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ABBREVIATIONS EXPLAINED.

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I.L.R. (1942) All.	.. Indian Law Reports, Allahabad Series.
A.L.J.	.. Allahabad Law Journal.
A.L.W.	.. Allahabad Law Weekly.
A.W.R.	.. Allahabad Weekly Reporter.
A.Cr.C.	.. Allahabad Criminal Cases.
A.I.R. 1942 All. or 1942 A.	.. All India Reporter, 1942 Allahabad.
A.M.L.J.	.. Ajmer-Merwara Law Journal.
I.L.R. (1942) Bom.	.. Indian Law Reports, Bombay Series.
Bom.L.R.	.. Bombay Law Reporter.
A.I.R. 1942 Bom. or 1942 Bom.	All India Reporter, 1942 Bombay.
Bur. L.T.	.. Burma Law Times.
Bur.L.J.	.. Burma Law Journal.
B.R.	.. Bihar Reports.
I.L.R. (1942) Cal	.. Indian Law Reports, Calcutta Series.
C.L.T.	.. Cuttack Law Times.
C.L.J.	.. Calcutta Law Journal.
Cr.L.J.	.. Criminal Law Journal.
C.W.N.	.. Calcutta Weekly Notes.
Comp.C.	.. Company Cases.
A.I.R. 1942 Cal. or 1942 Cal.	All India Reporter, 1942 Calcutta.
A.I.R. 1942 F.C.	.. All India Reporter, 1942 Federal Court.
Fed.L.J.	.. Federal Law Journal.
F.L.R.	.. Federal Law Reports.
I.A.	.. Law Reports, Indian Appeals.
A.I.R. 1942 P.C.	.. All India Reporter, 1942 Privy Council.
I.C.	.. Indian Cases.
I.T.R.	.. Income-tax Reports.
R.P.C.; R.A.; R.B.; R.C.; R.L.; R.M.; R.N.; R.O.; R.P.; R.R.; R.S.	Indian Rulings, Privy Council All., Bom., Cal., Lah., Mad., Nag., Oudh, Pat., etc.
I.L.R. (1942) Lah.	Indian Law Reports, Lahore Series.
A.I.R. 1942 Lah. or 1942 Lah.	All India Reporter, 1942 Lahore.
Lah.L.T. or L.L.T.	Lahore Law Times.
L.B.R.	.. Lower Burma Rulings.
L.W.	.. Law Weekly.
Luck.	.. Indian Law Reports, Lucknow Series.
I.L.R. (1942) Mad.	.. Indian Law Reports Madras Series.
(1942) M.L.J.	.. Madras Law Journal
M.L.T.	.. Madras Law Times.
M.W.N.	.. Madras Weekly Notes.
A.I.R. 1942 Mad. or 1942 Mad.	All India Reporter, 1942 Madras.
Mys.H.C.R.	.. Mysore High Court Reports.
Mys.L.J.	.. Mysore Law Journal.
I.L.R. (1942) Nag.	.. Indian Law Reports, Nagpur Series.
N.L.J.	.. Nagpur Law Journal.
A.I.R. 1942 Nag. or 1942 Nag.	All India Reporter, 1942 Nagpur.
A.I.R. 1942 Oudh or 1942 Oudh.	.. All India Reporter, 1942 Oudh.
O.A.	.. Oudh Appeals.
O.L.R.	.. Oudh Law Reports.
O.W.N.	.. Oudh Weekly Notes.
P.R.	... Punjab Record.
P.L.R.	.. Punjab Law Reporter.
P.W.R.	.. Punjab Weekly Reporter.
Pat. or P.	.. Indian Law Reports, Patna Series.
A.I.R. 1942 Pat. or 1942 Pat.	All India Reporter, 1942 Patna.
Pat.L.J.	.. Patna Law Journal.
Pat.L.T.	.. Patna Law Times.
P.W.N.	.. Patna Weekly Notes.
A.I.R. 1942 Pesh.	.. All India Reporter, 1942 Peshawar.
R, or Rang.	.. Indlan Law Reports, Rangoon Series.
Rang.L.R.	.. Rangoon Law Reports.
A.I.R. 1942 Rang. or 1942 Rang.	All India Reporter, 1942 Rangoon.
R.D.	.. Revenue Decisions.
S.L.R.	.. Slnd Law Reporter.
A.I.R. 1942 Sind or 1942 Sind.	All India Reporter, 1942 Sind.
U.B.R.	.. Upper Burma Rulings.

OTHER ABBREVIATIONS.

Appl.	.. Applied.
Appr.	.. Approved.
Comm.	.. Commented.
Cons.	.. Considered.
Cr.	.. Criminal.
Disc.	.. Discussed.
Diss.	.. Dissented from.
Doubt.	.. Doubted.
Expl.	.. Explained.
Foll.	.. Followed.
Dist. or D	.. Distinguished.
P.C.	.. Privy Council.
Rel.	.. Relied.
S.B.	.. Special Bench.
F.B.	.. Full Bench.
Ref. or R.	.. Referred.
Rev.	.. Revenue.

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——297=60 Cal. 980=37 C. W. N. 265 Ref. 46 C.W.N. 882=I.L.R. (1942) 2 Cal.485
61 I.A. 35=38 C.W.N. 325 Ref. 46 C.W.N. 94.
——78=36 Bom.L.R. 249 Foll. 44 Bom.L.R. 718; Rel. (1942) 2 M.L.J. 321 (F.B.).
——90=66 M.L.J. 65 Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
——158=38 C.W.N. 449 Ref. 46 C.W.N. 441.
——200=57 Mad.749 Ref.(1942) 2 M.L.J. 249 (P.C.).

61 I.A. 235 Dist. 17 Luck. 191.
——286=56 All. 468 Expl. I.L.R. 1942 Lah. 1 (P. C.); Reaffirmed 46 C.W.N. 537; P.C. Ref. 46 C.W.N. 967.
——371=39 C.W.N. 89 Ref. 46 C.W.N. 967.
——388 Rel. I.L.R 1942 Kar 513.
62 I.A. 40=37 Bom. L. R. 323 Foll. 44 Bom. L.R. 718.
——53, 62=62 Cal. 499 Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.
——80=57 All. 212 Appl. (1942) 2 M.L.J. 104. Ref. I. L. R. (1942) 2 Cal.160.
——161=59 Bom. 360=68 M. L.J. 701 (P.C.) Ref. (1942) 1 M.L.J. 119.
——224=39 C.W.N. 1124 Ref. 46 C.W.N. 729; Rel. I. L. R. (1942) 1 Cal. 169; (1942) 2 Cal. 299.
63 I.A. 12=40 C.W.N. 321 Ref. 46 C.W.N. 653.
——33=63 Cal. 691 Rel. I.L.R. 1942 Nag. 534.
——47=15 Pat. 268 Dist. (1942) 2 M.L.J. 667.
——114=15 Pat. 210 Ref. 46 C.W.N. 159; Rel. I.L.R. (1942) 1 Cal. 395.
——180, 189=40 C. W. N. 610 Ref. 46 C.W.N. 441.
——304 Ref. 44 Bom.L.R. 894.
——372 Ref. 21 Pat. 153.
——384=17 Lah. 644 Foll.(1942) 2 M.L.J. 457 (F.B.); I.L.R. (1942) 2 Cal. 413: Ref. (1942) 1 M.L.J. 318; 46 C. W.N. 808.
——441=16 Pat. 1 Ref. (1942) 2 M.L.J. 47.
——457=I. L. R. (1937) 1 Cal. 180 Ref. I.L.R. 1942 Mad. 182=(1941) 2 M.L.J. 900 (S.B.).
64 I A 5=41 C.W.N. 276 Ref. 46 C.W.N. 865.
——28 Foll. 21 Pat. 615.
——40 Appl. I.L.R. 1942 Lah. 692 (F.C.)
——55 Ref.I.L.R. 1942 Lah. 692 (F.C.).
——158=41 C.W.N. 709 Ref. 46 C.W.N. 561.
——203=I.L.R. (1937) 2 Cal. 447 Appl. (1942) 2 M.L.J. 187
——302=41 C.W.N. 1093. Ref. 46 C.W.N. 713.
——354=I L.R. 1937 All 901 Rel. I.L.R. (1942) 1 Cal.533.
65 I.A. 66=1938 O.W.N. 261 Foll. 1942 O.W.N. 157.
——93=I.L.R. 1938 Mad. 551=(1938) 1 M.L.J. 426 Ref. (1942) 1 M.L.J. 28; (1942) 2 M.L.J. 206.
——106=42 C.W.N. 930 Ref. 46 C.W.N. 20; Rel. 46 C. W.N. 355.
65 I.A. 213=40 Bom.L.R. 1065 Ref.44 Bom.L.R. 894.
——380=I.L.R. (1938) 2 Cal. 665 Rel. I.L.R. (1942) 2 Cal. 125.
66 I.A. 42=I.L.R. (1939) 1 Cal. 277=(1939) 1 M.L.J. 396 Ref. (1942) 2 M.L.J. 269.
——60=43 C.W.N. 281 Ref. 46 C.W.N. 704.
——66=18 Pat. 234 Disc. I.L.R. (1942) 1 Cal. 436.
——252=42 Bom.L.R. 138 Ref. 44 Bom.L.R. 788.
——258 Foll. I.L.R. 1942 All. 601 (604, 606) (P.C.); Ref.(1942) 2 M.L.J. 289.
67 I.A. 1 Foll. 44 Bom.L.R. 643; 46 C.W.N. 133; Ref. 1942 O.W.N. 337; I.L.R. (1942) 1 Cal. 510.
——129=I.L.R. 1940 Kar. 415 Ref. (1942) 2 M.L.J. 678 (F. B.).
——160=21 Lah. 470 Expl. 21 Pat. 330; Ref. (1942) 2 M.L. J. 724; 1942 O..W.N. 582; Rel. I.L.R. 1942 Bom. 512.
——222=I.L.R. (1940) Mad. 599 Ref. (1942) 2 M.L.J. 193.
——464=21 Lah. 685 Ref.I.L.R. (1942) 1 Cal. 11.
68 I.A. 1=I.L.R. (1941) Lah. 154 Appl. I.L.R. (1942) 2 Cal. 427=46 C.W.N. 743.

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1939 F.C.R. 13. (16) Rel. (1942) 1 M.L.J. 74 (F.C.); I.L.R. 1942 Lah. 712 (F.C.).
——18=2 F.L.J. 6 Cons. (1942) 2 M.L.J. 327; 1942 All. 302.
——159, 179, 184 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M. L.J. 14; I.L.R. 1942 Pat. Nag. 41.
1940 F.C.R. 110, 163 Foll. 21 Pat. 587 Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137; I.L.R. 1942 Lah. 623 (F.C.).
1941 F.C.R. 12 Ref. I.L.R. 1942 Mad. 630=(1941) 2 M..L. J. 862.

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3 F.L.J. 157 (185) Appl. I.L.R. 1942 All. 302; Foll. I.L.R. 1942 Mad. 60.
——157 Foll. I.L.R. 1942 Mad. 60 (72)=(1941) 2 M.L.J. 125.
4 F.L.J. 1 Rel. 21 Pat. 521.
——(H.C.) 178 Affirmed (1942) 1 M.L.J. 607.
5 F.L.J. 47 Ref. 1942 O.W.N. 654.

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1 All. 117 (F.B.) Dist. I.L.R. 1942 Nag. 182.
1 All. 394 Ref. I.L.R. 1942 A. 759 (768).
——688 Ref. I.L.R. 1942 All. 745 (760); I.L.R. 1942 Bom. 467.
2 All. 241 Ref. 1942 N.L.J. 91.
3 All. 563 Rel. 1942 N.L.J. 392.
——776 Ref. 1942 O.W.N. 316.
——812 Dist. I.L.R. 1942 All. 832 (835) (F.B.).
4 All. 91 Foll. 1942 A.L.J. 419.
——97 Diss. I.L.R. 1942 Nag. 650.
——296 Ref. 1942 O.W.N. 748.
——427 Ref. I.L.R. 1942 All. 759 (777).
5 All. 27 Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
——293 Rel. I.L.R. 1942 Nag 414.
——406 Dist. I.L.R. (1942) 2 Cal 28 Ref.. 21 Pat. 1.
——509 Ref. I.L.R. 1942 All. 518 (581).
6 All. 1, 9 (P.C.) Rel. I.L.R. 1942 Kar. 392.
——268 (P.C.) Ref. I.L.R. 1942 Lah. 559 (F.B.)
——269. (P.C.) Ref. I.LR. 1942 Lah. 559 (F.B.).
——509 Rel. 23 P.L.T. 387.
——560 Ref. I.L.R. 1942 All. 518 (571).
7 All. 264 Ref. 46 C.W.N. 882=I.L.R. (1942) 2 Cal. 485.
——461 Rel. 23 P.L.T. 81.
——641 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——661 (F.B.) Rel. I.L.R. 1942 Nag. 459.
——862 Dist. 44 P.L.R. 269.
8 All. 99 Ref. 17 Luck. 52.
——111 Rel. 1942 O.W.N. 494.
——146 (F.B.) Foll. 21 Pat. 233.
——324 Ref. I.L.R. (1942) 1 Cal. 169.
9 All. 108 (F.B.) Not Foll. I.L.R. 1942 Lah. 324.
——120 Ref. 23 P.L.T. 588.
——221 Ref. I.L.R. 1942 Nag. 1.
——661 Not Foll. 1942 O.W.N. 281.
10 All. 44 Appl. 21 Pat. 315.
——272 Ref. I.L.R. 1942 All. 518.
——506 Dist. I.L.R. 1942 Nag. 189.
——570 Ref. I.L.R. 1942 Mad. 360=(1941) 2M. L.J.1024.
11 All. 47, 56 (P.C.) Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.
——148 (F.B.) Ref. I.L.R. 1942 Mad. 677=(1942) 1 M.L. J. 281.
——194 (F.B.) Ref. 46 C.W.N. 379=1942 O.W.N. 748.
——267, 287 (F.B.) Rel. I.L. R. 1942 Nag. 333; (1942) 2 M.L.J. 595.
——361 Diss. 44 Bom.L.R. 439.
12 All. 198 Ref. 21 Pat. 1.
——387 Ref. 17 Luck. 198.

12 All. 399 (F.B.) Not Foll. 21. Pat 481.
13 All. 277 (F.B.) Foll. I.L.R. 1942 Nag. 294.
14 All. 38 Rel. I.L.R. 1942 Nag. 122.
——156 (F.B.) Foll. I.L.R. 1942 All. 259.
——242 Ref. 44 P.L.R. 38.
——524 Ref. 1942 O.W.N. 766.
15 All. 84 Ref. 17 Luck. 366.
——336 Rel. I.L.R. 1942 Lah. 675.
16 All. 84 (F.B.) Ref. 21 Pat. 258.
——124 Rel. I.L.R. 1942 Bom. 22.
——163 Ref. I.L.R. 1942 All. 862.
——165 (F.B.) Ref. 44 Bom. L.R. 819; I.L.R. 1942 All. Bom. 103.
——211 Ref. 17 Luck. 297.
——237 Foll. I.L.R. 1942 Mad. 770=(1942) 1 M.L.J. 532.
——379 Ref. I.L.R. 1942 All. 745 (748).
17 All. 63 (65) Ref. I.L.R. 1942 All. 608 (622).
——198 Dist. I.L.R. 1942 All. 680 (696, 700, 704); Rel. I.L.R. 1942 Nag. 182.
——531 Dist. I.L.R. 1942 Nag. 642.
18 All. 69 Dist. I.L.R. 1942 All. 832 (835).
——88 Ref. 17 Luck. 663.
——233 Rel. I.L.R. 1942 Nag. 633.
——246 Ref. 17 Luck. 311; 591.
——474 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
19 All. 50 Ref. I.L.R. 1942 Mad. 24=(1942) 2 M.L.J. 263; I.L.R. 1942 Bom. 776.
——109 Dist. I.L.R. 1942 Nag. 193.
——300 Ref. 1942 A.L.J. 152.
——342 Ref. I.L.R. 1942 Mad. 868=(1942) 2 M.L.J. 104.
——515 Ref. I.L.R. 1942 All. 518 (590)
20 All. 1 Foll. I.L.R. 1942 Nag. 432.
——42 Ref. I.L.R. 1942 All. 259.
——267 Ref. I.L.R. 1942 All. 518 (591); 759.
——299 Ref. I.L.R. 1942 Nag. 459.
——322 (F.B.) Not Foll. I.L.R. 1942 Nag. 172.
——362 Diss. 44 Bom.L.R. 117.
——401, 407 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
21 All. 4 Ref. I.L.R. 1942 All. 368.
21 All. 53 (P. C.) Ref. I.L.R. 1942 Nag. 561.
——106 Rel. I.L.R. 1942 All. 182.
——152 Rel. 1942 O.W.N. 648.
——380 Dist. I.L.R. 1942 All. 832 (835).
21 All. 496 (P.C.) Rel. I.L.R. 1942 Nag. 232; 17 Luck. 610.
22 All. 149 (P.C.) Foll. I.L.R. 1942 Nag. 592.
——307 Ref. 46 C.W.N. 947.
——326 Ref. 1942 O.W.N. 748.
23 All. 194 (P.C.) Dist. I.L.R. 1942 Nag. 526.
——291 Ref. I.L.R. 1942 All. 518 (574).
24 All. 94 Ref. 44 P.L.R. 87.
——112 Ref. I.L.R. 1942 All. 624 (655).
——160 Ref. 1942 O.W.N. 748.
——190 Ref. I.L.R. 1942 Kar. 179.
——346 Ref. 1942 O.W.N. 432.
——446 Ref. 1942 O.W.N. 786.
25 All. 27 Diss. I.L.R. 1942 Kar. 435.
——48 Rel. I.L.R. (1942) 1 Cal. 562.
——128 Ref. 1942 O.W.N. 432; 786.
——132 Dist. 21 Pat. 778.
——133 Foll. I.L.R. 1942 Kar. 157.
——334 Dist. 17 Luck. 164.
——341 Ref. 1942 A.L.J. 587.
——407 (P.C.) Ref. I.L.R. 1942 All. 518; I.L.R. 1942 Nag. 214.
26 All. 162 Foll. 44 Bom.L.R. 643; Ref. I.L.R. 1942 Lah. 517 (F.B.).
——365 Not Foll. I. L. R. 1942 Nag. 633.
——368 Ref. 1942 A.L.J. 386.
——407 Ref. 1942 O. W. N. 672 (F.B.).
——472 Ref. I. L. R. 1942 Bom. 340.
——490 Ref. 17 Luck. 636.
——493 Ref. 1942 N.L.J. 139.
——549 Dist. 1942 O.W.N. 237.
——588 Dist. 1942 O.W.N. 750.
27 All. 151 Not. Foll. I.L.R. 1942 Nag. 432.
——294 Foll. I.L.R. 1942 Nag. 484.
——334 (P.C.) Dist. I.L.R. 1942 Nag. 245.
——356 Rel. 23 P.L.T. 81.
——592 Diss. 46 C.W.N. 393.
——688 Rel. 1942 O.W.N. 281.
28 All. 41 Ref. 46 C.W.N. 561.
——137 Ref. I.L.R. 1942 All. 509.
——157 Ref. I.L.R. 1942 All. 368.
——249 Ref. 17 Luck. 346.
——288 Dist. 17 Luck. 319.
——302 Ref. I.L.R. 1942 All. 899.
——482 (P.C.) Rel. I.L.R. 1942 Nag. 393.
——585 (P.C.) Rel. I.L.R. 1942 Nag. 642.
——683 Ref. 44 P.L.R. 269.
——741 Ref. 17 Luck. 472.
29 All. 37 Foll. 21 Pat. 377.
——212 Ref. 23 P.L.T. 227.
——290 Ref. I.L.R. 1942 All. 509.
——331 Rel. 1942 A.L.J. 94=I. L.R. 1942 All. 820.
——373 Ref. 1942 N.L.J. 434.
29 All. 608 Ref. 23 P.L.T. 227.
——730 Dist. 17 Luck. 702.
——773 Ref. I.L.R. 1942 All.247.
30 All. 30 Dist. I.L.R. 1942 All. 832 (835).
——117 Ref. 17 Luck. 297.
——134 Foll. 1942 O.W.N. 435.
——141 Ref. 17 Luck. 623.
——197 Ref. I.L.R. 1942 Bom. 467.
——375 Ref. 23 P.L.T. 218.
——394 Ref. 1942 .A.L.J. 152.
——525 (P.C.) Ref. 21 Pat. 102.
31 All. 49 Ref. 17 Luck. 215.
——65 Ref. (1942) 2 M.L.J. 525.
——156 Ref. 1942 O.W.N. 672 (F.B.).
——276 Ref. 17 Luck. 530=1942 O.W.N. 546.
——412 Ref. I.L.R. 1942 All. 518.
——572 Foll. 44 P.L.R. 31; Ref. I.L.R. 1942 All. 509
32 All. 1 Dist. I.L.R. 1942 Nag. 309.
——30 Rel. I.L.R. 1942 All. 42.
——138 Dist. I.L.R. 1942 Nag. 309.
——410 (P.C.) Foll. 21 Pat. 377.
——491 Ref. (1942) 2 M.L.J. 663.
——571 Foll. I.L.R. 1942 Nag. 620.
——575 Ref. (1942) 1 M.L.J. 522.
——625 Rel. 17 Luck. 84.
33 All. 51 (F.B.) Dist. 17 Luck. 702.
——344 (P.C.) Ref. 1942 N.L.J. 570.
——356 Rel. 23 P.L.T. 717 (P. C.).
——457 Ref. 44 P.L.R. 87.
——479 Rel. 1942 O.W.N. 313; 494.
——645 Rel. I.L.R. 1942 Kar. 177.
——708 Ref. 1942 O.W.N. 672 (F.B.).
——757 Rel. 1942 O.W.N. 351.
34 All. 172 Dist. I.L.R. 1942 All. 103.
——184 Ref. 23 P.L.T. 218.
——478 Dist. 21 Pat. 815; Ref. I.L.R. (1942) 1 Cal. 211.
——606 Ref. I.L.R. 1942 All. 608 (619).
35 All. 48 (P.C.) Foll. I.L.R. 1942 Nag. 592.
——58 Ref. 1942 N.L.J. 547.
——227 (P.C.) Ref. I.L.R. (1942) Mad. 562=(1942) 1 M.L.J. 472.
——487 Dist. 17 Luck. 341.
——524 Ref. I.L.R. 1942 Bom. 190.
——558 Dist. I.L.R. 1942 Nag. 494.
——560 Rel. 17 Luck. 376.
36 All. 280 Ref. 44 P.L.R. 203.
——284 Ref. 1942 O.W.N. 206.
——350 (P.C.) Dist. I.L.R. 1942 Nag. 245; Ref. 1942 O. W.N. 206.
——370 Ref. 17 Luck. 226.

37 All. 40 Dist. I.L.R. 1942 Nag. 92.
——189 Rel. I L.R. (1942) 1 Cal. 562.
——309 Not Appr. (1942) 2 M. L.J. 47.
——557 Ref. I.L.R. 1942 All. 518; I.L.R. 1942 Mad. 844.
——624 Ref. 17 Luck. 128.
38 All. 56 Dist. 1942 O.W.N. 793.
——62 Foll. 1942 O.W.N. 281.
——237 Ref. I.L.R. 1942 Nag. 1.
——469 Dist. I.L.R. 1942 Bom. 456.
——509 Ref. 17 Luck. 109.
——570 Ref. 17 Luck. 198.
39 All. 348 Not Foll. I.L.R. 1942 Nag. 510.
——412 Ref. (1942) 2 M.L.J. 140.
——437 (P.C.) Ref. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.); I.L.R. 1942 Nag. 214; 543.
——469 Ref. I.L.R. 1942 All. 518 (574)
——553 (P.C.) Rel. I.L.R. 1942 Nag. 468.
——711 Ref. 17 Luck. 558.
40 All. 12 Rel. 1942 O.W.N. 213.
——159 (P.C.) Ref. 1942 N.L.J. 21.
——271 Foll. 21 Pat. 778.
——487 (P.C.) Foll. 44 P.L.R. 87.
——615 Ref. 23 P.L.T. 62.
——680 Ref. I.L.R. 1942 Lah. 559 (F.B.).
41 All. 111 Rel. I.L.R. 1942 Mad. 308=(1941) 2 M.L.J. 913.
——243 Ref. I.L.R. (1942) 1 Cal. 427.
——399 Expl. 23 P.L.T. 267.
——553 Dist. I.L.R. 1942 Nag. 642.
——583 Ref. I.L.R. 1942 All. 862.
——656 Dist. I.L.R. 1942 All. 821 (829).
42 All. 158, 167 (P.C.) Rel. I.L.R. 1942 Nag. 732.
——257 Foll. 21 Pat. 778.
——264 Not Foll. I.L.R. 1942 Nag. 322.
——290 Ref. 44 Bom.L.R. 699.
——336 Dist. I.L.R. 1942 All. 421.
——347 Dist. 44 Bom.L.R. 912.
——368 Ref. 1942 N.L.J. 478.
43 All. 20 (23) Rel. I.L.R. 1942 All. 821=1942 A.L.J. 346.
——35 Dist. I.L.R. 1942 All. 821 (829); Rel. 1942 A.L.J. 346.
——92 Foll. 21 Pat. 778.
——137 Foll. 1942 N.L.J. 218.
——159 Dist. I.L.R. 1942 All. 821 (829).
——305 Dist. I.L.R. 1942 Nag. 414.
——389 Ref. 17 Luck. 558.
——394 Not Foll. I.L.R. 1942 Mad. 688=(1942) 1 M.L.J. 377.
43 All. 463=19 A.L.J. 312 Overr. 1942 A.L.J. 732.
——589 Foll. 44 Bom.L.R. 15.
44 All. 19 Ref. 44 P.L.R. 437.
——67 Ref. I.L.R. 1942 Nag. 393.
——190 Ref. 23 P.L.T. 528.
——503 (P.C.) Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——521 Dist. I.L.R. 1942 Kar. 516.
——546 Rel. I.L.R. 1942 Nag. 182.
——636 Ref. 17 Luck. 487.
——677 Ref.(1942) 2 M.L.J. 164.
——686 Ref. I.L.R. 1942 All. 129.
45 All. 21 Dist. I.L.R. 1942 Nag. 73.
——66 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——179 Ref. 44 P.L.R. 87.
——179, 184 (P.C.) Foll. I.L.R. 1942 Nag. 294.
——297 Ref. I.L.R. 1942 All. 708 (736)=1942 A.L.J. 487.
——445 Rel. I.L.R. 1942 All. 821 (826).
——506 (F.B.) Dist. 17 Luck. 702.
——520 Ref. 17 Luck. 636.
——624 Dist. I.L.R. 1942 Nag. 428.
46 All. 95 (P.C.) Ref. I.L.R. 1942 All. 498; I.L.R. 1942 Nag. 214; I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——254 Not Foll. 21 Pat. 778.
——295 Ref. I.L.R. 1942 All. 498.
——359 Dist. 1942 N.L.J. 218= I.L.R. 1942 Nag. 315.
——377 Ref. 17 Luck. 636.
——537 Ref. 23 P.L.T. 62.
——560 Not Foll. I.L.R. 1942 Mad. 688=(1942) 1 M.L.J. 377.
——611 Not Foll. I.L.R. 1942 Nag. 208.
——620 Foll. I.L.R. 1942 Nag. 161.
——693 (F.B.) Ref. I.L.R. 1942 Mad. 749=(1942) 1 M.L.J. 538.
——815 Ref. (1942) 1 M.L.J. 485.
——831 Ref. 44 P.L.R. 437.
47 All. 44 Ref. 17 Luck. 739.
——78 Ref. I.L.R. 1942 Kar. 358.
——121 Rel. I.L.R. 1942 Nag. 414.
——165 Rel. 23 P.L.T. 528.
——268 Foll. I.L.R. 1942 Nag. 208.
——291 Ref. 44 Bom.L.R. 727; 23 P.L.T. 167.
——385 Ref. 23 P.L.T. 91.
——434 Ref. 44 P.L.R. 236.
——637 (F.B.) Reaffirmed I.L. R. 1942 All. 357 (F.B.).
47 All. 756 Foll. & Dist. 21 Pat. 720.
——770 Foll. I.L.R. 1942 All. 121.
——795 Foll. 23 P.L.T. 528.
——916 Rel. I.L.R. 1942 Nag. 414.
48 All. 60, 68 Ref. I.L.R. 1942 Kar. 193.
——77 Rel. 1942 O.W.N. 368.
——209 Rel. I.L.R. 1942 Kar. 196.
——239 Rel. I.L.R. 1942 Nag. 414.
——413 Rel. I.L.R. 1942 Kar. 354.
——493 Diss. I.L.R. 1942 All. 859.
——501 Foll. 44 P.L.R. 71; Ref. 1942 O.W.N. 387.
——518, 527 (P.C.) Ref. I.L.R. 1942 Nag. 214.
——529 (541) Ref. I.L.R. 1942 All. 518 (568).
——684 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——705 Rel. 23 P.L.T. 46.
49 All. 5 Ref. I.L.R. 1942 Nag. 62.
——149=25 A.L.J. 80 (P.C.) Ref. 1942 A.L.J. 94=I.L.R. 1941 All. 820.
——276 Ref. 17 Luck. 366.
——379 Rel. 23 P.L.T. 354.
——379 Foll. 21 Pat. 601.
——385 Dist. 21 Pat. 799.
——430 Rel. I.L.R. 1942 Nag. 393.
——443 Rel. 23 P.L.T. 534.
——454 Rel. 23 P.L.T. 104.
——464 Dist. I.L.R. 1942 Kar. 516; Rel. 1942 O.W.N. 63.
——482 Ref. 1942 N.L.J. 547.
——488 Dist. I.L.R. 1942 All. 169 (F.B.).
——496 Rel. 1942 A..L.J. 656.
——645 Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
——763 Foll. I.L.R. 1942 Nag. 608.
——923 Ref. 44 Bom.L.R. 111.
50 All. 454 Dist. 17 Luck. 164.
——489 Ref. I.L.R. 1942 All. 708 (727).
——495 Ref. I.L.R. 1942 All. 425.
——507 Ref. (1942) 2 M.L.J. 94.
——517 Dist. 17 Luck. 702.
——569 Ref. I.L.R. 1942 Nag. 393.
——606 Foll. (1942) 2 M.L.J. 626.
——709 Ref. I.L.R. 1942 Bom. 39.
——722 (P.C.) Ref. I.L.R. 1942 Lah. 129.
——754 Dist. I.L.R. 1942 Kar. 516; Rel. 1942 O.W.N. 63.
——857 Ref. I.L.R. 1942 All. 448; 671 (679).
——909 (F.B.) Foll. 17 Luck 105.

51 All. 1 Ref. I.L.R. 1942 All. 518.
——40 Ref. I.L.R. 1942 Bom. 441.
——188 Foll. I.L.R. 1942 All. 259.
——237 (F.B.) Ref. 17 Luck. 449.
——346 Foll. I.L.R. 1942 Nag. 779.
——467 Rel. I.L.R. 1942 Lah. 402.
——544 Dist. 17 Luck. 353.
——612 Ref. I.L.R. (1942) 1 Cal. 427.
——672 Ref. 17 Luck. 739.
——765 Ref. I.L.R. 1942 Nag. 740.
——771 (P.C.) Ref. I.L.R. 1942 Nag. 73.
——1010 Dist. I.L.R. 1942 Nag. 414.

52 All. 338 Foll. 17 Luck. 249.
——358 Ref. 1942 O.W.N. 672 (F.B.).
——368 Ref. I.L.R. 1942 Bom. 441.
——430 Ref. I.L.R. 1942 Lah. 517 (F.B.) ; 807.
——448 Rel. I.L.R. 1942 Nag. 62.
——546 Foll. 44 Bom.L.R. 912.
——553 Ref. 1942 O.W.N. 446.
——560 Not Foll. I.L.R. 1942 Nag. 518.
——619 Ref. 1942 O.W.N. 68.
——623 Ref. I.L.R. 1942 All. 859.
——761 Diss. 44 P.L.R. 342 ; Dist. 44 P.L.R. 415.
——844 Ref. 1942 O.W.N. 97 ; 363.
——856 Ref. 1942 N.L.J. 547.
——927 Ref. I.L.R. 1942 All. 859.
——1005 Diss. 21 Pat. 799.

53 All. 5 Rel. I.L.R. 1942 Nag. 588.
——100 Dist. 17 Luck. 164.
——114 Dist. 1942 O.W.N. 343.
——157 Ref. 23 P.L.T. 379.
——216 Ref. I.L.R. 1942 All. 859.
——223 Foll. I.L.R. 1942 Nag. 277.
——239 (F.B.) Ref. 46 C.W.N. 808=(1942) 2 Cal. 413 ; (1942) 1 M.L.J. 511.
——313 Not Foll. (1942) 1 M.L.J. 311.
——804 (F.B.) Rel. I.L.R. 1942 Kar. 12.
——868 (872) (F.B.) Ref. (1942) 1 M.L.J. 173.
——1006 Rel. I.L.R. 1942 Nag. 414.
——1023 (F.B.) Ref. 44 Bom. L.R. 111.

54 All. 25 Dist. 23 P.L.T. 615.
——93 (P.C.) Dist. I.L.R. 1942 Kar. 392.
——189 (P.C.) Disc. I.L.R. 1942 Lah. 155 (F.B.).
54 All. 205 Rel. 17 Luck. 727.
——371 Ref. I.L.R. 1942 Nag. 1.
——411 Rel. I.L.R. 1942 Nag. 523.
——428 Ref. I.L.R. 1942 Mad. 448=(1942) 1 M.L.J. 11.
——448 Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
——475 Diss. I.L.R. 1942 Mad. 143=(1941) 2 M.L.J. 541.
——506 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——525 Diss. I.L.R. 1942 Nag. 459.
——541 Foll. I.L.R. 1942 Nag. 114.
——622 Rel. I.L.R. (1942) 1 Cal. 245=46 C.W.N. 149.
——646 (F.B.) Not Foll. 17 Luck. 1 ; Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——806 Ref. 17 Luck. 572.
——812 Ref. 23 P.L.T. 218.
——822 Ref. I.L.R. 1942 All. 892.
——861 Ref. 1942 O.W.N. 387.
——897 (F.B.) Foll. 44 Bom. L.R. 415 ; Ref. (1942) 2 M.L.J. 47 ; 1942 O.W.N. 165 (F.B.).
——904 Foll. I.L.R. 1942 All. 169 (F.B.).
——1019 Ref. I.L.R. 1942 Bom. 574.
——1031 Dist. 21 Pat. 601.
——1067 (P.C.) Ref. 44 P.L.R. 382.

55 All. 139 Ref. I.L.R. 1942 Bom. 204.
——173 Ref. 1942 O.W.N. 522.
——191 Ref. 23 P.L.T. 218.
——221 Ref. (1942) 1 M.L.J. 575.
——256 Foll. I.L.R. 1942 Nag. 478 ; Ref. 17 Luck. 605 ; 628.
——283 Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.) ; I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——326 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——370 Ref. I.L.R. 1942 All. 498 ; I.L.R. 1942 Nag. 214.
——393 Foll. 21 Pat. 481.
——554 Foll. I.L.R. 1942 All. 259.
——715 Ref. I.L.R. 1942 All. 892.
——775 Rel. 17 Luck. 249.
——814 Ref. 1942 N.L.J. 30.
——897, 910 (F.B.) Rel. I.L.R. 1942 Nag. 740.
——972 Not Foll. I.L.R. 1942 Nag. 325.
——993 (P.C.) Rel. I.L.R. 1942 Kar. 448.

56 All. 134 Ref. 44 Bom.L.R. 111.
——142 Dist. (1942) 2 M.L.J. 500.
56 All. 250 Ref. I.L.R. 1942 Kar. 186 ; 17 Luck. 182.
——251 Rel. 23 P.L.T. 18.
——376 (P.C.) Ref. I.L.R. 1942 Nag. 369.
——468 (P.C.) Expl. 21 Pat. 710 ; 1942 A.L.J. 159 (P.C.).
——504 Expl. (1942) 2 M.L.J. 761 (P.C.).
——537 Ref. 44 P.L.R. 258.
——561 Dist. I.L.R. 1942 Nag. 131.
——624 Ref. 1942 N.L.J. 30.
——656 Ref. 44 P.L.R. 288.
——711 Dist. I.L.R. 1942 Kar. 392.
——791 (F.B.) Dist. 21 Pat. 838.

56 All. 821 Ref. 46 C.W.N. 882=I.L.R. (1942) 2 Cal. 485.
——895 Ref. I.L.R. 1942 All. 859.
——921 Not Foll. I.L.R. 1942 Mad. 770=(1942) 1 M.L.J. 532.
——1026 Dist. I.L.R. 1942 All. 821 (830).

57 All. 145 (F.B.) Rel. (1942) 2 M.L.J. 442.
——156 (P.C.) Foll. I.L.R. 1942 Lah. 129 (F.B.).
——176 Ref. I.L.R. 1942 All. 509.
——242 (P.C.) Appl. I.L.R. 1942 Mad. 868 ; Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.
——278 (F.B.) Rel. 1942 O.W.N. 753.
——330 (P.C.) Ref. I.L.R. 1942 Nag. 468.
——439 Ref. 1942 O.W.N. 343.
——459 Dist. I.L.R. 1942 Nag. 414.
——506 Rel. 17 Luck. 376.
——573 Dist. I.L.R. 1942 Nag. 506.
——580 Not Foll. (1942) 2 M.L.J. 431.
——605 Ref. I.L.R. 1942 All. 247; I.L.R. 1942 Nag. 543.
——638 Ref. 23 P.L.T. 218.
——810 Ref. 21 Pat 1 ; 44 P.L.R. 288.
——881 Diss. I.L.R. 1942 Lah. 717 (F.B.).
——949 Ref. 1942 N.L.J. 599.
——983 (F.B.) Ref. I.L.R. 1942 Lah 491 (F.B.).

58 All. 261, 271 (F.B.) Ref. I.L.R. 1942 Mad. 590=(1942) 1 M.L.J. 469 (F.B.).
——313 Ref. 17 Luck. 366.
——360 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——379 Ref. I.L.R. 1942 Mad. 24=(1941) 2 M.L.J. 263.
——495 Ref. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968.
——602 Ref. 1942 O.W.N. 672 (F.B.).
——644 Cons. I.L.R. (1942) 2 Cal. 507 : Ref. 46 C.W. 952.

58 All. 734 Dist. I.L.R. 1942 Bom 823 ; Rel. 17 Luck. 655.
——949 (F.B.) Not Foll. I.L.R. 1942 Nag. 118 ; Ref. 23 P.L. T. 91.
——1019 Ref. I.L.R. 1942 Bom. 467.
I.L.R. 1937 All. 234 Ref. I.L.R. 1942 Lah. 386.
——317 Rel. I.L.R. 1942 Nag. 414.
——344 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——366 Ref. 1942 N.L.J. 30.
——403 Disappr. I.L.R. 1942 All. 45 (F.B.).
——443 Rel. 1942 N.L.J. 372.
——500 Ref. I.L.R. 1942 All. 185 (F.B.).
——514 Dist. I.L.R. 1942 All. 351.
——616 Foll. I.L.R. 1942 Bom. 175 ; Ref. 44 P.L.R. 347 ; Rel. I.L.R. 1942 Lah. 746 (F.B.).
——759 Rel. I.L.R. 1942 All. 45 (F.B.).
——805 Appr. I.L.R. 1942 All. 185 (F.B..
——825 (F.B.) Rel. I.L.R. 1942 All. 518.
——880 (F.B.) Foll. 44 Bom.L.R. 415 ; Ref. I.L.R. 1942 Bom. 169.
——943 Disappr. I.L.R. 1942 All. 45 (F.B.).
I.L.R. 1938 All. 1 Foll. 21 Pat. 815.
——19 Overr. I.L.R. 1942 All. 45 (F.B.).
——22 Rel. 17 Luck. 597.
——29 Ref. I.L.R. 1942 All. 185 (F.B.).
——252 Dist. I.L.R. 1942 Nag. 343.
——305 Disappr. I.L.R. 1942 All. 45 (F.B.).
——422 Dist. I.L.R. 1942 All. 680 (701, 703).
——432 Ref. I.L.R. 1942 All. 398.
——466 Appr. 23 P.LT. 267.
——489 Ref. I.L.R. 1942 All. 493.
——538 Rel. I.L.R. 1942 Kar. 225.
——601 (P.C.) Rel. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.
——638 Reversed (1942) 2 M.LJ. 761=47 C.W.N. 60 (P.C.).
——687 Foll. 1942 O.W.N. 789.
——702 (F.B.) Ref. 21 Pat. 1.
——714 Ref, I.L.R. 1942 All. 368.
I.L.R. 1939 All. 200. Dist. I.L.R. 1942 Bom. 512.
——396 Ref. I.L.R. 1942 All. 185 (F.B.).
——431 Rel. I.L.R. 1942 All. 45 (F.B.).
——454 Dist. I.L.R. 1942 Nag. 564.
——492 Ref. I.L.R. 1942 Mad. 448=(1942) 1 M.L.J. 11.
——549 (F.B.) Rel. I.L.R. 1942 Lah. 447 (F.B.) ; 548.
I.L.R. 1939 All. 554 Ref. (1942) 2 M.L.J. 425.
——563 Not Foll. 1942 N.L.J. 485.
——647 (F.B.)=37 A.L.J. 522 Ref. 1942 A.L.J. 592 (F.B.).
——680 Ref. I.L.R. 1942 All. 518.
——817 Ref. I.L.R. 1942 All. 185 (F.B.).
——863 Foll. I.L.R. 1942 Bom. 249.
——934 Ref. 17 Luck. 52.
I.L.R. 1940 All. 1 Rel. I.L.R. 1942 All. 144.
——26 Appr. 1942 N.L.J. 485.
——91 Ref. 17 Luck. 555.
——136 Ref. I.L.R. 1942 All. 289.
——314 Ref. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——334 Dist. I.L.R. 1942 All. 351.
——338 Diss. I.L.R. 1942 Kar. 79.
——338 Dist. 21 Pat. 644.
——344 Not Foll. 17 Luck. 1.
——396 (F.B.) Appr. 46 C.W.N. 180.
——396 Disc. I.L.R. (1942) 1 Cal. 436 ; Not Foll. 23 P.L. T. 475.
——542 Rel. I.L.R. 1942 All. 848 (850).
——710 Rel. I.L.R. 1942 Nag. 506.
——730 Ref. I.L.R. 1942 All. 86.
——805 Ref. I.L.R. 1942 All. 445.
I.L.R. 1941 All. 136 Ref. I.L.R. 1942 All. 832 (838).
——153 Ref. I.L.R. 1942 All. 26.
——186 Ref. 17 Luck. 52.
——617 Ref. 1942 O.W.N. 654.
I.L.R. 1942 All. 103 Ref. I.L.R. 1942 All. 624 (646).
——119 Overr. 1942 A.L.J. 554 (F.B.).
——448 Ref. I.L.R. 1942 All. 671 (677).

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1 A.L.J. 247 Dist. 17 Luck. 164.
2 A.L.J. 29 Rel. 1942 A.L.J. 483.
——203 Ref. 1942 N.L.J. 547.
3 A.L.J. 833 Ref. 1942 A.L.J. 383.
5 A.L.J. 752 Ref. 1942 N.L.J. 531.
6 A.L.J. 135 Rel. 17 Luck. 284.
——924 Rel. I.L.R. 1942 Nag. 695.
7 A.L.J. 741 Foll. 1942 A.L.J. 419.
8 A.L.J. 674 Rel. I.L.R. 1942 All. 42.
9 A.L.J. 672 Foll. 1942 O.W.N. 435.
10 A.L.J. 185 Foll. 1942 A.L.J. 446 ; Ref. I.L.R. 1942 All. 810 (816).
11 A.L.J. 127 Ref. 17 Luck. 755 (F.B.).
12 A.L.J. 15 Ref. I.L.R. 1942 Mad 494=(1941) 2 M.L.J. 787.
——1080 Ref. 44 P.L.R. 437.
13 A.L.J. 470 Ref. I.L.R. 1942 Lah. 470.
——745 Ref. 1942 O.W.N. 574.
13 A.L.J. 753 Rel. 1942 A.L.J. 561.
——843 Ref. 17 Luck. 215.
——901 Rel. 1942 A.L.J. 561.
14 A.L.J. 85 Ref. 17 Luck. 558.
——247 Ref. 1942 A.L.J. 677.
16 A.L.J. 44 Rel. 1942 A.L.J. 634
17 A.L.J. 151 Ref. I.L.R. 1942 All. 759 (768) ; 17 Luck. 72.
——832 Dist. 21 Pat. 601=23 P.L.T. 354.
——922 Ref. 17 Luck. 215.
19 A.L.J. 822 Not Foll. I.L.R. 1942 All. 121 ; Ref. I.L.R. 1942 All. 155.
21 A.L.J. 358 Rel. 1942 A.L.J. 346.
——701 Ref. 1942 O.W.N. 766.
——930 Rel. I.L.R. 1942 Nag. 695.
23 A.L.J. 97 (103) Ref. I.L.R. 1942 All. 518 (561).
——869 Ref. 1942 O.W.N. 582.
24 A.L.J. 347 Ref. I.L.R. 1942 All. 242.
——355 Rel. 17 Luck. 610.
——441 Ref. I.L.R. 1942 All. 756 (F.B.).
——557 Dist. 1942 A.L.J. 419.
——751 Ref. I.L.R. 1942 All. 745 (748).
25 A.L.J. 213 Rel. 1942 A.L.J. 661.
——749 Ref. I.L.R. 1942 All. 945.
26 A.L.J. 268 Diss. 1942 A.L.J 487.
——1174 Ref. I.L.R. 1942 All. 518 (572).
27 A.L.J. 9 (P.C.) Rel. 1942 A.L. J. 264 (P.C.).
——976 Ref. 17 Luck. 739.
——1257 Ref. 17 Luck. 215.
1930 A.L.J. 99 Ref. I.L.R. 1942 All. 862.
——224 Ref. (1942) 2 M.L.J. 97.
——389 Ref. I.L.R. 1942 All. 945
——901 Foll. 1942 A.L.J. 340.
——1537 Rel. 1942 A.L.J. 483.
——1572 Overr. I.L.R. 1942 All. 624 (F.B.).
1931 A.L.J. 314 Ref. I.L.R. 1942 All. 745 (750).
——417 Ref. 44 Bom.L.R. 839.
——603 Ref. 1942 A.L.J. 44.
——649 Rel. 1942 A.L.J. 386.
——727 Foll. 1942 A.L.J. 419.
——777 Rel. 1942 O.W.N. 281.
1932 A.L.J. 228 Foll. 44 Bom. L.R. 855.
——392 Ref. I.L.R. 1942 Bom. 704.
——497 Rel. 17 Luck. 284.
——691 Ref. I.L.R. 1942 All. 862.
——731 Rel. 1942 A.L.J. 352.
——1029 Ref. I.L.R. 1942 All. 671 (679).
——1110 Ref. I.L.R. 1942 All. 518.
1933 A.L.J. 110 Foll. 1942 A.L.J. 340.
——255 Rel. 1942 O.W.N. 206.
——907 Ref. I.L.R. 1942 All. 938; Rel. 1942 A.L.J. 632.

1933 A.L.J. 957 Rel. 1942 A.L.J. 376.
——1059 Rel. 1942 O.W.N. 425.
1934 A.L.J. 247 Ref. 17 Luck. 605.
——308 (F.B.) Rel. 1942 A.L.J. 559.
——827 Foll. 1942 A.L.J. 340.
——857 Disappr. I.L.R. 1942 All. 421 (F.B.).
——1197 Ref. 1942 A.L.J. 346.
1935 A.L.J. 139 Ref. 1942 O.W.N. 582.
——383 Rel. I.L.R. 1942 All. 832 (840).
——841 Rel. 1942 O.W.N. 281.
——978 (P.C.) Ref. I.L.R. 1942 All. 425.
1936 A.L.J. 3 Rel. 1942 A.L.J. 559.
——680 Ref. I.L.R. 1942 All. 518 (570).
——1250 Dist. I.L.R. 1942 All. 351.
——1366 Ref. 1942 O.W.N. 791.
1937 A.L.J. 120 Ref. 17 Luck. 121.
——125 Ref. I.L.R. 1942 All. 185 (F.B.).
——126 Rel. 1942 O.W.N. 281.
——486 Rel. 1942 O.W.N. 281.
——659 Ref. 17 Luck. 755=1942 O.W.N. 165 (F.B.).
——843 Ref. I.L.R. 1942 All. 155.
——1095 Ref. 1942 O.W.N. 699.
——1367 Rel. I.L.R. 1942 All. 45 (F.B.).
1938 A.L.J. 541 Overr. I.L.R. 1942 All. 174 (F.B.).
——708 Rel. 17 Luck. 502.
——754 Ref. I.L.R. 1942 All. 398.
——763 Ref. I.L.R. 1942 All. 518.
——786 (P.C.) Ref. I.L.R. 1942 All. 518 (574); 1942 A.L.J. 449.
——825 Ref. 1942 A.L.J. 722.
1939 A.L.J. 101 Ref. I.L.R. 1942 All. 950.
——213 (219) Ref. 1942 A.L.J. 37.
——555 Overr. I.L.R. 1942 All. 174 (F.B.).
——1048 (1050) Ref. I.L.R. 1942 All. 185 (F.B.).
1940 A.L.J. 118 Ref. 17 Luck. 462.
——377 Ref. 1942 A.L.J. 578 (F. B.).
——470 Foll. 1942 A.L.J. 399.
——497 Rel. 1942 O.W.N. 117.
——598 Ref. I.L.R. 1942 All. 938=1942 A.L.J. 632.
——650 Dist. 1942 O.W.N. 368.
1941 A.L.J. 549 (F.B.) Ref. 17 Luck. 623; Rel. 17 Luck. 597.
1942 A.L.J. 178=I.L.R. 1942 All. 119 Overr. 1942 A.L.J. 554 (F.B.).
——392 (P.C.) Rel. 1942 O.W.N. 687.

ALLAHABAD WEEKLY NOTES.

1882 A.W.N. 69 Foll. 1942 A.L.J. 419.
1888 A.W.N. 187 Dist. I.L.R. 1942 All. 680 (692, 702, 704).
——210 Ref. I.L.R. 1942 Mad. 24=(1941) 2 M.L.J. 263.
1889 A.W.N. 169 Dist. I.L.R. 1942 All. 821 (829).
1890 A.W.N. 100 Rel. I.L.R. 1942 All. 42.
1892 A.W.N. 115 Dist. 17 Luck. 164; Ref. I.L.R. 1942 All. 155.
1898 A.W.N. 145 Ref. 1942 A.L.J. 677.
1907 A.W.N. 38 Ref. (1942) 1 M.L.J. 325.

I.L.R. BOMBAY SERIES.

1 Bom. 352 Ref. I.L.R. 1942 Bom. 357.
——610 Ref. 17 Luck. 663.
2 Bom. 19 Ref. I.L.R. 1942 Bom. 357.
——252 Dist. I.L.R. 1942 Bom. 83.
——481, 487 Rel. I.L.R. 1942 Kar. 45.
3 Bom. 54 Ref. I.L.R. 1942 All. 518 (570).
——154 Foll. I.L.R. 1942 Nag. 721.
4 Bom. 473 Foll. I.L.R. 1942 Nag. 721.
——515 (F.B.) Rel. I.L.R. 1942 Nag. 636.
——590 Diss. I.L.R. 1942 Nag. 541.
5 Bom. 8 Cons. 44 Bom.L.R. 111.
——132 Ref. I.L.R. 1942 Bom. 287.
——451 Rel. I.L.R. 1942 Kar. 32.
6 Bom. 42 Ref. I.L.R. 1942 Bom. 441.
——460 Dist. 1942 O.W.N. 480.
——498 Overr. I.L.R. 1942 Bom. 75.
——599, 609 Rel. I.L.R. 1942 Kar. 559.
7 Bom. 167 Ref. I.L.R. 1942 Bom. 35.
——180 Ref. I.L.R. 1942 Bom. 776.
——213 Ref. 44 P.L.R. 275.
——438 Ref. I.L.R. (1942) 2 Cal. 413.
8 Bom. 585 Ref. I.L.R. 1942 All. 518 (579).
9 Bom. 86 Rel. I.L.R. 1942 Nag. 232.
10 Bom. 88 Cons. 44 Bom.L.R. 111.
——224 Cons. 44 Bom.L.R. 111.
——288 Ref. 1942 N.L.J. 547.
——461 (P.C.) Foll. I.L.R. 1942 Nag. 131.
——659 Ref. 46 C.W.N. 289, 561.
11 Bom. 37 Ref. I.L.R. (1942) 2 Cal. 413.
11 Bom. 473 Not Foll. I.L.R. 1942 Nag. 633.
——551 (P.C.) Ref. 44 Bom.L.R. 894.
——704 Ref. (1942) 1 M.L.J. 44.
12 Bom. 247 Cons. 44 Bom.L.R. 643.
13 Bom. 126 Foll. I.L.R. 1942 Nag 459.
——389 Ref. 21 Pat. 102.
——600 Foll. (1942) 1 M.L.J. 230.
——664 Ref. 1942 O.W.N. 546.
14 Bom. 165 Ref. 17 Luck. 52.
——463 Ref. (1942) 1 M.L.J. 119.
——476 Dist. I.L.R. 1942 Kar. 392.
——562 Dist. 44 Bom.L.R. 894.
15 Bom. 238 Ref. 17 Luck. 109.
——565 Ref. I.L.R. 1942 Bom. 782.
16 Bom. 351 Dist. I.L.R. 1942 Kar. 488.
——486 Cons. 44 Bom.L.R. 111.
17 Bom. 169 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——425 Rel. I.L.R. 1942 Kar. 452.
——431 (P.C.) Dist. I.L.R. 1942 Nag. 526.
——514 Foll. I.L.R. 1942 Bom. 128.
——758 Foll. I.L.R. 1942 Nag. 16
18 Bom. 48 Rel. I.L.R. 1942 Lah. 79.
——377 (F.B.) Ref. I.L.R. 1942 Bom. 26.
——452 Rel. 1942 A.L.J. 44.
19 Bom. 36 Not Foll. I.L.R. 1942 Lah. 324; Ref. 23 P.L.T. 46.
——96 Ref. I.L.R. 1942 Bom. 39.
——99 Ref. 1942 N.L.J. 434.
——428 Ref. I.L.R. 1942 Bom. 340.
——571 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——797 Foll. 1942 N.L.J. 441.
——821 Dist. 44 Bom.L.R. 912.
20 Bom. 61 Dist. 44 Bom.L.R. 894.
——86 Ref. 17 Luck. 462.
——338 Ref. 17 Luck. 482.
——367 Rel. 1942 A.L.J. 674.
——390 Cons. 44 Bom.L.R. 111.
——767 Rel. I.L.R. 1942 Nag. 281.
21 Bom. 137 Ref. I.L.R. 1942 Bom. 39.
——250 Rel. I.L.R. 1942 Kar. 543.
——822 Ref. (1942) 1 M.L.J. 511.
22 Bom. 101 Ref. I.L.R. 1942 All. 759 (761)=1942 A.L.J. 289.
——321 Ref. I.L.R. 1942 Lar. 29.
——558 (F.B.) Ref. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——718 Diss. I.L.R. 1942 Kar. 435.
——812 Ref. I.L.R. 1942 All. 518 (590).
23 Bom. 56 Ref. I.L.R. 1942 Kar. 200.

23 Bom. 137 (F.B.) Appr. (1942) 2 M.L.J. 321 (F.B.).
——454 Ref. 17 Luck. 366.
——725 Ref. I.L.R. 1942 All. 259.
24 Bom. 50 (P.C.) Ref. I.L.R. 1942 Nag. 468.
——350 Rel. I.L.R. 1942 Lah. 717 (F.B.).
——435 Ref. I.L.R. 1942 Bom. 357, 717.
——458 Ref. (1942) 1 M.L.J. 44.
——547 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——591 Ref. (1942) 1 M.L.J. 485.
——622 Dist. I.L.R. 1942 Nag. 294.
25 Bom. 90 Rel. I.L.R. 1942 Nag. 208.
——252=2 Bom.L.R. 1012 Foll. 44 Bom.L.R. 409.
——263 Ref. 46 C.W.N. 379.
——353 (F.B.) Cons. I.L.R. 1942 Bom. 39.
——551 Ref. I.L.R. 1942 Mad. 608=(1942) 1 M.L.J. 331.
——586 Ref. I.L.R. 1942 Mad. 868=(1942) 2 M.L.J. 104.
26 Bom. 25 Rel. I.L.R. 1942 Bom. 798.
——206, 213 (F.B.) Ref. I.L.R. 1942 Nag. 281.
——221 (F.B.) Dist. I.L.R. 1942 Nag. 182.
——396 Ref. I.L.R. 1942 Bom. 259.
——551 Rel. I.L.R. 1942 Nag. 414.
——707 Ref. I.L.R. 1942 Mad. 24=(1941) 2 M.L.J. 263.
27 Bom. 43 Ref. 1942 N.L.J. 375.
——140 Ref. 44 P.L.R. 330 (F.B.).
——284 Diss. I.L.R. 1942 Kar. 435.
——344 Rel. 1942 O.W.N. 773.
——373=5 Bom.L.R. 241 Foll. 44 Bom.L.R. 146.
——515 Cons. I.L.R. 1942 Bom. 595.
——600 Rel. I.L.R. 1942 Kar. 452.
——618 Ref. 46 C.W.N. 393.
——626 Ref. I.L.R. 1942 Nag. 510.
28 Bom. 11 Ref. 1942 O.W.N. 766.
——20 (49) Ref. I.L.R. 1942 All. 1.
——62=5 Bom.L.R. 672 Foll. 44 Bom.L.R. 409.
——66 Dist. 46 C.W.N. 393.
——125 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——226 Rel. I.L.R. 1942 Kar. 45.
——238 Dist. I.L.R. 1942 Kar. 162.
——253 Dist. I.L.R. 1942 Bom. 259.
——314 Rel. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——340 Ref. I.L.R. 1942 All. 950.
——412 Not Foll. 21 Pat. 138.
——451 Ref. I.L.R. 1942 Mad. 746=(1942) 1 M.L.J. 435.
——479 Ref. 1942 N.L.J. 327.
——533 Ref. 21 Pat. 102.
28 Bom. 567 Diss. I.L.R. 1942 Mad. 13 (20)=(1941) 2 M.L.J. 463 (F.B.).
——679 (F.B.) Ref. I.L.R. 1942 Bom. 303.
29 Bom. 161 Ref. 44 P.L.R. 330 (F.B.).
——207 Ref. 23 P.L.T. 218.
——229 Appl. I.L.R. 1942 Bom. 520.
——368 Ref. 46 C.W.N. 513.
30 Bom. 1 Ref. I.L.R. 1942 Mad. 33 (38)=(1941) 2 M.L.J. 281
——49 Ref. 17 Luck. 353.
——152 Ref. (1942) 2 M.L.J. 281.
——205, 213 Rel. I.L.R. 1942 Kar. 38.
——603 Ref. I.L.R. 1942 Lah. 517 (F.B.); 1942 A.L.J. 722.
31 Bom. 15 (F.B.) Rel. I.L.R. 1942 Kar. 326.
——120=8 Bom.L.R. 963 Ref. 44 Bom.L.R. 855.
——165 Ref. 44 P.L.R. 87.
——373 (P.C.) Ref. 1942 N.L.J. 434.
——552=9 Bom.L.R. 950 Ref. 44 Bom.L.R. 409.
32 Bom. 50=9 Bom.L.R. 923 Ref. 44 Bom.L.R. 894.
——81 Ref. (1942) 1 M.L.J. 522.
——275 Ref. (1942) 1 M.L.J. 21.
——432 Rel. I.L.R. 1942 Kar. 559.
——479 Rel. I.L.R. 1942 Nag. 543.
33 Bom. 44=10 Bom.L.R. 943 Foll. 44 Bom.L.R. 643.
——264 Not Foll. (1942) 1 M.L.J. 318; Ref. 1942 N.L.J. 599.
——479=11 Bom.L.R. 345 Dist. 44 Bom.L.R. 907.
——483 Ref. I.L.R. 1942 Bom. 403.
34 Bom. 72 Ref. I.L.R. 1942 All. 247; I.L.R. 1942 Nag. 281.
——316=12 Bom.L.R. 130. Foll. 44 Bom.L.R. 924.
——329=12 Bom.L.R. 208 Foll. 44 Bom.L.R. 146.
——462 Rel. I.L.R. 1942 Kar. 452.
——546 Foll. 21 Pat. 233.
35 Bom. 79 Dist. I.L.R. 1942 Nag. 564; Foll. 1942 N.L.J. 99.
——307=13 Bom.L.R. 508 Appr. 44 Bom.L.R. 409.
——342 Ref. 17 Luck. 636.
——438 Rel. I.L.R. 1942 Lah. 79.
——461 Diss. I.L.R. 1942 Kar. 12.
——487 Ref. 21 Pat. 1.
——516 Foll. (1942) 2 M.L.J. 607.
——563 Rel. 23 P.L.T. 534.
36 Bom. 1 Ref. 1942 O.W.N. 699.
——283 Foll. I.L.R. 1942 Nag. 494.
——325 Ref. I.L.R. 1942 Bom. 717.
——500 Ref. 17 Luck. 205, 530.
37 Bom. 42 Rel. I.L.R. 1942 Kar. 428.
37 Bom. 101 Ref. I.L.R. 1942 Kar. 94.
——114 Ref. 21 Pat. 1.
——651 Rel. I.L.R. 1942 Nag. 134.
——675 (F.B.) Ref. 46 C.W.N. 838.
38 Bom. 24 Cons. 44 Bom.L.R. 111.
——47 Treated as Overr. I.L.R. 1942 Bom. 11.
——116 Ref. I.L.R. 1942 All. 950.
——219=15 Bom.L.R. 1129 Foll. 44 Bom.L.R. 409.
39 Bom. 16 Foll. 44 Bom.L.R. 387.
——34 Ref. I.L.R. (1942) 1 Cal. 253.
——245 Ref. 44 P.L.R. 330 (F.B.)
——494 Ref. I.L.R. 1942 Bom. 717.
——545 Disc. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——729 Ref. 17 Luck. 482.
40 Bom. 235 Ref. I.L.R. 1942 Lah. 517.
——439 Dist. I.L.R. 1942 Bom. 293.
——473 Ref. I.L.R. 1942 Bom. 101.
——606=18 Bom.L.R. 762 Foll. 44 Bom.L.R. 146.
41 Bom. 159 Ref. I.L.R. 1942 Bom 326.
——312 Ref. I.L.R. 1942 Lah. 517.
——384 Ref. 44 Bom.L.R. 643.
——563 Ref. 44 Bom.L.R. 45.
42 Bom. 80 Foll. 44 Bom.L.R. 924.
——556 Rel. I.L.R. 1942 Bom. 504.
——689 Rel. I.L.R. 1942 Kar. 162.
——728 Not Foll. I.L.R. 1942 Mad. 770=(1942) 1 M.L.J. 532.
43 Bom. 1 Rel. I.L.R. 1942 All. 904.
——66 Ref. I.L.R. 1942 Bom. 584.
——168 Ref. 17 Luck. 655.
——181 (P.C.) Foll. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250.
——481 Ref. I.L.R. 1942 Bom. 782.
——507 Ref. 1942 N.L.J. 91.
——575 Ref. 17 Luck. 482.
44 Bom. 55 Ref. 23 P.L.T. 379.
——223 Impliedly Overr. I.L.R. 1942 All. 608 (618); (1942) 2 M.L.J. 390 (P.C.).
——283 Rel. I.L.R. (1942) 2 Cal. 203.
——327 Ref. I.L.R. 1942 Bom. 782.
——366 Dist. I.L.R. 1942 Bom. 608.
——405 Foll. 44 Bom.L.R. 643.
——895 Foll. 44 P.L.R. 540.
——934 Disappr. I.L.R. 1942 Bom. 14.
45 Bom. 1 Ref. I.L.R. 1942 Lah. 386.
——329 Foll. I.L.R. 1942 Bom. 94.

45 Bom. 337 Ref. 1942 O.W.N. 748.
——386 Rel. I.L.R. 1942 Kar. 38.
——428 Ref. I.L.R. 1942 Lah. 491.
——567 Ref. I.L.R. 1942 Kar. 354.
——648=23 Bom.L.R. 110 Foll. 44 Bom.L.R. 367.
——694 Disappr. I.L.R. 1942 Bom. 326.
——768 Ref. (1942) 1 M.L.J. 21.
——805 Dist. I.L.R. 1942 Nag. 721.
——834 (F.B.) Ref. I.L.R. 1942 Bom. 26.
——920 Ref. I.L.R. 1942 Bom. 357, 717.
——942 Disappr. I.L.R. 1942 Bom. 14.
——1048 Rel. 46 C.W.N. 11.
46 Bom. 123 Disappr. I.L.R. 1942 Nag. 294.
——195 Ref. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250.
——307 Ref. I.L.R. 1942 Bom. 782.
——455 Rel. I.L.R. 1942 Bom. 486.
——489 Ref. (1942) 2 M.L.J. 120.
——702 Rel. I.L.R. 1942 Kar. 79.
——761=24 Bom.L.R. 269 Ref. 44 Bom.L.R. 855.
——811=24 Bom.L.R. 402 Dist. I.L.R. 1942 Bom. 357.
——916 Rel. 17 Luck. 1.
——1009 Diss. (1942) 2 M.L.J. 47.
47 Bom. 28 Ref. 1942 O.W.N. 446.
——56=24 Bom.L.R. 798 Ref. 44 Bom.L.R. 830.
——244 Rel. I.L.R. 1942 Nag. 306.
——465=25 Bom.L.R. 26 Ref. 44 Bom.L.R. 916.
——589 Appr. 1942 N.L.J. 520.
——632 Doubted I.L.R. 1942 Bom. 512.
——699, 701 Foll. 21 Pat. 173.
——721 Rel. I.L.R. 1942 Nag. 414.
——724 (P.C.) Ref. I.L.R. 1942 Lah. 491 (F.B.).
——907 Dist. I.L.R. 1942 Nag. 193.
48 Bom. 7 Rel. I.L.R. 1942 Lah. 717 (F.B.).
——61 Ref. I.L.R. 1942 Bom. 717.
——75 (F.B.) Ref. 44 P.L.R. 330 (F.B.).
——411 (P.C.) Dist. I.L.R. 1942 Lah. 41.
——500 Foll. 21 Pat. 644.
——638 Ref. I.L.R. 1942 Bom. 190.
49 Bom. 126 Dist. I.L.R. 1942 Nag. 526.
——608 Rel. I.L.R. 1942 Kar. 12.
——715 Foll. I.L.R. 1942 Nag. 114.
——799, 802 Rel. I.L.R. 1942 Kar. 12.
——821 Foll. 21 Pat. 710,
49 Bom. 892 Foll. 21 Pat. 113.
50 Bom. 56 Ref. (1942) 2 M.L.J. 112.
——344 Expl. I.L.R. 1942 Kar. 94.
——468 Overr. I.L.R. 1942 Bom. 75.
——674 Rel. I.L.R. 1942 Kar. 90.
——783 Ref. I.L.R. 1942 All. 892.
——793 Foll. 44 Bom.L.R. 367.
51 Bom. 1 Ref. 44 P.L.R. 87.
——143 Foll. I.L.R. 1942 Bom. 1.
——430 (F.B.) Rel. I.L.R. 1942 Lah. 447 (F.B.), 548.
——450 Ref. 44 P.L.R. 368.
——725 (P.C.) Ref. I.L.R. 1942 Bom. 357.
——908 (F.B.) Expl. I.L.R. 1942 Bom. 183; Ref. I.L.R. 1942 All. 357 (F.B.).
52 Bom. 88 (F.B.) Ref. I.L.R. 1942 Bom. 620.
——151 Rel. I.L.R. 1942 Nag. 494.
——184 Dist. I.L.R. 1942 Nag. 92.
——477 Foll. I.L.R. 1942 Nag. 114; I.L.R. 1942 Lah. 742.
——521 Ref. I.L.R. 1942 Bom. 574; I.L.R. 1942 Lah. 282 (F.B.).
——699 Foll. I.L.R. 1942 Nag. 34.
——832 (F.B.) Ref. I.L.R. 1942 Kar. 94.
53 Bom. 57 Ref. I.L.R. 1942 Mad. 802=(1942) 1 M.L.J. 228.
——203 Commented I.L.R. 1942 Bom. 139 (F.B.).
——213 Foll. 1942 N.L.J. 478.
——230 (P.C.) Foll. I.L.R. 1942 Nag. 592.
——573 Dist. I.L.R. 1942 Lah. 788.
54 Bom. 26=31 Bom.L.R. 1302 Foll. 44 Bom.L.R. 120.
——75 Ref. I.L.R. 1942 Bom. 39.
——146 Expl. I.L.R. 1942 Kar. 94; Rel. I.L.R. 1942 Nag. 134, 426.
——495, 502 (P.C.) Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.
——718 Ref. I.L.R. 1942 All. 86.
——822 Rel. 1942 A.L.J. 376.
55 Bom. 59 (F.B.) Foll. I.L.R. (1942) 2 Cal. 507=46 C.W.N. 952.
——110 Ref. 46 C.W.N. 808=I.L.R. (1942) 2 Cal. 413.
——160 Ref. 17 Luck. 572.
——165 Appr. I.L.R. 1942 Bom. 717.
——544 Ref. 44 P.L.R. 275.
——565 Ref. 17 Luck. 289.
56 Bom. 23 Rel. I.L.R. 1942 Kar. 488.
——172 Disc. I.L.R. (1942) 1 Cal. 436.
——213 Not applicable I.L.R. (1942) 1 Cal. 278.
——237 Ref. I.L.R. 1942 Lah. 491.
56 Bom. 324 Ref. I.L.R. 1942 Bom. 767.
——403 Ref. 1942 N.L.J. 30.
——439 Rel. I.L.R. 1942 Nag. 122.
——619 (628-629) Ref. (1942) 1 M.L.J. 119.
57 Bom. 40=34 Bom.L.R. 1483 (F.B.) Dist. 44 Bom.L.R. 894.
——67 Rel. I.L.R. 1942 Nag. 294.
——74 Ref. I.L.R. 1942 Bom. 303, 340.
——306 Ref. 17 Luck. 733.
——314 Dist. 17 Luck. 506.
——413 Diss. I.L.R. (1942) 1 Cal. 132.
——507 Diss. 1942 O.W.N. 359.
——616 Ref. 46 C.W.N. 326.
——623 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——641 Rel. 1942 O.W.N. 1.
——802 Rel. I.L.R. 1942 Nag. 478.
58 Bom. 162 Ref. I.L.R. (1942) 1 Cal. 161.
——226 Dist. I.L.R. 1942 Bom. 1.
——419 Dist. I.L.R. 1942 Bom. 595.
——498 Foll. I.L.R. 1942 Bom. 7.
——564 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——729 (F.B.) Ref. I.L.R. 1942 Bom. 39.
59 Bom. 57 Rel. 1942 O.W.N. 756.
——125 Rel. 23 P.L.T. 534.
——161 (169) Doubted I.L.R. 1942 Mad. 147=(1941) 2 M.L.J. 362.
——430 Ref. 1942 O.W.N. 236.
——558 Ref. I.L.R. 1942 Lah. 807.
60 Bom. 183 Dist. I.L.R. 1942 Kar. 72.
——311 Ref. 1942 A.L.J. 152.
——954 Dist. 21 Pat. 377.
I.L.R. 1937 Bom. 432 Cons. I.L.R. 1942 Bom. 39.
——508 (F.B.) Ref. (1942) 1 M.L.J. 119; I.L.R. 1942 Bom. 303.
——602 Ref. I.L.R. 1942 Lah. 603.
——623 Ref. I.L.R. 1942 Bom. 520.
——628 Dist. (1942) 2 M.L.J. 309.
——708 Ref. 46 C.W.N. 239.
——774 Dist. I.L.R. 1942 Bom. 259.
——827 Foll. 21 Pat. 615.
I.L.R. 1938 Bom. 31 Rel. I.L.R. 1942 Kar. 292.
——102 Appr. 1942 N.L.J. 227; Dist. (1942) 2 M.L.J. 309.
——331 Dist. 1942 N.L.J. 242.
——421 (P.C.) Foll. I.L.R. 1942 Mad. 230=(1941) 2 M.L.J. 595.
——679=40 Bom.L.R. 559 (F.B.) Ref. I.L.R. 1942 Bom. 303.
——704 Ref. I.L.R. 1942 Lah. 491,

I.L.R. 1939 Bom 62 at 85 Ref. I.L.R. 1942 Nag. 118.
——284 Disappr. I.L.R. 1942 Lah 1 (P.C.).
——340 (F.B.) Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——493 Ref. I.L.R. 1942 Lah. 517.
——512 Dist. (1942) 2 M.L.J. 678 (F.B.).
I.L.R. 1940 Bom 42 Dist. (1942) 2 M.L.J. 678 (F.B.); Ref. (1942) 1 M.L.J. 119.
——299 Ref. I.L.R. 1942 All. 942.
——361 Ref. I.L.R. 1940 Lah. 491 (F.B.).
——487 Ref. 1940 N.L.J. 557.
——587 Impliedly overr. 21 Pat. 587; (1942) 2 M.L.J. 6 (F.C.); Ref. (1942) 2 M.L.J. 6 (F.C.).
——819 Ref. I.L.R. 1942 Bom. 467.
I.L.R. 1941 Bom. 153 Dist. 1942 N.L.J. 311.
——292 (F.B.) Rel. I.L.R. 1942 Kar. 292.
——333 Disc. I.L.R. (1942) 1 Cal. 436=46 C.W.N. 186; Rel. 23 P.L.T. 475.
——415 Foll. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.

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2 Bom.L.R. 798 Foll. I.L.R. 1942 Bom. 712.
3 Bom.L.R. 601 Ref. 44 Bom.L.R. 673.
4 Bom.L.R. 231 Foll. 21 Pat. 330.
7 Bom.L.R. 73 Rel. I.L.R. 1942 Kar. 225.
——457 Ref. I.L.R. 1942 Bom. 534.
8 Bom.L.R. 678 Foll. 44 Bom.L.R. 924.
——942 Ref. 1942 O.W.N. 766.
9 Bom.L.R. 735 Rel. I.L.R. 1942 Kar. 12.
10 Bom.L.R. 657 Ref. I.L.R. 1942 Bom. 403.
11 Bom.L.R. 1153 Ref. I.L.R. 1942 Bom. 540.
——1187 Rel. I.L.R. 1942 Kar. 392.
12 Bom.L.R. 232 Dist. I.L.R. 1942 Kar. 72.
——870 Ref. (1942) 2 M.L.J. 120.
13 Bom.L.R. 49 Foll. 44 Bom.L.R. 643.
15 Bom.L.R. 103 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
16 Bom.L.R. 766 Ref. I.L.R. 1942 Bom. 357.
——778 Dist. 44 Bom.L.R. 903.
——513 Ref. I.L.R. 1942 Bom. 357.
18 Bom.L.R. 243 Ref. I.L.R. 1942 Bom. 357.
——475 Ref. 44 Bom.L.R. 855.
——763 Ref. I.L.R. 1942 Bom. 337.
19 Bom.L.R. 74 Ref. I.L.R. (1942) 2 Cal. 413.
22 Bom.L.R. 1089 Foll. I.L.R. 1942 Bom. 357.
23 Bom.L.R. 227 Foll. I.L.R. 1942 Bom. 467.
——749 Ref. I.L.R. 1942 Bom. 798=44 Bom.L.R. 710.
——1241 Dist. I.L.R. 1942 Bom. 83.
24 Bom.L.R. 513 Ref. (1942) 1 M.L.J. 274.
——741 Foll. 44 Bom.L.R. 111.
25 Bom.L.R. 453 Dist. 44 Bom. L.R. 830.
——527 (P.C.) Rel. I.L.R. 1942 Kar. 559.
——582 Ref. I.L.R. 1942 Kar. 479.
——1214 Ref. 44 Bom.L.R. 855.
——1275 (P.C.) Ref. I.L.R. 1942 Bom. 14.
26 Bom.L.R. 288 Not Foll. 44 Bom.L.R. 727.
——317 Doubted 44 Bom.L.R. 830.
——345 Dist. 44 Bom.L.R. 830.
——523 Dist. I.L.R. 1942 Kar. 162.
——1173 Ref. 44 Bom.L.R. 146.
27 Bom.L.R. 196 Dist. 44 Bom. L.R. 903.
——477 Reconciled with 42 Bom. L.R. 1111; 44 Bom.L.R. 844.
——514 Ref. (1942) 2 M.L.J. 120.
——581 Ref. I.L.R. 1942 Bom. 259.
——1195 Ref. I.L.R. 1942 Bom. 829=44 Bom.L.R. 682.
——1351 Rel. I.L.R. 1942 Kar. 1.
——1419 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——1149 Impliedly Overr. I.L.R. 1942 All. 608=(1942) 2 M.L.J. 390 (P.C.).
28 Bom.L.R. 64 Foll. 44 Bom.L.R. 11.
——148 Foll. I.L.R. 1942 Bom. 151=44 Bom.L.R. 95.
——540 Disappr. I.L.R. 1942 Bom. 755.
——582 Appl. I.L.R. 1942 Bom. 520.
——633 Ref. I.L.R. 1942 Bom. 326.
——743 Comm.I.L.R. 1942 Bom. 595; Ref. 46 C.W.N. 419.
——1465 Ref. I.L.R. 1942 Bom. 717.
29 Bom.L.R. 241 Rel. I.L.R. 1942 Kar. 392.
——253 Ref. 44 Bom.L.R. 727.
——299 Rel. (1942) 1 M.L.J. 190.
30 Bom.L.R. 290 (P.C.) Rel. I.L.R. 1942 Kar. 375; I.L.R. 1942 Kar. 577.
——305 (P.C.) Dist. 44 Bom.L.R. 727.
——415 Ref. I.L.R. 1942 Mad. 33 (38)=(1941) 2 M.L.J. 281.
——431 Ref. I.L.R. 1942 Bom. 717.
30 Bom.L.R. 565 Ref. 44 Bom.L. R. 643.
——673 Appl. I.L.R. 1942 Bom. 520.
——873 Rel. I.L.R. 1942 Kar. 306.
——1555 Ref. I.L.R. 1942 Bom. 303.
31 Bom.L.R. 280 (P.C.) Foll. 44 Bom.L.R. 767.
——289 (P.C.) Appl. I.L.R. 1942 Bom. 11.
——1105 Ref. 44 Bom.L.R. 830.
32 Bom.L.R. 181 Cons. I.L.R. 1942 Bom. 755.
——463 Ref. 44 Bom.L.R. 814.
——768 Comm. 44 Bom.L.R. 756.
——1009 Declared obiter 44 Bom.L.R. 120, 124; Ref. (1942) 1 M.L.J. 213.
——1076 Ref. 44 Bom.L.R. 178.
——1093 Ref. 44 Bom.L.R. 855.
——1430 Rel. I.L.R. 1942 Kar. 547.
——1435 Ref. I.L.R. 1942 Bom. 293.
33 Bom.L.R. 213 Ref. I.L.R. 1942 Bom. 357.
——459 Foll. 44 Bom.L.R. 880.
——927 Ref. I.L.R. 1942 Bom. 124.
——1313 (F.B.) Ref. 44 Bom.L.R. 907.
——1443 Ref. I.L.R. 1942 Bom. 798=44 Bom.L.R. 710.
34 Bom.L.R. 404 Doubted 44 Bom.L.R. 409.
——996 Ref. 44 Bom.L.R. 894.
——1001 Ref. 44 Bom.L.R. 894.
——1429 Ref. 44 Bom.L.R. 178.
——1500 Rel. I.L.R. 1942 Kar. 553.
35 Bom.L.R. 44 Ref. 46 C.W.N. 379.
——147 Ref. I.L.R. 1942 Bom. 636.
——581 Dist. 44 Bom.L.R. 890.
——599 Dist. 44 Bom.L.R. 849.
——763 Rel. (1942) 2 M.L.J. 137.
——1033 (F.B.) Rel. I.L.R. 1942 Nag. 633.
36 Bom.L.R. 523 Ref. I.L.R. 1942 Bom. 183.
——761 Ref. I.L.R. 1942 Bom. 357.
——960 Ref. 44 Bom.L.R. 432.
——1005 Foll. I.L.R. 1942 Bom. 558.
——1211 Ref. I.L.R. 1942 Bom. 534.
——1236 Disc. I.L.R. 1942 Bom. 175.
37 Bom.L.R. 123 Foll. I.L.R. 1942 Bom. 822=44 Bom.L.R. 678.
——207 Diss. I.L.R. 1942 Mad. 143=(1941) 2 M.L.J. 541.
——778 Rel. I.L.R. 1942 Kar. 351.
38 Bom.L.R. 267 Not Foll. I.L.R. 1942 Kar. 473.
——492 Dist. 44 Bom.L.R. 880.
——562 (F.B.) Ref. 44 Bom.L.R. 855.
——593 Dist. 44 Bom.L.R. 907.

38 Bom.L.R. 1137 Comm. 44 Bom.L.R. 11.
——1164 (F.B.) Ref. 44 Bom.L.R. 756.
——1293 Expl. I.L.R. 1942 Bom. 584.
39 Bom.L.R. 216 Ref. I.L.R. 1942 Bom. 357.
——1172 Foll. 44 Bom.L.R. 752.
——1309 Foll. 44 Bom.L.R. 415.
40 Bom.L.R. 127 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——458 Ref. 44 Bom.L.R. 894.
——545 Ref. 44 Bom.L.R. 727.
——559 (F.B.) Foll. 44 Bom.L.R. 661.
——952 Expl. I.L.R. 1942 Bom. 183.
——1001 Foll. 44 Bom.L.R. 415.
——1041 Ref. 44 Bom.L.R. 643; 46 C.W.N. 59.
——1075 (P.C.) Rel. I.L.R. 1942 Kar. 516.
——1192 Ref. 44 Bom.L.R. 415.
——1231 Ref. I.L.R. 1942 Bom. 303.
41 Bom.L.R. 208 Not good law 44 Bom.L.R. 661.
——391 Ref. I.L.R. 1942 Bom. 574.
——455 Dist. I.L.R. 1942 Bom. 512.
——497 Appr. I.L.R. 1942 Bom. 14.
——575 Foll. 44 Bom.L.R. 629.
——919 Dist. I.L.R. 1942 Kar. 22.
——1091 Ref. 44 Bom.L.R. 178.
——1166 Rel. I.L.R. 1942 Kar. 351.
——1231 Ref. I.L.R. 1942 Bom. 530.
——1258 Foll. I.L.R. 1942 Bom. 175.
——1277 Ref. I.L.R. 1942 Bom. 303.
42 Bom.L.R. 113 Diss. I.L.R. 1942 Kar. 168.
——175 Not Foll. I.L.R. 1942 Bom. 670.
——486 Ref. I.L.R. 1942 Bom. 183.
——621 (P.C.) Dist. I.L.R. 1942 Kar. 392.
——878 Foll. I.L.R. 1942 Bom. 163=44 Bom.L.R. 629.
——1111 Reconciled with 27 Bom L.R. 477; 44 Bom.L.R. 844.
43 Bom.L.R. 26 Rel. I.L.R. 1942 Kar. 168.
——79 Rel. I.L.R. 1942 Kar. 363.
——163 Ref. 44 Bom.L.R. 432.
——225 Ref. I.L.R. 1942 Bom. 169.
——492 Foll. 44 Bom.L.R. 661.
——553 Ref. and Dist. I.L.R. 1942 Bom. 83.
——581 (F.B.) Expl. 44 Bom.L.R. 401.
——946 Foll. I.L.R. 1942 Bom. 384.
44 Bom.L.R. 20 Ref. 17 Luck. 755 =1942 O.W.N. 165 (F.B.).
44 Bom.L.R. 120 Foll. 44 Bom.L.R. 124.
——132 Ref. 44 P.L.R. 347.
——449 Appr. 1942 N.L.J. 575.
——880 Foll. 44 Bom.L.R. 903.

BOMBAY HIGH COURT REPORTS.

1 Bom.H.C.R. App. i, lxxii Rel. I.L.R. 1942 Nag. 281.
4 Bom.H.C.R. Crown Cases 17 Ref. I.L.R. 1942 Nag. 122.
5 Bom.H.C.R. 25 Rel. I.L.R. 1942 Kar. 473.
——(A.C.J.) 30 Foll. 44 Bom.L.R. 819.
——42 Foll. 44 Bom.L.R. 401.
——181 Restored by 60 I.A. 25: I.L.R. 1942 Bom. 75.
8 Bom.H.C.R. 244 Ref. I.L.R. 1942 Mad. 608=(1942) 1 M.L.J. 331.
10 Bom.H.C.R. 444 Ref. 1942 O.W.N. 639.
12 Bom.H.C.R. 1 Dist. 44 P.L.R. 540.

I.L.R. CALCUTTA SERIES.

1 Cal. 409 Rel. 46 C.W.N. 830.
3 Cal. 20 Rel. I.L.R. (1942) 1 Cal. 533.
——63 Dist. 21 Pat. 521.
——696 Ref. 23 P.L.T. 294.
——738, 741 (F.B.) Ref. I.L.R. 1942 Nag. 281.
4 Cal. 41 Foll. I.L.R. (1942) 2 Cal. 565.
——172 (P.C.) Ref. 44 P.L.R. 382.
——455 Dist. I.L.R. 1942 Kar. 392.
——497 Ref. (1942) 1 M.L.J. 44.
——531 Ref. I.L.R. 1942 Lah. 491.
5 Cal. 148 (P.C.) Ref. I.L.R. 1942 Mad. 95 (127)=(1941) 2 M.L.J. 311 (F.B.).
——438 (P.C.) Rel. I.L.R. 1942 Nag. 468.
——615 Ref. 46 C.W.N. 113.
——721 Ref. I.L.R. 1942 Nag. 1.
——776, 789 (P.C.) Ref. I.L.R. 1942 Mad. 630=(1941) 2 M.L.J. 862.
——792, 805 Rel. I.L.R. 1942 Nag. 281.
——819 Not Foll. (1942) 2 M.L.J. 707.
——830 Dist. 1942 N.L.J. 380.
——911 Dist. I.L.R. 1942 Kar. 392.
6 Cal. 256 (F.B.) Ref. 46 C.W.N. 113.
——311 Ref. 23 P.L.T. 678.
——381 (P.C.) Ref. I.L.R. 1942 Mad. 682=(1942) 1 M.L.J. 285.
——440 Ref. 1942 N.L.J. 547.
——513 Diss. (1942) 1 Cal. 289= 46 C.W.N. 141.
——687 Ref. 44 P.L.R. 133.
——707 Ref. 44 P.L.R. 275.
6 Cal. 827 Appl. I.L.R. (1942) 2 Cal. 52; Ref. 46 C.W.N. 409.
7 Cal. 333 Ref. I.L.R. 1942 Kar. 466; I.L.R. (1942) 2 Cal. 69.
——414 Disc. 46 C.W.N. 94; Ref. 23 P.L.T. 294.
——608 Rel. I.L.R. 1942 Nag. 166.
——620 (626) Rel. I.L.R. 1942 Mad. 60 (65)=(1941) 2 M. L.J. 125.
8 Cal. 51 (P.C.) Foll. I.L.R. 1942 Lah. 559 (F.B.); Ref. 23 P.L.T. 361.
——121 Ref. 21 Pat. 258.
——138 Ref. 44 P.L.R. 87.
——149 Ref. I.L.R. 1942 All. 518.
——154 Not Foll. I.L.R. 1942 Lah. 470.
——238 Ref. 46 C.W.N. 838.
——266 Foll. I.L.R. 1942 Nag. 45.
——537 Ref. 1942 N.L.J. 434.
——739 Not Foll. I.L.R. 1942 Lah. 470.
——819 Ref. 46 C.W.N. 513.
——919 Ref. I.L.R. 1942 All. 518.
——971 Foll. I.L.R. 1942 Nag. 34.
9 Cal. 237 Ref. 1942 O.W.N. 639.
——271 Dist. 46 C.W.N. 967.
——295 Ref. 46 C.W.N. 696.
——766 (P.C.) Ref. I.L.R. 1942 Nag. 555.
10 Cal. 63 Rel. I.L.R. (1942) 1 Cal. 310=46 C.W.N. 73.
——109 Ref. 1942 O.W.N. 6.
——482 (P.C.) Rel. I.L.R. 1942 Kar. 392.
——599 Ref. I.L.R. 1942 Kar. 424.
——697 Dist. I.L.R. 1942 All. 832 (834) (F.B.); Foll. I.L. R. 1942 Nag. 721.
——769 Ref. (1942) 2 M.L.J. 512.
——1035 (P.C.) Dist. I.L.R. 1942 Nag. 309.
11 Cal. 6 (P.C.) Ref. I.L.R. 1942 Nag. 459.
——106 Dist. 1942 O.W.N. 380.
——121 (P.C.) Ref. 44 P.L.R. 382.
——153 Foll. I.L.R. 1942 Nag. 721.
——275 Ref. 46 C.W.N. 496.
——338 Disc. 46 C.W.N. 94.
12 Cal. 50 Dist. I.L.R. (1942) 2 Cal. 28.
——69 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——339 (344) Ref. I.L.R. 1942 All. 103.
——608 Not Foll. 21 Pat. 481.
13 Cal. 208 Rel. I.L.R. (1942) 1 Cal. 310=46 C.W.N. 73.
14 Cal. 189 Not Foll. 1942 O.W. N. 281.
——423 Ref. I.L.R. (1942) 1 Cal. 488=46 C.W.N. 136.
——835 Cons. I.L.R. (1942) 1 Cal. 149.

15 Cal. 70 (P.C.) Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
——460 Rel. I.L.R. (1942) 2 Cal. 427.
16 Cal. 98 Ref. I.L.R. 1942 All. 103.
——307 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
——443 Rel. 23 P.L.T. 185.
——473 (P.C.) Foll. 1942 N.L.J. 99.
——667 Rel. (1942) 2 M.L.J. 134.
17 Cal. 3 (P.C.) Foll. I.L.R. 1942 Nag. 555.
——491 Rel. 23 P.L.T. 87.
——498 at 510 (P.C.) Ref. I.L.R. 1942 Bom. 441.
——543 (F.B.) Foll. 21 Pat. 799.
——574 (F.B.) Diss. I.L.R. 1942 Bom. 22.
18 Cal. 341 (P.C.) Dist. 1942 N.L.J. 21; Ref. 1942 O.W.N. 639.
——507 Rel. I.L.R. 1942 Kar. 177.
19 Cal. 1 (F.B.) Foll. 21 Pat. 469.
——489 Dist. 21 Pat. 469.
——683 (P.C.) Foll. 21 Pat. 233.
20 Cal. 22 Ref. 46 C.W.N. 713.
——51 (F.B.) Ref. (1942) 1 M.L.J. 274.
——74 Ref. 17 Luck. 346.
——319 Dist. (1942) 2 M.L.J. 707.
——708 Dist. I.L.R. (1942) 1 Cal. 408=46 C.W.N. 904.
——762 Ref. 23 P.L.T. 218.
——867 Rel. I.L.R. 1942 Kar. 120.
21 Cal. 169 Ref. (1942) 2 M.L.J. 340; Rel. 23 P.L.T. 742; 46 C.W.N. 505.
——206 Ref. I.L.R. 1942 Bom. 39.
——479 Not Appr. I.L.R. 1942 Kar. 196.
——496 Dist. I.L.R. 1942 All. 169 (F.B.).
——539 Diss. I.L.R. 1942 Bom. 712.
——612 Rel. 1942 A.L.J. 561.
——955 Not Foll. I.L.R. 1942 Nag. 510.
22 Cal. 8 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——324 (P.C.) Rel. 44 P.L.R. 476.
——445 Ref. I.L.R. 1942 All. 259.
——451 Foll. I.L.R. 1942 Bom. 101.
——619 (P.C.) Ref. I.L.R. 1942 Bom. 441.
——752 Ref. 1942 O.W.N. 546.
——788=22 I.A. 107 (P.C.) Rel. I.L.R. 1942 Kar. 237.
——833 Ref. 46 C.W.N. 513.
——859 Dist. 17 Luck. 121.
——909 Ref. 17 Luck. 636.
——1017 Ref. 17 Luck. 663.
23 Cal. 87 Rel. 46 C.W.N. 702.
——339 Dist. 44 Bom.L.R. 367.
——502 Ref. 44 P.L.R. 38.
——536 Foll. 44 Bom.L.R. 146.
23 Cal. 610 Ref. I.L.R. 1942 Kar. 193.
——775 (P.C.) Appl. I.L.R. 1942 Mad. 264=(1941) 2 M.L.J. 904 (F.B.).
——884 Ref. 23 P.L.T. 11.
——975 (P.C.) Cons. 23 P.L.T. 368; Ref. I.L.R. 1942 Lah. 129 (F.B.).
——980 Rel. I.L.R. 1942 Lah. 717=44 P.L.R. 330 (F.B.).
24 Cal. 62 Rel. 23 P.L.T. 342.
——143 Ref. 23 P.L.T. 348.
——334 Appl. I.L.R. (1942) 2 Cal. 52=46 C.W.N. 409.
——473 Ref. (1942) 1 M.L.J. 580.
——557 Ref. 23 P.L.T. 11.
——677 Dist. I.L.R. 1942 Kar. 452.
——711 Ref. I.L.R. 1942 All. 624 (652).
——786 Rel. 1942 O.W.N. 773.
25 Cal. 233 Rel. I.L.R. 1942 Nag. 494.
——315 Foll. I.L.R. (1942) 1 Cal. 289=46 C.W.N. 141.
——401 Rel. I.L.R. 1942 Kar. 516.
——553 Ref. 46 C.W.N. 843.
——571 Rel. 21 Pat. 488.
——711 Rel. I.L.R. 1942 Nag. 510.
26 Cal. 227 Ref. I.L R. 1942 All. 478.
——254 Dist. 23 P.L.T. 588; Foll. I.L.R. 1942 Nag. 340.
——398 Rel. 1942 O.W.N. 773.
——409 Dist. I.L.R. 1942 All. 671 (677).
27 Cal. 38 Ref. (1942) 2 M.L.J. 94.
——144 Expl. I.L.R. 1942 Kar. 94; Rel. I.L.R. 1942 Nag. 426.
——202 Dist. (1942) 1 M.L.J. 92.
——205 Dist. 21 Pat. 469.
——239 Ref. 1942 O.W.N. 546.
——262-n Rel. 23 P.L.T. 588.
——379 Foll. I.L.R. 1942 Bom. 467; Ref. I.L.R. 1942 All. 745 (750).
——918 Ref. 23 P.L.T. 644.
——943 (P.C.) Ref. 1942 N.L.J. 375.
28 Cal. 17 Not Foll. I.L.R. 1942 All. 624 (652).
——146 Ref. I.L.R. 1942 Nag. 740.
——149 Foll. I.L.R. 1942 Bom. 712.
——223 Ref. 23 P.L.T. 294.
——238 Foll. I.L.R. (1942) 1 Cal. 289=46 C.W.N. 141.
29 Cal. 154 (P.C.) Foll. 44 Bom. L.R. 415; Ref. (1942) 2 M.L.J. 47.
——167 (P.C.) Dist. I.L.R. 1942 Nag. 414.
——395 Ref. 23 P.L.T. 227.
——461 (P.C.) Dist. I.L.R. 1942 Nag. 494.
——707 (P.C.) Dist. I.L.R. 1942 Nag. 721.
29 Cal. 782 Rel. I.L.R. 1942 Nag. 510.
30 Cal. 369 Dist. I.L.R. 1942 Kar. 392.
——397 Rel. I.L.R. 1942 Nag. 414.
——433 Ref. 23 P.L.T. 218.
——489 Ref. 46 C.W.N. 842.
——725 (P.C.) Dist. I.L.R. 1942 Nag. 24.
——801 Ref. I.L.R. 1942 Nag. 740.
——831 Ref. 44 Bom.L.R. 859.
——999 Foll. I.L.R. 1942 Bom. 680.
31 Cal. 111 Ref. 1942 N.L.J. 434.
——159 Ref. 46 C.W.N. 967.
——256 (P.C.) Rel. 21 Pat. 682.
——262 (P.C.) Foll. I.L.R. 1942 Nag. 534.
——284 Ref. I.L.R. 1942 Bom. 71.
——487 (P.C.) Foll. 1942 N.L.J. 557.
——503 Ref. I.L.R. 1942 All. 1.
——516 Ref. I.L.R. 1942 Bom. 94.
——557 Foll. I.L.R. 1942 Nag. 426.
——725 Disc. I.L.R. (1942) 2 Cal. 502.
——937 Ref. 17 Luck. 205.
——1001 Ref. 46 C.W.N. 838.
32 Cal. 111 Foll. 21 Pat. 682.
——129 (P.C.) Foll. I.L.R. 1942 Nag. 555; Ref. 21 Pat. 197.
——154 Ref. 23 P.L.T. 644.
——296 Ref. 17 Luck. 456=44 P.L.R. 31.
——483 Dist. 21 Pat. 366=23 P.L.T. 412; Ref. I.L.R. 1942 Lah. 307 (F.B.).
——502 Ref. 46 C.W.N. 73.
——654 Foll. I.L.R. 1942 Mad. 836=(1942) 2 M.L.J. 43.
——891 Ref. 46 C.W.N. 355; 44 Bom.L.R. 111.
——921 Ref. I.L.R. 1942 Lah. 50.
——988 Rel. 17 Luck. 555.
——1130 Foll. 44 Bom.L.R. 727.
33 Cal. 537 (P.C.) Dist. I.L.R. 1942 Nag. 661.
——613 Impliedly overr. I.L.R. 1942 All. 608=(1942) 2 M. L.J. 390 (P.C.).
——821 Ref. 46 C.W.N. 513.
——927 (934) Rel. 17 Luck. 189.
——947 Ref. 46 C.W.N. 113.
——1278 Foll. I.L.R. 1942 Mad. 308=(1941) 2 M.L.J. 913.
34 Cal. 51 Rel. 1942 A.L.J. 483.
——101 Rel. I.L.R. (1942) 2 Cal. 203.
——199 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——257 Ref. 23 P.L.T. 167.
——305 Ref. 46 C.W.N. 355.
——329 (P.C.) Rel. I.L.R. 1942 Kar. 358.
——551 (561) (F.B.) Rel. I.L.R. 1942 Nag. 695.
——930 (931) Ref. 46 C.W.N. 418
35 Cal. 61 Ref. I.L.R. 1942 Mad 640=(1942) 1 M.L.J. 292; 23 P.L.T. 167.

35 Cal. 202 (P.C.) Ref. I.L.R. 1942 Nag. 636 ; Rel. I.L.R. 1942 Nag. 166.
——243 Ref. I.L.R. 1942 All. 945.
——320 Foll. 44 Bom.L.R. 894.
——353 Dist. I.L.R. 1942 Nag. 721.
——394 Diss. I.L.R. (1942) 1 Cal. 149.
——519 Ref. 1942 O.W.N. 766.
——551 (P.C.) Expl. I.L.R. 1942 Nag. 503 ; Ref. 23 P.L.T. 218.
——721 Diss. I.L.R. (1942) 1 Cal. 85=46 C.W.N. 86.
——837 Ref. I.L.R. 1942 Kar. 326 ; 46 C.W.N. 713.
——990 Ref. I.L.R. 1942 Bom. 94.
——1104 Ref. I.L.R. 1942 Lah. 50.
36 Cal. 48 Ref. I.L.R. 1942 Bom. 534.
——193, 219 Rel. I.L.R. 1942 Nag. 393.
——233 Diss. I.L.R. (1942) 2 Cal. 203.
——252 Dist. I.L.R. (1942) 2 Cal. 121 ; Ref. 21 Pat. 1.
——780 (P.C.) Dist. I.L.R. 1942 Nag. 478 ; Ref. I.L.R. 1942 All. 862.
——960 Ref. 46 C.W.N. 522.
37 Cal. 1 Ref. I.L.R. 1942 All. 708 (730)=1942 A.L.J. 487.
——52 Dist. I.L.R. 1942 Nag. 667.
——128 (F.B.) Ref. 46 C.W.N. 477; Rel. I.L.R. 1942 Nag. 468.
——179 Cons. (1942) 2 M.L.J. 164.
——259 (260, 261) Ref. 46 C.W. N. 474.
——559 Foll. I.L.R. (1942) 2 Cal. 268=46 C.W.N. 982 ; Ref. I.L.R. 1942 Nag. 1.
——604 Cons. 44 P.L.R. 7.
——618 at 622 Ref. I.L.R. 1942 Bom. 26.
——731 Ref. 23 P.L.T. 270.
——754 Foll. (1942) 2 M.L.J. 748.
——914 Dist. 21 Pat. 720.
38 Cal. 182 Dist. 21 Pat. 849.
——405 Diss. I.L.R. (1942) 2 Cal. 203.
——700 (P.C.) Expl. I.L.R. 1942 Mad. 807 (F.B.) ; Ref. I.L.R. 1942 All. 518 (588).
——832 Ref. 21 Pat. 1.
——862 Ref. I.L.R. 1942 Kar. 29.
39 Cal. 150 Rel. 23 P.L.T. 243.
——265 Ref. 17 Luck. 739.
——360 Disc. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F.B.).
——527 Ref. 1942 O.W.N. 672 (F.B.) ; Rel. I.L.R. 1942 Nag. 393.
——563 Diss. I.L.R. 1942 Bom. 712.
——704 Dist. I.L.R. 1942 Nag. 636.
39 Cal. 953 (P.C.) Ref. I.L.R. 1942 Lah. 510 (F.B.).
40 Cal. 21 (P.C.) Foll. I.L.R. 1942 Mad. 236=(1941) 2 M.L.J. 529.
——64 Ref. I.L.R. 1942 Nag. 740.
——391 Dist. I.L.R. 1942 Nag. 107.
——477 (F.B.) Ref. 21 Pat. 1.
——503 Ref. 44 Bom.L.R. 727 ; 23 P.L.T. 167.
——511 Foll. 23 P.L.T. 185.
——514 Dist. I.L.R. 1942 Nag. 263.
——704 Rel. I.L.R. (1942) 1 Cal. 211=46 C.W.N. 59.
——955 Ref. I.L.R. (1942) 1 Cal. 67.
——966 Foll. 23 P.L.T. 528.
41 Cal. 137 Dist. 21 Pat. 377 ; Ref. 46 C.W.N. 371.
——350 Ref. 21 Pat. 667.
——466 (S.B.) Ref. 21 Pat. 102.
——956 Rel. I.L.R. 1942 Kar. 547.
——972 (P.C.) Expl. 21 Pat. 710.
——1023 (P.C.) Rel. I.L.R. 1942 Nag. 749.
42 Cal. 72 (P.C.) Dist. 21 Pat. 281 ; Ref. I.L.R. 1942 Nag. 377 ; Rel. 466 C.W.N. 631.
——172 Ref. I.L.R. (1942) 2 Cal. 232.
——365 Dist. I.L.R. (1942) 2 Cal. 403=46 C.W.N. 847.
——422 Foll. 17 Luck. 20 ; Ref. 21 Pat. 258 ; 17 Luck. 150.
——489 (P.C.) Foll. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 344.
——612 Appl. 21 Pat. 102.
——801 (P.C.) Rel. I.L.R. 1942 Lah. 79.
——830 Not Foll. (1942) 1 M.L.J. 278.
——897 (P.C.) Dist. 21 Pat. 682.
——914 Foll. 1942 O.W.N. 814 (P.C.) ; Ref. 1942 A.L.J. 710.
——953 Ref. 46 C.W.N. 317.
——1043 Not Foll. (1942) 2 M.L.J. 337.
43 Cal. 59 Ref. 17 Luck. 755= 1942 O.W.N. 165 (F.B.).
——124 Not Appr. I.L.R. 1942 Kar. 196.
——207 Ref. 17 Luck. 346.
——211 Dist. I.L.R. 1942 All. 680 (704).
——285 Foll. I.L.R. 1942 Bom. 128.
——574 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——707 (P.C.) Ref. I.L.R. 1942 All. 518 ; 21 Pat. 197 ; Rel. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F.B.).
——857 Ref. I.L.R. 1942 Lah. 491.
——932 Ref. 44 Bom.L.R. 178.
——1001 Ref. 1942 N.L.J. 547.
——1029 Foll. I.L.R. 1942 Nag. 255.
43 Cal. 1031 Ref. I.L.R. 1942 All. 759 (774).
44 Cal. 47 Ref. 46 C.W.N. 355.
——186 Rel. 1942 A.L.J. 94= I.L.R. 1941 All. 820.
——675, 685 (P.C.) Ref. I.L.R. 1942 Lah. 155 =44 P.L.R. 382 (F.B.).
——689 Dist. I.L.R. 1942 Bom. 463.
——804 Ref. I.L.R. 1942 Lah. 491.
——858 (P.C.) Expl. & Dist. 21 Pat. 441.
——890 Disc. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——970 Cons. 44 P.L.R. 7.
——978 Dist. I.L.R. (1942) 1 Cal. 11.
——1025 Rel. I.L.R. 1942 All. 933=1942 A.L.J. 568 ; 46 C.W.N. 887.
45 Cal. 17 Ref. 44 P.L.R. 133.
——111 Ref. I.L.R. 1942 All. 862.
——169 Ref. I.L.R. 1942 Lah. 411 (F.B.).
——450 (P.C.) Expl. 44 P.L.R. 518 ; Ref. 1942 N.L.J. 589.
——525 Foll. I.L.R. 1942 All. 395.
——530 Expl. 23 P.L.T. 267.
——590 Ref. 44 P.L.R. 87.
——634 Disc. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
46 Cal. 566 Dist. I.L.R. 1942 All. 832 (835, 841) Foll. I.L.R. (1942) 2 Cal. 565.
——651 Rel. 1942 O.W.N. 195.
——663 (P.C.) Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
——694 (P.C.) Foll. 1942 N.L.J. 99.
——887 Ref. I.L.R. 1942 All. 121.
47 Cal. 29 Ref. 44 P.L.R. 31.
——175 (P.C.) Foll. I.L.R. 1942 Mad. 438=(1941) 2 M.L.J. 986.
——537 Foll. I.L.R. 1942 Bom. 204.
——555 (557) Ref. I.L.R. 1942 M. 189.
——633 Ref. (1942) 2 M.L.J. 285.
——866 Ref. I.L.R. 1942 Bom. 441.
48 Cal. 100 Ref. 44 P.L.R. 87.
——110 (P.C.) Rel. I.L.R. 1942 Nag. 478.
——138=24 C.W.N. 723 (F.B.) ; Ref. 46 C.W.N. 98.
——260 (P.C.) Ref. I.L.R. 1942 Mad. 844.
——388 (S.B.) Ref. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618 ; 44 P.L.R. 7.
——481 (P.C.) Ref. I.L.R. 1942 Lah. 491 (F.B.).
——536 Ref. 44 P.L.R. 87.
——605 Dist. I.L.R. (1942) 2 Cal. 232.
——817 Ref. 46 C.W.N. 882= I.L.R. (1942) 2 Cal. 485.

48 Cal. 832 (P.C.) Ref. I.L.R. 1942 Nag. 478.
——1046 Ref. I.L.R. 1942 M. 590=(1942) 1 M.L.J. 469 (F.B.).
49 Cal. 28 Disc. I.L.R. (1942) 2 Cal. 502.
——280 Ref. 23 P.L.T. 636.
——477 Ref. 46 C.W.N. 561.
——829 Ref. I.L.R. 1942 Nag. 263.
——895 Rel. I.L.R. 1942 All. 862.
——919 Rel. I.L.R. (1942) 2 Cal. 554.
——931 Ref. I.L.R. 21 Pat. 1.
50 Cal. 49 Foll. 1942 N.L.J. 99.
——140 Rel. I.L.R. 1942 Kar. 196.
——159 Dist. I.L.R. 1942 Nag. 208.
——329, 336 Rel. I.L.R. 1942 Nag. 92.
——446 (P.C.) Ref. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 344.
——664 Rel. 1942 N.L.J. 302.
——872, 875 Rel. I.L.R. 1942 Nag. 333.
——929 Ref. 44 P.L.R. 87; Rel. 1942 A.L.J. 390=I.L.R. 1942 All. 817.
——957 Ref. I.L.R. (1942) 2 Cal. 111.
——969 Foll. I.L.R. (1942) Kar. 278.
51 Cal. 124 Ref. I.L.R. 1942 Bom. 204.
——972 Ref. 1942 N.L.J. 30.
52 Cal. 128 Ref. 23 P.L.T. 218.
——188 Rel. I.L.R. 1942 Nag. 494.
——417, 422, 423 (P.C.) Rel. I.L.R. 1942 Nag. 703.
——677 Ref. 1942 O.W.N. 165 (F.B.).
——783 Ref. 46 C.W.N. 18.
——809, 819 (P.C.) Rel. I.L.R. 1942 Nag. 92.
53 Cal. 166 Rel. I.L.R. (1942) 1 Cal. 149.
——350 (F.B.) Ref. I.L.R. 1942 Bom. 534.
——515=30 C.W.N. 609 Ref. 46 C.W.N. 477.
——694 Appl. I.L.R. (1942) 1 Cal. 408=46 C.W.N. 904.
——922 Dist. 21 Pat. 377.
——992=31 C.W.N. 112 Ref. 46 C.W.N. 982.
54 Cal. 161 (P.C.) Expl. 21 Pat. 167.
——189 Foll. 46 C.W.N. 393.
——237 Foll. I.L.R. (1942) 2 Cal. 144.
——266 Ref. I.L.R. 1942 Bom. 26.
——283 Dist. I.L.R. 1942 Kar. 72.
——524 Ref. 46 C.W.N. 561.
——624 Dist. I.L.R. 1942 Bom. 190.
——650 Rel. I.L.R. (1942) 1 Cal. 278.
——1057 Rel. I.L.R. 1942 Kar. 220.
55 Cal. 96 Rel. I.L.R. 1942 Nag. 377.
——448 Doubted I.L.R. (1942) 1 Cal. 169.
——499 Foll. I.L.R. 1942 Bom. 124.
——551 Dist. I.L.R. 1942 Nag. 588.
——666 Ref. I.L.R. 1942 Nag. 1.
——918 Dist. I.L.R. 1942 Nag. 16.
——1181 Foll. 21 Pat. 799.
——1284 Ref. 17 Luck. 391.
——1315 Dist. 21 Pat. 377.
56 Cal. 173 Ref. 23 P.L.T. 636.
——252 Ref. 46 C.W.N. 483.
——262 Foll. I.L.R. 1942 Bom. 670.
——290 Foll. 23 P.L.T. 243.
——487 Ref. 46 C.W.N. 147.
——512 Ref. I.L.R. 1942 Lah. 592 (F.B.).
——584 Ref. (1942) 2 M.L.J. 97.
——667 Ref. 23 P.L.T. 697.
——723 (F.B.) Rel. I.L.R. 1942 Bom. 798=44 Bom.L.R. 710.
——738 Ref. 23 P.L.T. 294.
——805 Ref. 1942 A.L.J. 592 (F.B.).
——914 Foll. 1942 N.L.J. 99.
——940 Cons. I.L.R. (1942) 1 Cal. 149.
——979 Rel. I.L.R. (1942) 1 Cal. 149.
——989 Foll. 1942 N.L.J. 441.
——1117 Rel. I.L.R. (1942) 1 Cal. 211.
57 Cal. 1 Ref. I.L.R. 1942 Nag. 1.
——61 Appl. 21 Pat. 138=23 P.L.T. 707.
—— 231 Rel. 23 P.L.T. 481.
——473 Appr. (1942) 2 M.L.J. 47.
——503 Rel. I.L.R. 1942 Nag. 62.
——533 Ref. I.L.R. 1942 Bom. 39.
——612 Diss. 44 Bom.L.R. 924.
——964 Rel. 23 P.L.T. 191.
——980 Rel. 23 P.L.T. 97.
——1062 Disc. I.L.R. (1942) 1 Cal. 436.
——1127 Ref. 23 P.L.T. 167.
——1189 Rel. I.L.R. 1942 Nag. 349.
——1280 Rel. I.L.R. (1942) 2 Cal. 203.
58 Cal. 96 Rel. I.L.R. 1942 Nag. 510.
——204 Foll. I.L.R. (1942) 2 Cal. 105.
——430 (P.C.) Rel. 21 Pat. 521; 23 P.L.T. 275.
——539 Ref. 17 Luck. 733=1942 O.W.N. 56.
——580 Ref. 21 Pat. 258.
——727 Rel. I.L.R. 1942 Kar. 12.
——752 Not Foll. I.L.R. 1942 Nag. 588.
——768 Rel. I.L.R. (1942) 1 Cal. 149.
58 Cal. 832 Ref. I.L.R. (1942) 1 Cal. 289.
——850 Ref. 23 P.L.T. 167.
——909 Ref. I.L.R. 1942 All. 398.
——919 Ref. I.L.R. 1942 Bom. 39.
——1037 Ref. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.); Rel. 23 P.L.T. 644.
——1235 Foll. 23 P.L.T. 294; Ref. I.L.R. 1942 Nag. 703.
——1335 Dist. 21 Pat. 138=23 P.L.T. 707; Ref. 17 Luck. 20; 17 Luck. 150.
——1439 Ref. I.L.R. (1942) 1 Cal. 273.
59 Cal. 1 (P.C.) Ref. 44 P.L.R. 204; Rel. I.L.R. 1942 Nag. 714.
——8 Ref. I.L.R. 1942 Bom. 384.
——19 Foll. 21 Pat. 753; Not Foll. I.L.R. 1942 Nag. 143.
——80 Rel. 23 P.L.T. 662.
——92 Cons. I.L.R. (1942) 2 Cal. 507.
——155 Foll. 23 P.L.T. 345.
——205 Rel. 23 P.L.T. 191.
——388 Cons. I.L.R. (1942) 2 Cal. 253=46 C.W.N. 697.
——402 Ref. 46 C.W.N. 561.
——570 Ref. I.L.R. 1942 Bom. 39.
——576 Ref. I.L.R. 1942 All. 759 (774)=1942 A.L.J. 732.
——636 Ref. I.L.R. (1942) 2 Cal. 299=46 C.W.N. 729.
——760 (F.B.) Foll. 21 Pat. 481.
——859 Disc. I.L.R. (1942) 2 Cal. 268=46 C.W.N. 982; Ref. I.L.R. 1942 Nag. 1=(1942) N.L.J. 570.
——1073 Rel. I.L.R. 1942 All. 360.
——1131 Foll. I.L.R. 1942 Nag. 143; 21 Pat. 753; 1942 All. 945=1942 A.L.J. 607.
——1289 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——1361=A.I.R. 1932 Cal. 474 Rel. I.L.R. 1942 Nag. 510.
——1399 (P.C.) Foll. 21 Pat. 849.
60 Cal. 8 Foll. I.L.R. 1942 Mad. 749=(1942) 1 M.L.J. 538.
——24 Expl. I.L.R. 1942 Bom. 139 (F.B.).
——191 Cons. I.L.R. (1942) 1 Cal. 149.
——240 Ref. 17 Luck. 636.
——538 Ref. 44 Bom.L.R. 643.
——545 Ref. I.L.R. 1942 All. 899.
——630 Ref. 17 Luck. 462.
——643, 650 Dist. I.L.R. 1942 Nag. 193.
——670 Foll. 44 P.L.R. 31.
——729 Foll. 21 Pat. 138=23 P.L.T. 707.
——761 Diss. I.L.R. 1942 Bom. 670.
——918 Ref. I.L.R. (1942) 1 Cal. 562.
——948 Ref. 44 Bom.L.R. 111.
——1003 Ref. I.L.R. (1942) 1 Cal. 533=46 C.W.N. 261.

60 Cal. 1176 Ref. 44 Bom. L.R. 830.
——1193 Ref. 44 Bom.L.R. 111.
——1339 Rel. I.L.R. 1942 Kar. 299.
61 Cal. 6 Ref. I.L.R. 1942 All. 892; Rel. 1942 A.L.J. 376.
——256 Dist. 21 Pat. 138=23 P. L.T. 707.
——262 (P.C.) Dist. I.L.R. 1942 Nag. 608=1942 N.L.J. 375.
——285 Ref. I.L.R. 1942 All. 398.
——670 Ref. 44 Bom.L.R. 699.
——694 Ref. 1942 N.L.J. 589.
——711 Disc. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——841 Dist. 21 Pat. 377; Ref. 46 C.W.N. 371.
——890 Foll. 1942 N.L.J. 39.
——894 Impliedly overr. I.L.R. 1942 All. 390 (P.C.); Ref. I.L.R. 1942 All. 608.
——975 Ref. I.L.R. (1942) 1 Cal. 161.
——1068 Rel. 23 P.L.T. 342.
62 Cal. 75 Ref. 44 Bom.L.R. 111.
——82 Ref. 46 C.W.N. 842.
——95 Ref. I.L.R. 1942 Bom. 384.
——204 Rel. 1942 A.L.J. 94=I.L.R. 1941 All. 820.
——257 Ref. 1942 O.W.N. 527.
——457 Foll. I.L.R. 1942 Nag. 377; Ref. I.L.R. 1942 Mad. 614=(1942) 1 M.L.J. 283.
——510 Rel. 23 P.L.T. 588.
——639 Diss. 44 Bom.L.R. 919.
——677 Ref. I.L.R. 1942 Bom. 169; 17 Luck. 755 (F.B.).
——692 Reversed I.L.R. (1942) 1 Cal. 533=46 C.W.N. 261.
——911 Expl. I.L.R. 1942 Nag. 775.
——965 Rel. 23 P.L.T. 18.
63 Cal. 136 Ref. I.L.R. (1942) 2 Cal. 478.
——176 Appr. I.L.R. 1942 All. 421.
——697 (P.C.) Foll. I.L.R. 1942 Nag. 24.
——867 Rel. 1942 O.W.N. 756.
——1079 Dist. 1942 Lah. 212.
——1172 Dist. 21 Pat. 377.
I.L.R. (1937) 1 Cal. 103 Cons. I.L.R. (1942) 2 Cal. 253.
——127 Not Foll. I.L.R. 1942 All. 848 (855).
——306 Foll. 21 Pat. 130=23 P.L.T. 494.
——359 Ref. I.L.R. 1942 Mad. 851.
——504 Ref. 1942 N.L.J. 547.
——573 Dist. (1942) 2 M.L.J. 568.
——576=41 C.W.N. 200 Ref. 46 C.W.N. 496.
——788 Foll. I.L.R. (1942) 2 Cal. 565.
I.L.R. (1937) 2 Cal. 97 Rel. I.L.R. 1942 Nag. 16.
——187 Disappr. I.L.R. 1942 Bom. 7.
——475 Not Foll. 23 P.L.T. 644.
——631 Dist. 21 Pat. 469.

I.L.R. (1937) 2 Cal. 675 Ref. 1942 N.L.J. 599; I.L.R. (1942) 2 Cal. 413.
——698 Ref. 46 C.W.N. 371.
I.L.R. (1938) 1 Cal. 509 Diss. I.L.R. 1942 Bom. 776.
I.L.R. (1938) 2 Cal. 72 (P.C.) Ref. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250; I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472; Rel. I.L.R. 1942 Nag. 294.
——275 Rel. I.L.R. 1942 Nag. 441.
——418 Diss. I.L.R. (1942) 1 Cal. 510.
I.L.R. (1939) 1 Cal. 46 Foll. 44 Bom.L.R. 814.
——425 Diss. 1942 A.L.J. 592 (F.B.).
——468 Not Foll. 1942 N.L.J. 520.
I.L.R. (1939) 2 Cal. 255 Ref. 17 Luck. 205.
——425 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——446 Rel. 23 P.L.T. 678.
——471 Disc. I.L.R. (1942) 2 Cal. 232.
I.L.R. (1940) 1 Cal. 82 Ref. 44 P.L.R. 31.
——250 (P.C.) Dist. I.L.R. 1942 Lah. 79 (F.B.).
——266 (P.C.) Rel. I.L.R. 1942 Mad. 13 (22)=(1941) 2 M.L.J. 463 (F.B.).
——323 Diss. I.L.R. 1942 Bom. 620.
——329 Rel. I.L.R. (1942) 2 Cal. 28.
——393 Ref. 1942 A.L.J. 578 (F.B.).
——468 Overr. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.).
——575 Foll. (1942) 1 M.L.J. 230.
I.L.R. (1940) 2 Cal. 215 Ref. I.L. R. 1942 All. 398.
——578 Ref. 1942 N.L.J. 139.
I.L.R. (1941) 1 Cal. 299 Not Foll. I.L.R. 1942 Lah. 447 (F.B.).
——373 Rel. I.L.R. (1942) 2 Cal. 293.
——419 Rel. I.L.R. 1942 Kar. 363.
——477 Ref. I.L.R. (1942) Mad. 526=(1942) 1 M.L.J. 155.
——490 Rel. I.L.R. (1942) 2 Cal. 203.
——514 Ref. I.L.R. (1942) 1 Cal. 326.
I.L.R. (1941) 2 Cal. 44 Ref. I.L. R. (1942) 1 Cal. 510.
——184 Diss. I.L.R. (1942) 1 Cal. 61; I.L.R. (1942) 1 Cal. 354; Overr. I.L.R. (1942) 1 Cal. 414=46 C.W.N. 153.
——221 Ref. (1942) 2 M.L.J. 748.
——353 Ref. I.L.R. (1942) 1 Cal. 310.
——373 Ref. I.L.R. (1942) 2 Cal. 461=46 C.W.N. 790.
I.L.R. (1942) 1 Cal. 61 Foll. I.L. R. (1942) 1 Cal. 414; Ref. I.L.R. (1942) 1 Cal. 186.
——235 Ref. I.L.R. (1942) 2 Cal. 516.
——497 Appl. I.L.R. (1942) 2 Cal. 325.
I.L.R. (1942) 2 Cal. 241 Ref. I. L.R. (1942) 2 Cal. 295.

CALCUTTA WEEKLY NOTES.

1 C.W.N. 76 Rel. 23 P.L.T. 81.
2 C.W.N. 521 Foll. I.L.R. 1942 Nag. 45.
——689 Ref. 46 C.W.N. 830.
3 C.W.N. 73 Ref. 46 C.W.N. 830.
——212 Ref. 46 C.W.N. 383.
——341 Ref. 46 C.W.N. 668.
4 C.W.N. 49 Cons. (1942) 2 M.L. J. 240.
——304 Ref. 23 P.L.T. 379.
5 C.W.N. 27 Ref. I.L.R. 1942 Mad. 933=(1942) 2 M.L.J. 115.
——67 Disc. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F.B.).
——207 (S.B.) Dist. 21 Pat. 223.
——329 Rel. 23 P.L.T. 644.
——335 Disc. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.).
——386 Foll. 21 Pat. 377.
——549 Affirmed in 6 C.W.N. 530 Ref. 46 C.W.N. 379.
6 C.W.N. 834 Ref. 46 C.W.N. 707.
——877 Rel. 23 P.L.T. 742.
7 C.W.N. 140 Ref. 23 P.L.T. 644.
——345 Cons. (1942) 2 M.L.J. 240.
8 C.W.N. 376 Ref. 23 P.L.T. 644.
9 C.W.N. 794 Foll. I.L.R. 1942 Bom. 680.
——829 Foll. I.L.R. 1942 Nag. 438.
——1061 Ref. 46 C.W.N. 513.
10 C.W.N. 449 Ref. 46 C.W.N. 561.
——503 Ref. 46 C.W.N. 668.
——1102 Diss. I.L.R. (1942) 1 Cal. 427.
11 C.W.N. 79 Ref. 23 P.L.T. 644.
——848 Rel. I.L.R. (1942) 1 Cal. 100=46 C.W.N. 759.
——878 Ref. (1942) 2 M.L.J. 512.
——1078 Ref. 17 Luck. 1.
——lxxvi Ref. 46 C.W.N. 317.
12 C.W.N. 37 Ref. 46 C.W.N. 561.
——98 Diss. I.L.R. 1942 Kar. 157.
——478 Ref. 46 C.W.N. 798.
——703 Foll. I.L.R. 1942 Nag. 620.
——709 Ref. 46 C.W.N. 830.
——845 Dist. 21 Pat. 778.
——985 Diss. I.L.R. 1942 Kar. 157.
——1010 (1014) Ref. (1942) 1 M.L.J. 187.
13 C.W.N. 690 Ref. I.L.R. (1942) 1 Cal. 67.
——724 Foll. I.L.R. 1942 Nag. 633.

13 C.W.N. 791=9 C.L.J. 125 Ref. 46 C.W.N. 696.
14 C.W.N. 256 Ref. 46 C.W.N. 719=I.L.R. (1942) 2 Cal. 363.
——451 Dist. 17 Luck. 341.
——560 Ref. I.L.R. 1942 Mad. 933=(1942) 2 M.L.J. 115.
——653 Ref. I.L.R. 1942 Mad. 933=(1942) 2 M.L.J. 115.
——752 Ref. 46 C.W.N. 326.
——1096 Rel. 46 C.W.N. 505.
——cxxxviii Expl. I.L.R. 1942 Kar. 278.
15 C.W.N. 375 Dist. I.L.R. 1942 Nag. 73.
——800 Impliedly overr. I.L.R. 1942 All. 608=(1942) 2 M.L.J. 390 (P.C.); Ref. I.L.R. 1942 All. 608.
16 C.W.N. 394 Ref. I.L.R. 1942 All. 121; I.L.R. 1942 Kar. 196.
——798 Ref. 21 Pat. 197.
——834 Dist. I.L.R. 1942 Nag. 16.
——1029 Foll. I.L.R. 1942 Bom. 636.
17 C.W.N. 5 Ref. 46 C.W.N. 865.
——503 Ref. (1942) 1 M.L.J. 400.
——512 Diss. I.L.R. (1942) 1 Cal. 149.
——578 Ref. I.L.R. 1942 Mad. 189.
——817 Ref. 46 C.W.N. 938.
——959 Foll. 21 Pat. 366.
18 C.W.N. 92 Dist. I.L.R. (1942) 2 Cal. 121=46 C.W.N. 696.
——490 Ref. 46 C.W.N. 306.
——537 Ref. 23 P.L.T. 91.
——575 Ref. 21 Pat. 1.
——782 Ref. 21 Pat. 1.
——954 Ref. 46 C.W.N. 245.
——1016 Rel. I.L.R. 1942 (2) Cal. 325.
——1136 Ref. 46 C.W.N. 317.
——1311 Foll. I.L.R. 1942 Nag. 139.
19 C.W.N. 972 Ref. 1942 O.W.N. 564.
20 C.W.N. 28 Foll. I.L.R. 1942 Bom. 712.
——51=21 C.L.J. 253 Ref. 46 C.W.N. 561.
——122 Ref. 46 C.W.N. 317.
——163 Ref. 46 C.W.N. 513.
——358 Dist. 21 Pat. 287.
——520 Foll. I.L.R. (1942) 1 Cal. 573.
——675 Ref. 46 C.W.N. 407.
——749 Rel. 46 C.W.N. 505.
——845 Ref. 23 P.L.T. 227.
——857 Ref. (1942) 1 M.L.J. 583.
——901 Ref. 46 C.W.N. 477.
——943 Dist. 17 Luck. 341.
21 C.W.N. 784 Rel. 17 Luck. 246.
——976 Ref. 46 C.W.N. 938.
——978 Ref. 46 C.W.N. 938.
22 C.W.N. 263 Ref. I.L.R. 1942 All. 671 (676).
——540 Dist. 21 Pat. 838.
23 C.W.N. 83 Ref. 17 Luck. 238.
——654 Foll. 23 P.L.T. 165.
23 C.W.N. 811 Dist. 21 Pat. 544.
24 C.W.N. 133 Ref. 23 P.L.T. 227.
——226 Ref. I.L.R. 1942 Lah. 1 (P.C.).
——752 Rel. I.L.R. 1942 Nag. 92.
——811 Dist. 21 Pat. 544.
——1024 Ref. 46 C.W.N. 938.
25 C.W.N. 129 Not Foll. I.L.R. 1942 Nag. 172.
——142 Ref. 21 Pat. 258.
——328 Ref. 23 P.L.T. 345.
26 C.W.N. 36 Foll. I.L.R. (1942) 2 Cal. 546; Ref. 46 C.W.N. 893.
——65 Foll. I.L.R. 1942 Nag. 608.
——206 Ref. 46 C.W.N. 20.
——216 Ref. 46 C.W.N. 141.
——499 Dist. I.L.R. 1942 Mad. 133=(1941) 2 M.L.J. 455.
——511 Dist. 21 Pat. 488.
——580 Ref. 46 C.W.N. 405.
27 C.W.N. 77 (P. C.) Ref. 46 C.W.N. 522.
——359 Rel. I.L.R. (1942) 1 Cal. 562.
——936 Rel. I.L.R. (1942) 2 Cal. 554.
28 C.W.N. 46 Ref. 46 C.W.N. 509.
——732 Ref. 17 Luck. 52.
29 C.W.N. 432 Cons. I.L.R. 1942 2 Cal. 507.
——575 Ref. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178.
——1020 Ref. 46 C.W.N. 798.
30 C.W.N. 238 Appr. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F.B.).
——735 Ref. 46 C.W.N. 326.
——807 Ref. (1942) 2 M.L.J. 164.
31 C.W.N. 32 Ref. I.L.R. (1942) 1 Cal. 510=46 C.W.N. 169.
——634 Ref. 46 C.W.N. 938.
——703 (710) Ref. I.L.R. 1942 All. 185 (F.B.).
——814 Ref. I.L.R. 1942 Nag. 45.
32 C.W.N. 299 Rel. I.L.R. 1942 Kar. 435.
——418 Diss. I.L.R. (1942) 2 Cal. 262=46 C.W.N. 631.
——569 (P.C.) Rel. I.L.R. 1942 Kar. 79.
——821 (P.C.) Ref. 46 C.W.N. 864.
33 C.W.N. 519 Ref. 46 C.W.N. 59.
——949 (P.C.) Ref. 46 C.W.N. 522.
——977 Ref. I.L.R. (1942) 1 Cal. 245=46 C.W.N. 149.
34 C.W.N. 213 Ref. 46 C.W.N. 713.
——631 Ref. I.L.R. (1942) 1 Cal. 67.
35 C.W.N. 77 Ref. 46 C.W.N. 141.
——210 Not Appl. I.L.R. (1942) 2 Cal. 111.
——320 Rel. I.L.R. (1942) 2 Cal. 507=46 C.W.N. 952.
——324 (P.C.) Rel. 46 C.W.N. 561.
35 C.W.N. 367 Disc. I.L.R. (1942) 2 Cal. 268.
——648 Dist. I.L.R. (1942) 2 Cal. 232.
——809 Ref. 46 C.W.N. 952.
——1217 (P.C.) Ref. 46 C.W.N. 729.
36 C.W.N. 4 (P.C.) Ref. 17 Luck. 755=1942 O.W.N. 165 (F. B.).
——833 Ref. 44 Bom.L.R. 138.
37 C.W.N. 181 Foll. 21 Pat. 815; Ref. I.L.R. 1942 Kar. 179.
——397 Ref. 46 C.W.N. 11.
——412 Ref. 1942 O.W.N. 206.
——1159 Dist. 44 P.L.R. 1.
38 C.W.N. 52 Cons. 44 Bom.L.R 216 (F.B.).
——130 Ref. 46 C.W.N. 298.
——184 Dist. 21 Pat. 461; Rel. 21 Pat. 488.
——278 Ref. 46 C.W.N. 405.
——476 Appr. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.).
——795 Ref. I.L.R. (1942) 1 Cal. 67.
——865 (P.C.) Expl. 21 Pat. 469.
39 C.W.N. 155 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——303 Dist. I.L.R. (1942) 2 Cal. 427=46 C.W.N. 743.
——311 Ref. I.L.R. (1942) 1 Cal. 510=46 C.W.N. 169.
——651 Not Foll. I.L.R. 1942 Lah. 447 (F.B.).
——853 Ref. I.L.R. (1942) 2 Cal. 332=46 C.W.N. 817.
——1044 Ref. 46 C.W.N. 212.
——1198 Appr. 46 C.W.N. 634.
40 C.W.N. 135 Ref. 46 C.W.N. 938.
——173 Ref. 46 C.W.N. 938.
——312 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——345 Ref. 46 C.W.N. 298.
——432 Ref. 46 C.W.N. 108.
——580 Disappr. 46 C.W.N. 634.
——751 Ref. 1942 O.W.N. 664.
——1104 Disappr. 46 C.W.N. 634
——1149 Cons. 46 C.W.N. 697.
41 C.W.N. 14 (P.C.) Rel. I.L.R. 1942 Kar. 79.
——65 (P.C.) Foll. 21 Pat. 258.
——480 Ref. 46 C.W.N. 713.
——534 Not Foll. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968; Ref. I.L.R. 1942 Lah. 517 (F.B.).
——748 (P.C.) Ref. 46 C.W.N. 218.
——845 Foll. I.L.R. 1942 Bom. 636.
——900 Appr. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.).
——1008 Dist. 21 Pat. 377.
——1079 Ref. 46 C.W.N. 808.
——1187 Foll. 21 Pat. 250.
——1330 Ref. 17 Luck. 739.
42 C.W.N. 54 Ref. 21 Pat. 1.
——167 Ref. 46 C.W.N. 141.
——173 Ref. 46 C.W.N. 667.
——351 Foll. 21 Pat. 743.

42 C.W.N. 360 Ref. 1942 O.W. N. 34.
——374 Ref. I.L.R. (1942) 2 Cal. 295.
——479 Dist. 46 C.W.N. 725.
——509 (P.C.) Dist. 21 Pat. 330.
——610 Disappr. 46 C.W.N. 634.
——665 Foll. (1942) 2 M.L.J. 190.
——721 Ref. 44 Bom.L.R. 111.
——793 Ref. 46 C.W.N. 133, 169.
——1013 (P.C.) Foll. 21 Pat. 815.
——1065 Ref. 44 Bom.L.R. 111.
——1203 Expl. I.L.R. (1942) 1 Cal. 310=46 C.W.N. 73.
——1216 Ref. 46 C.W.N. 667.
43 C.W.N. 147 Affirmed 46 C.W. N. 5 (P.C.).
——260 Affirmed 46 C.W.N. 1 (P.C.).
——360 Foll. 21 Pat. 753.
——527 Ref. 1942 O.W.N. 388.
——697 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——862 Ref. 46 C.W.N. 403.
——897 (P.C.) Ref. I.L.R. 1942 All. 671 (676); I.L.R. 1942 Mad. 562=(1942) 2 M.L.J. 472.
——937 Rel. I.L.R. (1942) 1 Cal. 85=46 C.W.N. 86.
——1046 Foll. I.L.R. (1942) 1 Cal. 510=46 C.W.N. 169; Ref. 46 C.W.N. 133.
——1214 Rel. 23 P.L.T. 588.
44 C.W.N. 93 Rel. 46 C.W.N. 947.
——118 Ref. 46 C.W.N. 623.
——165 Foll. 46 C.W.N. 496.
——232 Foll. 46 C.W.N. 682; Ref. 46 C.W.N. 849.
——253 Diss. (1942) 2 M.L.J. 170.
——294 (P.C.) Foll. 21 Pat. 815; Ref. 46 C.W.N. 169.
——304 Ref. 46 C.W.N. 865.
——362 Rel. 44 C.W.N. 943.
——364 Ref. 46 C.W.N. 611.
——604 Ref, I.L.R. (1942) Lah. 517 (F.B.).
——830 Cons. 44 Bom.L.R. 216 (F.B.).
——974 Ref. 46 C.W.N. 561.
45 C.W.N. 11 Dist. I.L.R. (1942) 1 Cal. 414=46 C.W.N. 153.
——22 Doubted I.L.R. (1942) 1 Cal. 49=46 C.W.N. 889.
——44 Ref. 46 C.W.N. 967.
——435 (P.C.) Ref. 46 C. W. N. 729.
——519 Ref. 46 C.W.N. 1020.
——530 Foll. 46 C.W.N. 129; Ref. 46 C.W.N. 34; 179.
——623 Rev. 46 C.W.N. 759.
——665 Disc. 46 C.W.N. 94.
——709 Ref. 46 C.W.N. 94.
——776 Dist. 46 C.W.N. 179; Foll. 46 C.W.N. 129 Ref. 46 C.W.N. 875; Rel. 46 C.W. N. 681.
——791 Diss. 46 C.W.N. 889.
——828 Foll. I.L.R. (1942) 2 Cal. 28.
——850 Reversed 46 C.W.N. 692.
——857 Diss. 46 C.W.N. 557.
45 C.W.N. 859 Affirmed 46 C. W.N. 33; Diss. 46 C.W.N. 84; 46 C.W.N. 153.
——863 Diss. I.L.R. (1942) 1 Cal. 61; I.L.R. (1942) 1 Cal. 414=46 C.W.N. 153; Ref. 46 C.W.N. 673.
——916 Ref. 46 C.W.N. 790.
——932 Ref. 46 C.W.N. 94.
——973 Foll. 46 C.W.N. 129.
——975 Foll. I.L.R. (1942) 1 Cal. 414=46 C.W.N. 153; Ref. I.L.R. (1942) 1 Cal. 61, 186.
——976 Foll. 46 C.W.N. 129.
——979 Reversed 46 C.W.N. 441.
——1042 Foll. 46 C.W.N. 129.
——1047 Affirmed 46 C.W.N. 465
——1090 Ref. 46 C.W.N. 388.
——1091 Com. I.L.R. (1942) 2 Cal. 389; Ref. 46 C.W.N. 673 677.
46 C.W.N. 12 Foll. 46 C.W.N. 14.
——20 Ref. 46 C.W.N. 753= I.L.R. (1942) 2 Cal. 443.
——33 Dist. 46 C.W.N. 557.
——153 Ref. 46 C.W.N. 559.
——174 Foll. 46 C.W.N. 889; Ref. 46 C.W.N. 628.
——368 Appr. I.L.R. (1942) 2 Cal. 389; Ref. 46 C.W.N. 673, 677.
——388 Diss. I.L.R. (1942) 2 Cal. 389; Ref. 46 C.W.N. 673, 677.
——457 Ref. 46 C.W.N. 906= (1942) 1 Cal. 235; 46 C.W. N. 856, 919.
——536 Rel. 46 C.W.N. 681.
——540 Foll. 46 C.W.N. 628; 999; Ref. 46 C.W.N. 864.
——605 Ref. 46 C.W.N. 607.
——628 Foll. 46 C.W.N. 999.
——967 Ref. 46 C.W.N. 975.

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1 C.L.J. 85 Foll. 21 Pat. 682.
——182 Ref. 1942 O.W.N. 328.
——337 (343-348) Appr. I.L.R. 1942 All. 624 (664); Ref. (1942) 2 M.L.J. 559.
2 C.L.J. 1 Ref. 46 C.W.N. 513.
3 C.L.J. 74 Dist. I.L.R. 1942 Nag. 205.
——182 Not Appr. I.L.R. 1942 All. 671.
4 C.L.J. 37 Rel. I.L.R. (1942) 2 Cal. 554.
5 C.L.J. 148 Ref. 44 Bom.L.R. 727.
——178 Ref. 23 P.L.T. 294.
——527 Disc. 46 C.W.N. 94.
6 C.L.J. 102 Ref. 46 C.W.N. 355.
——214 Ref. 44 P.L.R. 236.
——383 Ref. I.L.R. 1942 Nag. 1.
——398 Dist. 44 P.L.R. 415.
——472 Ref. 46 C.W.N. 513.
8 C.L.J. 177 Ref. 46 C.W.N. 668.
9 C.L.J. 91 Ref. 21 Pat. 197.
——331 Dist. I.L.R. 1942 All. 671 (677).
12 C.L.J. 146 Ref. I.L.R. (1942) 1 Cal. 427.
17 C.L.J. 30 Rel. 46 C.W.N. 355
——65 Ref. 21 Pat. 197.
——209 Ref. 1942 N.L.J. 353.
20 C.L.J. 107 Ref. 46 C.W.N. 355.
21 C.L.J. 104 Ref. 1942 O.W.N. 672 (F.B.).
22 C.L.J. 266 Rel. I.L.R. (1942) 2 Cal. 363=46 C.W.N. 719.
——574 Dist. (1942) 2 M.L.J. 518.
24 C.L.J. 335 Ref. (1942) 2 M.L.J. 120.
25 C.L.J. 149 Foll. 21 Pat. 223.
26 C.L.J. 590 (P.C.) Ref. I.L.R. 1942 Mad. 532=(1942) 1. M.L.J. 344; 46 C.W.N. 218.
27 C.L.J. 96 Ref. 46 C.W.N. 865.
——528 Ref. 46 C.W.N. 938.
——605 Disc. 46 C.W.N. 94.
29 C.L.J. 44 Foll. 21 Pat. 223.
——245=51 I.C. 98 Ref. I.L.R. 1942 Nag. 1.
——377 Ref. I.L.R. (1942) 1 Cal. 510.
——494 Ref. 46 C.W.N. 212.
——577 Ref. 46 C.W.N. 169.
31 C.L.J. 259 Ref. 23 P.L.T. 270.
33 C.L.J. 7 Ref. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178.
35 C.L.J. 1 Ref. 46 C.W.N. 707.
——61 Ref. 46 C.W.N. 713.
——332 Ref. 46 C.W.N. 355.
——356 Ref. 46 C.W.N. 405.
37 C.L.J. 184 Rel. 46 C.W.N. 702.
——191 Ref. 46 C.W.N. 212.
——473 Rel. 23 P.L.T. 159.
41 C.L.J. 80 Ref. 46 C.W.N. 952.
——176 Ref. 43 P.L.T. 167.
42 C.L.J. 281 at 407 Ref. 46 C.W. N. 317.
46 C.L.J. 584 Foll. I.L.R. (1942) 2 Cal. 565.
51 C.L.J. 461 Foll. I.L.R. (1942) 2 Cal. 332=46 C.W.N. 817.
——485 Dist. 46 C.W.N. 727.
54 C.L.J. 593 Rel. I.L.R. (1942) 1 Cal. 149.
60 C.L.J. 472 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
62 C.L.J. 28 Not Appr. I.L.R. 1942 Mad. 851.
68 C.L.J. 305 Reversed I.L.R. (1942) 2 Cal. 1 (P.C.).
——381 Dist. 46 C.W.N. 277.
72 C.L.J. 12 Dist. I.L.R. (1942) 2 Cal. 554.
74 C..L.J. 145 Ref. 46 C.W.N. 169.
——180 Rel. 1942 O.W.N. 269.
——491 Ref. 44 P.L.R. 288.

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4 C.L.R. 27 Ref. I.L.R. 1942 Lah. 559 (F.B.).
9 C.L.R. 332 Rel. (1942) 1 M.L.J. 190.

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1 W.R. (Supp.) 121 Ref. 46 C.W. N. 113.
——351 Foll. 21 Pat. 799.

4 W.R. (Cr.) 26 Ref. I.L.R. 1942 Lah. 470.
5 W.R. Misc. 57 Ref. 21 Pat. 197.
——Cr. 80 Foll. I.L.R. 1942 Nag. 510.
6 W.R. 324 Ref. 1942 O.W.N. 335
7 W.R. 384 Ref. I.L.R. 1942 Nag. 1.
9 W.R. 58 (Cr.) Ref. 1942 N.L.J. 547.
——(Suth.) 61 Foll. I.L.R. 1942 Nag. 24.
——242 Foll. I.L.R. (1942) 2 Cal. 565.
——505 Ref. (1942) 2 M.L.J. 249 =23 P.L.T. 717 (P.C.); I.L.R. 1942 All. 259.
10 W.R. (Cr.) 31 Ref. 1942 N.L.J. 547.
11 W.R. 11 (18) Ref. I.L.R. 1942 All. 759 (776).
——(Cr.) 25, 27 Foll. I.L.R. 1942 Nag. 695.
12 W.R. 435 Rel. I.L.R. 1942 Lah. 79.
13 W.R. 72 Ref. 23 P.L.T. 644.
——75 (F.B.) Ref. 46 C.W.N. 947.
——410 Rel. 23 P.L.T. 540.
14 W.R. 25=6 B.L.R. 255 (F.B.) Ref. 46 C.W.N. 298.
——265 Foll. 21 Pat. 799.
15 W.R. 348 Ref. (1942) 1 M.L.J. 485.
——548 Ref. I.L.R. 1942 Bom. 782=44 Bom.L.R. 629.
17 W.R. 108 Ref. 44 P.L.R. 87.
——364 Ref. I.L.R. 1942 Lah. 491=44 P.L.R. 140 (F.B.).
18 W.R. 47 (Cr.) Rel. 23 P.L.T. 644.
——226 (P.C.) Rel. I.L.R. 1942 Nag. 468.
——234 Dist. 46 C.W.N. 277.
19 W.R. 230 Ref. 44 P.L.R. 330 (F.B.).
20 W.R. (Cr. Rul.) Ref. (1942) 1 M.L.J. 460; Foll. 23 P.L.T. 684.
——44 Rel. 46 C.W.N. 668.
——133 Ref. 17 Luck. 366.
——375 Ref. I.L.R. 1942 Kar. 466.
21 W.R. 208 Ref. 1942 O.W.N. 546.
——216 Rel. I.L.R. 1942 Kar. 177.
23 W.R. 214 Ref. I.L.R. 1942 All. 259.
——253 (P.C.) Rel. I.L.R. 1942 Nag. 468.
24 W.R. 394 Ref. 46 C.W.N. 289.
32 W.R. 701 Ref. I.L.R. 1942 Kar. 210.

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3 B.L.R. (A.C.J.) 295 Rel. I.L.R. (1942) 1 Cal. 533.
5 B.L.R. 362 Rel. I.L.R. 1942 Mad. 608=(1942) 1 M.L.J. 331.
6 B.L.R. 492 Rel. I.L.R. 1942 Kar 193.
7 B.L.R. (O.C.J.) 57 Ref. 44 P.L.R. 330 (F.B.).
9 B.L.R. 377 (P.C.) Ref. (1942) 1 M.L.J. 119.
11 B.L.R. 405 Rel. I.L.R. 1942 Kar. 479.
12 B.L.R. 406 Ref. I.L.R. 1942 Kar. 306.
13 B.L.R. 91 Ref.I.L.R. 1942 Lah. 491 (F.B.).
——274 Ref. I.L.R. (1942) 2 Cal. 232.
——461 Ref. 46 C.W.N. 513.
15 B.L.R. 167 Dist. I.L.R. (1942) 1 Cal. 211.

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1 Lah. 27 Ref. I.L.R. (1942) Mad. 526=(1942) 1 M.L.J. 155.
——73 Rel. I.L.R. 1942 Kar. 496.
——295 Ref. I.L.R. 1942 All. 862.
——344 Ref. 44 P.L.R. 133.
——348 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——540 Ref. 44 Bom.L.R. 643.
2 Lah. 155 Foll. I.L.R. 1942 Mad. 770=(1942) 1 M.L.J. 532.
3 Lah. 84 Impliedly overr. A.I.R. 1942 Lah. 217=44 P.L.R. 488.
——103 Not Foll. (1942) 1 M.L.J. 21.
——144 Ref. 44 P.L.R. 269.
——188 Rel. I.L.R. 1942 Lah. 491 (F.B.).
——242 Not Foll. (1942) 1 M.L.J. 21.
——296, 308 Dist. I.L.R. 1942 Lah. 788.
4 Lah. 38 Dist. I.L.R. 1942 Kar. 72.
——249 Rel. I.L.R. 1942 Lah. 79.
5 Lah. 16 Ref. 1942 O.W.N. 432.
——50 (P.C.) Ref. I.L.R. 1942 Lah. 623=44 P.L.R. 437 (P.C.)
——301 Dist. 21 Pat. 778.
——385 Foll. 44 P.L.R. 157.
——416 Dist. I.L.R. 1942 Nag. 193.
6 Lah. 1=52 I.A. 22 Foll. I.L.R. (1942) 2 Cal. 413; I.L.R. 1942 Nag. 325.
——206 (215, 216) Rel. I.L.R. 1942 Lah. 41.
——226 Rel. 23 P.L.T. 606.
——319 Rel. I.L.R. 1942 Lah. 79.
——487 Ref. I.L.R. 1942 Lah. 252.
——493 Ref. I.L.R. (1942) 2 Cal. 413=46 C.W.N. 808.
——528 Ref. I.L.R. 1942 Lah. 411 (F.B.).
7 Lah. 65 Ref. I.L.R. 1942 All. 899.
——124 Foll. (1942) 1 M.L.J. 564.
——482 Foll. I.L.R. 1942 Nag. 620.
8 Lah. 35=A.I.R. 1927 Lah. 110. Dist. (1942) 2 M.L.J. 491.
——246 Ref. 46 C.W.N. 561.
8 Lah. 310 Dist. I.L.R. 1942 Nag. 294.
——384 (F.B.) Dist. 17 Luck. 702; Rel. I.L.R. 1942 O.W.N. 184; I.L.R. 1942 Nag. 325.
——573 Ref. 23 P.L.T. 294.
——593 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——597 (P.C.) Rel. I.L.R. 1942 Nag. 543.
——681 Ref. I.L.R. 1942 Lah. 491.
9 Lah. 38 (F.B.) Foll. 44 P.L.R. 488 (F.B.).
——176 Rel. I.L.R. 1942 Lah. 212.
——244 Ref. I.L.R. 1942 Lah. 50.
——284, 290 (P.C.) Rel. I.L.R. 1942 Lah. 349 (F.B.).
——306 Disappr. I.L.R. 1942 Bom. 175; Overr. I.L.R. 1942 Lah. 746=44 P.L.R. 347 (F.B.).
——324 Rel. I.L.R. 1942 Nag. 24.
——501 Ref. 17 Luck. 435.
10 Lah. 7 Ref. 17 Luck. 327.
——75 (P.C.) Ref. I.L.R. 1942 Lah. 155.
——86 Expl. 44 P.L.R. 518.
——132 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——143 Rel. I.L.R. 1942 Lah. 603.
——155 Ref. I.L.R. 1942 Nag. 62.
——357 Ref. 17 Luck. 271.
——613 Ref. 44 P.L.R. 87.
——800 Dist. 21 Pat. 743.
11 Lah. 258 (F.B.) Rel. I.L.R. 1942 Lah. 155 (F.B.).
——325 Dist. I.L.R. 1942 Kar. 392.
——598 Rel. 1942 N.L.J. 557.
——716 Ref. I.L.R. 1942 Lah. 155 (.FB.)
12 Lah. 280 (P.C.) Dist. I.L.R. 1942 Lah. 510 (F.B.).
——304 Rel. I.L.R. 1942 Nag. 769.
——671=32 P.L.R. 622 Not Foll. 44 P.L.R. 133.
——741 Ref. I.L.R. 1942 Kar. 306.
13 Lah. 152 Foll. I.L.R. 1942 Nag. 62.
——195 Ref. 1942 O.W.N. 34.
——327 Not Foll. I.L.R. 1942 Mad. 688=(1942) 1 M.L.J. 377.
——342 (F.B.) Rel. 44 P.L.R. 510.
——396 Disappr. I.L.R. 1942 Lah. 746=44 P.L.R. 347 (F.B.); I.L.R. 1942 Bom. 175.
——546 Ref. 44 P.L.R. 368.
——672 Rel. I.L.R. 1942 Bom. 94
14 Lah. 19 Rel. I.L.R. 1942 Nag. 588.
——255 Ref. I.L.R. 1942 All. 398; I.L.R. 1942 Lah. 1 (P.C.).
——615 Foll. 21 Pat. 743.
——635 Rel. I.L.R. 1942 Lah. 79.
——703 Dist. 23 P.L.T. 104.
——715 Rel. I.L.R. 1942 Nag. 414.

15 Lah. 9 Ref. I.L.R. (1942) 2 Cal. 413=46 C.W.N. 808; 44 P.L.R. 96; Rel. I.L.R. 1942 Nag. 518
——66=36 P.L.R. 426 Overr. A.I.R. 1942 Lah. 19=I.L.R. 1942 Lah. 217=44 P.L.R. 21.
——354 Rel. 1942 O.W.N. 756.
——389, 405 (F.B.) Foll. I.L.R. 1942 Lah. 41.
——667 Rel. I.L.R. 1942 Kar. 435.
——698 Foll. 23 P.L.T. 697.
16 Lah. 7 Overr, A.I.R. 1942 Lah. 81=44 P.L.R. 41.
——73 Dist. I.L.R. 1942 Nag. 193
——92 Ref. I.L.R. 1942 Lah. 190 (F.B.).
——237 Rel. I.L.R. 1942 Lah. 41.
——258 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——516 Diss. 46 C.W.N. 261.
——517 Diss. I.L.R. (1942) 1 Cal. 533.
——921 Rel. I.L.R. 1942 Lah. 155 (F.B.).
——937 Ref. I.L.R. 1942 All. 398.
17 Lah. 1 (F.B.) Rel. I.L.R. 1942 Lah. 282 (F.B.).
——32 Foll. 1942 N.L.J. 338.
——270 Appr. 44 P.L.R. 342.
——275 Ref. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968; I.L.R. 1942 Lah. 517 (F.B.).
——557, 569 Rel. I.L.R. 1942 Nag. 126.
——606 Ref. I.L.R. 1942 Lah. 491.
——618 Rel. 44 P.L.R. 518.
——629 Foll. 44 P.L.R. 549.
——644 (P.C.) Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
18 Lah. 196 Appr. 1942 N.L.J. 557.
——234 Rel. I.L.R. 1942 Nag. 369.
——438 (F.B.) Ref. I.L.R. 1942 Nag. 107.
19 Lah. 103=40 P.L.R. 546 Foll. 44 P.L.R. 133.
——593 Foll. I.L.R. 1942 Bom. 636.
20 Lah. 1 Rel. I.L.R. (1942) 1 Cal. 132.
——103 Dist. 21 Pat. 774.
——433 Ref. I.L.R. 1942 All. 671 (677).
21 Lah. 400 =(1939) 2 M.L.J. Supp. 23=2 F.L.J. 153 Ref. (1942) 2 M.L.J. 523.
——470 (P.C.) Dist. I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848.
——493 (P.C.) Ref. I.L.R. 1942 All. 1.
——797 (F.B.) Foll. 44 P.L.R. 463.
——942 Not Good law 23 P.L.T. 475.
23 Lah. 1 (P.C.) Foll. I.L.R. 1942 Mad. 419=(1942) 1 M.L.J. 132 (P. C.).

I.L.R. 1937 Lah. 728 Ref. (1942) 2 M.L.J. 425.
I.L.R. 1938 Lah. 93 Ref. I.L.R. 1942 Lah. 190 (F.B.); Rel. I.L.R. 1942 Lah. 155 (F.B.).
——193 (F.B.) Ref. I.L.R. 1942 Lah. 282 (F.B.).
——332 Disappr. I.L.R. 1942 Lah 364 (F.B.); Rel. I.L.R. 1942 Lah. 41.
I.L.R. 1939 Lah. 103 Overr. I.L.R. 1942 Lah. 559 (F.B.).
——299 Ref. I.L.R. 1942 Mad. 875=(1942) 1 M.L.J. 425.
——520 (F.B.) Varied I.L.R. 1942 Lah. 1=44 P.L.R. 225. (P.C.).
I.L.R. 1940 Lah. 242 Disc. I.L.R. (1942) 1 Cal. 436=46 C.W.N. 180.
——470 (P.C.) Dist. I.L.R. 1942 Mad. 590=(1942) 1 M.L.J. 469 (F.B.).
——755 Cons. (1942) 2 M.L.J. 134.
I.L.R. 1941 Lah. 1 (F.B.) Foll. I.L.R. 1942 Lah. 464.
——39 Ref. I.L.R. (1942) 1 Cal. 562.
——154 (P.C.) Foll. I.L.R. 1942 Lah. 59=44 P.L.R. 150.
——395 (F.B.) Foll. I.L.R. 1942 Mad. 143=(1941) 2 M.L.J. 541.
——451 (F.B.) Ref. I.L.R. 1942 Lah. 379.
I.L.R. 1942 Lah. 1 Ref. 23 P.L.T. 323; I.L.R. 1942 Mad. 807 (F.B.).
——145 (F.B.) Ref. I.L.R. 1942 Lah. 129 (F.B.).
——155 (F.B.) Rel. I.L.R. 1942 Lah. 190 (F.B.).
——199 Dist. I.L.R. 1942 Lah. 149 (F.B.).
——349 (F.B.) Ref. I.L.R. 1942 Lah. 559 (F.B.).

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72 P.R. 1879 Ref. I.L.R. 1942 Lah. 282 (F.B.).
33 P.R. 1882 Ref. I.L.R. 1942 Lah. 282 (F.B.).
4 P.R. (Rev.) 1885 Ref. I.L.R. 1942 Lah. 282 (F.B.).
36 P.R. 1886 Ref. I.L.R. 1942 Lah 282 (F.B.).
51 P.R. 1887 (Cr.) Ref. 44 P.L.R. 269.
9 P.R. 1888 (F.B.) Foll. 44 P.L.R. 488 (F.B.).
69 P.R. 1888 Dissppr. I.L.R. 1942 Lah. 746=44 P.L.R. 347 (F.B.).
44 P.R. 1891 (F.B.) Foll. 44 P.L.R. 488 (F.B.).
45 P.R. 1891 (F.B.) Foll. 44 P.L.R. 488 (F.B.).
15 P.R. 1892 (F.B.) Ref. 44 P.L.R. 157.
46 P.R. 1893 Ref. 44 P.L.R. 157.
276 P.R. 1896 Ref. 17 Luck. 158.
15 P.R. 1901 Foll. 44 P.L.R. 109.
24 P.R. 1902 (F.B.) Rel. I.L.R. 1942 Lah. 155 (F.B.).
35 P.R. 1903 (F.B.) Appr. I.L.R. 1942 Lah. 282 (F.B.).
68 P.R. 1904 Ref. I.L.R. 1942 Lah. 282 (F.B).
102 P.R. 1905 Ref. I.L.R. 1942 Lah. 282 (F.B.).
45 P.R. 1906 Ref. 44 P.L.R. 382.
25 P.R. 1908 Foll. 44 P.L.R. 455.
52 P.R. 1908 Ref. 44 P.L.R. 382.
92 P.R. 1908 Ref. I.L.R. 1942. Lah. 268.
119 P.R. 1908 Ref. I.L.R. 1942 Lah. 282 (F.B.).
136 P.R. 1908 Ref. I.L.R. 1942 Lah. 268.
144 P.R. 1908 Ref. I.L.R. 1942 Lah. 386.
91 P.R. 1909 (F.B.) Ref. I.L.R. 1942 Lah. 155 (F.B.).
12 P.R. 1911=6 P.L.R. 1911 Foll. 44 P.L.R. 420 (F.B.).
20 P.R. 1912 Ref. 44 P.L.R. 275.
23 P.R. 1912 Ref. I.L.R. 1942 Lah. 155 (F.B.).
28 P.R. 1912 Ref. 17 Luck. 158.
37 P.R. 1912 Ref. I.L.R. 1942 Lah. 386.
219 P.R. 1912 Ref. 17 Luck. 158.
48 P.R. 1914 Ref. I.L.R. 1942 Lah. 50.
8 P.R. (Cr.) 1915 Ref. I.L.R. 1942 All. 899.
97 P.R. 1915 Ref. I.L.R. 1942 Lah. 252.
152 P.R. 1915 Dist. 17 Luck. 739.
6 P.R. (Cr.) 1916 Not Foll. I. L. R. 1942 Lah. 470.
52 P.R. 1916=35 P.L.R. 1917 (F.B.)Dist.44 P.L.R.420(F.B.)
105 P.R. 1917 Diss. I.L.R. 1942 Lah. 717 (F.B.).
18 P.R. 1918 (Cr.) Dist. 44 P.L.R. 540.
63 P.R. 1918 Dist. I.L.R. 1942 Lah. 155 (F.B.).
91 P.R. 1919 Ref. I.L.R. 1942 Lah. 623=44 P. L. R 437 (F. C.)
97 P.R. 1919 Disappr. I.L.R. 1942 Lah. 50.
108 P.R. 1919=A.I.R. 1920 Lah. 151 Diss. 44 P.L.R. 157.

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21 P.L.R. 1901 Ref. 44 P.L.R. 382.
26 P.L.R. 1915=A.I.R. 1915 Lah. 476 Ref. 44 P.L.R. 186.
39 P.L.R. 1915 Rel. 44 P.L.R. 80.
31 P.L.R. 1918=A.I.R. 1918 Lah. 380 Foll. 44 P.L.R. 109.
26 P.L.R. 175 Dist. 44 P.L.R. 420 (F.B.).
26 P.L.R. 552 Cons. 44 P.L.R. 7.
29 P.L.R. 307 Ref. 44 P.L.R. 368.
30 P.L.R. 416 Overr. A.I.R. 1942 Lah. 84=44 P.L.R. 71.
——416=A.I.R. 1929 Lah. 28 Overr. 44 P.L.R. 71.
31 P.L.R. 909 Ref. 44 P.L.R. 87.
32 P.L.R. 284 Rel. 44 P.L.R. 518.
34 P.L.R. 417 Ref. I.L.R. 1942 Lah. 282 (F.B.).

35 P.L.R. 279 Rel. 44 P.L.R. 518.
37 P.L.R. 821 (F.B.) Ref. 44 P.L.R. 437 (F.C.).
38 P.L.R. 269 Dist. I.L.R. 1942 Lah. 282 (F.B.).
——691 Ref. I.L.R. 1942 Lah. 559 (F.B.).
39 P.L.R. 334 (P.C.) Foll. 44 P.L.R. 269.
——649=A.I.R. 1937 Lah. 738 Foll. 44 P.L.R. 74.
——714 Ref. 44 P.L.R. 368.
——720=1931 Lah. 497 Ref. 44 P.L.R. 236.
——1011 Cons. 44 P.L.R. 7.
40 P.L.R. 303=A.I.R. 1938 Lah. 458 Foll. 44 P.L.R. 74.
——319, 398 (F.B.) Ref. I.L.R. 1942 Lah. 217 (F.B.).
——658 Overr. A.I.R. 1942 Lah. 147=I.L.R. 1942 Lah. 447 (F.B.).
——872 Foll. 44 P.L.R. 167.
41 P.L.R. 194 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——348 Ref. 44 P.L.R. 382.
——878 Ref. I.L.R, 1942 Lah. 282 (F.B.).
42 P.L.R. 126 Reversed A.I.R. 1942 Lah. 237.
——126 Reversed 44 P.L.R. 376.
——555 Appr. I.L.R. 1942 Lah. 386.
——628 Diss. 44 P.L.R. 382.
——628 Overr. A.I.R. 1942 Lah. 243=44 P.L.R. 382.
——754 Ref. 44 P.L.R. 376.
43 P.L.R. 106 Foll. 44 P.L.R. 162.
——191 Overr. I.L.R. 1942 Lah. 675.
——198 Appr. 44 P.L.R. 382.
43 P.L.R. 226 (S.B.) Affirmed 44 P.L.R. 437 (F.C.).

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12 L.L.J. 56 Ref. (1942) 2 M.L.J. 47.

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135 P.W.R. 1910 Ref. I.L.R. 1942 Lah. 282 (F.B.).

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13 L.L.T. 29 Ref. I.L.R. 1942 Lah. 758 (F.B.).
14 L.L.T. 26 Ref. I.L.R. 1942 Lah 758 (F.B.).
15 L.L.T. 1 Ref. I.L.R. 1942 Lah. 758 (F.B.).
20 L.L.T. 19. Ref. I.L.R. 1942 Lah. 758 (F.B.).

I.L.R. MADRAS SERIES.

1 Mad. 174 (P.C.) Ref. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——290 Ref. I.L.R. 1942 All. 518 (F.B.).
2 Mad. 124 Rel. I.L.R. 1942 Nag. 294.
——175 Ref. 21 Pat. 197.
——182 (F.B.) Ref. I.L.R. 1942 All. 759 (771).
2 Mad. 187 Rel. (1942) 2 M.L.J. 154.
3 Mad. 78 Rel. I.L.R. 1942 Mad. 177.
——95 Rel. (1942) 1 M.L.J. 564.
——230 Ref. I.L.R. 1942 All. 608 (622).
——248 Ref. 17 Luck. 572.
——249 Ref. I.L.R. 1942 Nag. 625.
——271 (FB..) Ref. (1942) 2 M.L.J. 112.
4 Mad. 204 Ref. (1942) 1 M.L.J. 400.
——302 Ref. (1942) 2 M.L.J.315; 750.
——323 Ref. I.L.R. 1942 Nag. 459.
5 Mad. 169 (F.B.) Ref. I.L.R. 1942 Mad. 251=(1942) 2 M.L.J. 883 (F.B.).
——234 Rel. 1942 O.W.N. 748.
——390 Dist. (1941) 2 M L.J.556.
6 Mad. 71 Ref. 1942 N.L.J. 570.
——303 Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
7 Mad. 255 Overr. I.L.R. 1942 Mad. 271=(1941) 2 M.L.J. 622 (F.B.).
——258 Ref. 17 Luck. 456.
——405 (406) Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
——434 Ref. I.L.R. 1942Kar. 473
——545 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
8 Mad. 208 Reaffirmed and Foll. (1942) 2 M.L.J. 691 (F.B.).
——361 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F. (B.).
——381 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
——415 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
——464 Ref. 1942 A.L.J. 94= 1942 N.L.J. 589 (P.C.).
——516 Ref. I.L.R. 1942 Mad. 13 =(1941) 2 M.L.J. 463 (F.B.)
——520 Ref. I.L.R. 1942 All. 103.
——464 Ref. 1942 N.L.J. 589.
9 Mad. 64 (F.B.) Foll. I.L.R. 1942 Mad. 807=(1942) 2 M.L.J. 292 (F.B.); Ref. (1942) 1M.L. J. 119 ; Rel. (1942) 2 M.L.J. 678 (F.B.).
——256 Ref. 1942 O.W.N. 307.
10 Mad. 38 Ref. I.L.R. 1942 (2) Cal. 152.
——185 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——283 Rel. 1942 O.W.N. 748.
——316 Reaffirmed and Foll. (1942) 2 M.L.J. 691 (F.B.).
11 Mad. 5 (F.B.) Ref. I.L.R. 1942 Mad. 682=(1942) 1 M.L.J. 285 ; 1942 O.W.N. 541.
——91 Ref. (1942) 1 M.L.J. 181.
——191 Rel. 23 P.L.T. 457.
——266 Ref. 17 Luck. 116.
——309 (F.B.) Dist. (1942) 2 M.L.J. 162.
12 Mad. 19 (P.C.) Foll. I.L.R, 1942 Lah. 559 (F.B.),
12 Mad. 36 Rel. 17 Luck. 513.
——239 Ref. I.L.R. 1942 All. 938.
——241 Ref. I.L.R. 1942 All. 1.
——325 Appr. (1942) 2 M.L.J. 691 (F.B.).
——356 Cons. 44 P.L.R. 114.
13 Mad. 75 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F.B.).
——135 Ref. I.L.R. 1942 Bom. 574.
——366 Foll. (1942) 1 M.L.J. 318.
——423, 424 Dist. I.L.R. 1942 Nag. 193.
——504 Rel. I.L.R. 1942 Nag. 633.
14 Mad. 1 Foll. 21 Pat. 815 ; Ref. I.L.R. 1942 Kar. 179.
——169 Ref. (1942) 1 M.L.J. 400.
——232 Rel. I.L.R. 1942 Kar. 452.
——316 Appr. I.L.R. 1942 Mad. 807 (F.B.) ; Ref. I.L.R. 1942 All. 518 (519).
——363 Ref. 1942 O.W.N. 786.
——467 Ref. I.L.R. 1942 All. 924 =1942 A.L.J. 611.
15 Mad. 15 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F. B.).
——155 Rel. 1942 A.L.J. 634.
——221=2 M.L.J. 120 Ref. (1942) 1 M.L.J. 583.
16 Mad. 31 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F.B.).
——182 Ref. I.L.R. 1942 Bom. 467.
——220 Dist. I.L.R. 1942 Nag. 182.
17 Mad. 144 Foll. (1942) 2 M.L.J. 750.
——389 Ref. 46 C.W.N. 289 ; 561.
——456 Ref. 17 Luck. 530.
18 Mad. 134 Foll. I.L.R. 1942 Nag. 340.
——374 Foll. (1942) 1 M.L.J. 372.
19 Mad. 197 Rel. I.L.R. 1942 Nag. 459.
——349 Ref. 17 Luck. 311.
——411 Rel. I.L.R. 1942 Kar. 452.
20 Mad. 239 Dist. I.L.R. 1942 Nag. 182.
——481 Ref. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250.
21 Mad. 47 Diss. 1942 O.W.N. 435.
——49 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——241 Diss. I.L.R. 1942 Lah. 74.
——269 Foll. & Dist. 21 Pat. 720.
——388=8 M.L.J. 48 Ref. (1942) 2 M.L.J. 463 (F.B.).
22 Mad. 39 Diss. 1942 O.W.N. 435 ; Ref. 44 P.L.R. 437.
——49 Ref. 17 Luck. 319.
——113, 115 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406 ; I.L.R. 1942 All. 708 (736).

22 Mad. 117 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M. L. J. 463 (F.B.).
——119 (125) Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
——149 Ref. 23 P.L.T. 11.
——256 Dist. 44 Bom.L.R. 120.
——305 Ref. 46 C.W.N. 379.
——398 Ref. I.L.R. 1942 All. 518 (591).
——464 (P.C.) Ref. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 344.
23 Mad. 24 Ref. 1942 O.W.N. 446.
——84 Ref. (1942) 2 M.L.J. 785.
——271 (P.C.) Rel. 21 Pat. 197; Rel. I.L.R. 1942 Mad. 13 (22)=(1941) 2 M.L.J. 463 (F.B.).
——441 Dist. 44 P.L.R. 415.
——486=10 M.L.J. 73 Foll. (1942) 1 M.L.J. 28; Rel. (1942) 2 M.L.J. 206.
——490 Ref. 23 P.L.T. 218.
24 Mad. 81 Dist. (1942) 2 M.L.J. 556.
——85 Ref. (1942) 2 M.L.J. 525.
——96=10 M.L.J. 383. Overr. (1942) 2 M.L.J. 525 (F.B.).
——214 Foll. 1942 N.L.J. 39.
——255 Ref. I.L.R. 1942 Nag. 34.
——421 Ref. 44 .P.L.R. 437(F.C.)
——429=11 M.L.J. 210 Ref. (1942) 2 M.L.J. 47.
——658 Ref. 44 P.L.R. 114.
25 Mad. 61 (P.C.) Foll. 1942 O.W.N. 564; Ref. I.L.R. 1942 Mad. 322=(1941) 2 M.L.J. 534.
——431 (F.B.) Foll. 21 Pat. 322.
——457 Ref. I.L.R. 1942 Mad. 60 (68)=(1941) 2 M.L.J. 125.
——599 Ref. I.L.R. 1942 Nag. 1.
——627 Ref. 44 P.L.R. 437.
——678 Ref. I.L.R. 1942 All. 759 (765).
26 Mad. 1 Ref. I.L.R. 1942 Lah. 125 (129) (F.B.); I.L.R. 1942 Nag. 510.
——41 Ref. (1942) 1 M.L.J. 108.
——124 Foll. I.L.R. 1942 Nag. 426.
——156 Dist. I.L.R. 1942 Nag. 294.
——179 Ref. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178.
——214 Ref. I.L.R. (1942) 2 Cal. 413=46 C.W.N. 947.
——230 Ref. I.L.R. 1942 All. 448.
——330 Dist. 44 Bom.L.R. 894.
——494 Foll. I.L.R. 1942 Nag. 45.
——499 Ref. 1942 O.W.N. 631.
——592 Ref. I.L.R. 1942 Bom. 534.
——627=13 M.L.J. 239 Foll. (1942) 1 M.L.J. 28; (1942) 2 M.L.J. 206.
26 Mad. 656 (F.B.) Ref. I.L.R. 1942 Mad. 587=(1941) 2 M.L.J. 852.
——681 Overr. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
——686 Ref. 1942 O.W.N. 672 (F.B.).
——792 Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
27 Mad. 21 Dist. I.L.R. 1942 Mad. 868=(1942) 2 M.L.J. 104.
——37 Rel. I.L.R. 1942 Nag. 459
——237 Ref. 44 P.L.R. 38.
——243 (F.B.) Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816; (1942) 1 M.L.J. 173; Rel. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——424=14 M.L.J. 32 Ref. (1942) 1 M.L.J. 44.
——435 (452) Ref. I.L.R. 1942 All. 1.
——496=14 M.L.J. 345 (F.B.) Ref. (1942) 1 M.L.J. 182.
——591=14 M.L.J. 297 Ref. (1942) 1 M.L.J. 21.
28 Mad. 1 Rel. I.L.R. 1942 Nag. 16.
——54 Ref. 44 Bom.L.R. 727.
——495 Foll. 1942 N.L.J. 441.
——565 Ref. (1942) 1 M.L.J. 383.
29 Mad. 118 Ref. 46 C.W.N. 522.
——151 (F.B.) Foll. 21 Pat. 300.
——190 Ref. (1942) 1 M.L.J. 490.
——217 Impliedly Overr. (1942) 2 M.L.J. 390=I.L.R. 1942 All. 608 (P.C.).
——234=16 M.L.J. 99 Dist. (1942) 2 M.L.J. 398.
——283 (P.C.) Rel. I.L.R. 1942 Nag. 555.
——309 Foll. I.L.R. 1942 Bom. 132.
——333 (F.B.) Expl. I.L.R. 1942 Mad. 677=(1942) 1 M.L.J. 281.
——539=16 M.L.J. 582 Ref. (1942) 2 M.L.J. 1 (F.C.); 23 P.L.T. 304.
30 Mad. 18 Ref. 23 P.L.T. 218.
——26 Appr. I.L.R. 1942 Mad. 271=(1942) 2 M.L.J. 622 (F.B.).
——61=16 M.L.J.462 Ref. (1942) 2 M.L.J. 418.
——88 Foll. I.L.R. 1942 Bom. 620
——143=17 M.L.J. 334 Ref. (1942) 2 M.L.J. 750.
——201 Ref. 1942 N.L.J. 570.
——212 Ref. 1942 A.L.J. 634.
——215 Ref. 44 P.L.R. 114.
——290 Ref. 46 C.W.N. 393.
——367 Overr. I.L.R. 1942 Mad. 264=(1941) 2 M.L.J. 904 (F.B.).
——375 Foll. I.L.R. 1942 Nag. 721.
——426 (P.C.) Ref. I.L.R. 1942 Mad. 851.
——444=17 M.L.J. 294 Ref. (1942) 2 M.L.J. 565.
30 Mad. 547 Foll. 1942 O. W. N 305.
31 Mad. 333 Ref. I.L.R. 1942 All. 608 (618).
——343Rel. I.L.R. 1942 Kar.516.
32 Mad. 3 Foll. I.L.R. 1942 Nag. 62.
——370 Ref. I.L.R. 1942 All. 360.
——258 (F.B.) Ref. (1942) 1 M.L.J. 384.
——377 Ref. I.L.R. 1942 All. 759; 1942 A..L.J. 289; 17 Luck.72.
33 Mad. 89=19 M.L.J. 130 Ref. (1942) 1 M.L.J. 108.
——93 (F.B.) Ref. 44 P.L.R. 330 (F.B.).
——98 (F.B.) Diss. I.L.R. 1942 Lah. 717 (F.B.).
——102 Ref. I.L.R. 1942 Kar. 326.
——228 Ref. (1942) 1 M.L.J. 119.
——334=20 M.L.J. 211 Ref. (1942) 2 M.L.J. 444.
——342 Ref. I.L.R. 1942 All. 518 (592).
——452 Appr. I.L.R. 1942 Mad. 13 (23)=(1941) 2 M.L.J. 463 (F.B.).
34 Mad. 221 Not Foll. I.L.R. 1942 All. 680 (705).
——231 Foll.I.L.R. 1942 Nag.721
——253 Rel. (1942) 2 M.L.J. 221.
——288 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——422=20 M.L.J. 855 Ref. (1942) 1 M.L.J. 522.
——493 (495) Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
35 Mad. 1 (F.B.) Rel. I.L.R. 1942 Lah. 491=44 P.L.R. 140 (F.B.).
——75 Ref. 1942 O.W.N. 699.
——95 Ref. 17 Luck. 530.
——417 Foll. 21 Pat. 233.
——598 Ref. I.L.R. 1942 All. 360.
——607=14 Bom.L.R. 1034 (P. C.) Foll. 44 Bom.L.R. 643.
——636=22 M.L.J. 152 Foll. (1942) 1 M.L.J. 187.
36 Mad. 108 Rel. 23 P.L.T. 87.
——295 (P.C.) Rel. I.L.R. 1942 Nag. 642.
——348=21 M.L.J. 983 Ref. (1942) 1 M.L.J. 506; (1942) 2 M.L.J. 94.
——414 Not Foll. I.L.R. 1942 Bom. 504.
——472=22 M.L.J. 184 Foll. (1942) 2 M.L.J. 556.
37 Mad. 38 Foll. 44 Bom.L.R. 894.
——107 Rel. I.L.R. (1942) 1 Cal. 278.
——119 Ref. I.L.R. 1942 Lah. 129.
——163 Expl. I.L.R. 1942 Bom. 688.
——181 Not Foll. I.L.R. 1942 Kar. 45.
——565 Diss. 44 Bom.L.R. 919.
38 Mad. 36=23 M.L.J. 513 Ref. (1942)1 M.L.J. 575.
——101 Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.

38 Mad. 138 Ref. 1942 N.L.J. 30.
——160=23 M.L.J. 360 Ref. (1942) 1 M.L.J. 485.
——166=24 M.L.J. 517 Ref. (1942) 2 M.L.J. 750.
——178 Ref. 46 C.W.N. 522.
——203=25 M.L.J. 228 Appl. (1942) 2 M.L.J. 198.
——247 Dist. I.L.R. 1942 All. 103
——479 (Judgment of Ayling, J. Not Foll. 21 Pat. 250=23 P.L.T. 725.
——788 Rel. 21 Pat. 377.
——922 (F.B.) Dist. I.L.R. 1942 Nag. 636; Ref. 23 P.L.T. 218.
——1028=26 M.L.J. 160 Rel. (1942) 2 M.L.J. 221.
——1076 Dist. I.L.R. 1942 Nag. 322.
39 Mad. 80 Ref. (1942) 1 M.L.J. 303.
——115 (P.C.) Rel. I.L.R. 1942 Nag. 642.
——419 Ref. I.L.R. 1942 All. 608 (618).
——501 Ref. I.L.R. 1942 All. 671 (677).
——554 Ref. 44 P.L.R. 87.
——661 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——733 Ref. I.L.R. (1942) 1 Cal. 253.
——781 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——843 Ref. I.L.R. 1942 Mad. 618=(1942) 1 M.L.J. 296.
——936=29 M.L.J. 569 Rel. (1942) 2 M.L.J. 442.
——939 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
——1045 (F.B.) Ref. (1942) 2 M..L.J. 234 (F.B.).
40 Mad. 93 Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
——233=32 M.L.J. 13 Ref. (1942) 2 M.L.J. 520; Rel. (1942) 1 M.L.J. 396.
——302 (306)=30 M.L.J. 361 Dist. (1942) 1 M.L.J. 217 (2).
——365 (F.B.) Ref. 44 Bom.L.R. 874.
——402 (P.C.) Rel. I.L.R. 1942 Nag. 543.
——581=31 M.L.J. 386 Ref. (1942) 1 M.L.J. 173; I.L.R. 1942 Mad. 251=(1942) 2 M.L.J. 883 (F.B.).
——660 Foll. I.L.R. 1942 Nag. 236.
——698 Foll. I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848; I.L.R. 1942 Bom. 512.
——733 Rel. I.L.R. 1942 Nag. 166.
——783=32 M.L.J. 253 (F.B.) Ref. (1942) 2 M.L.J. 626.
——793 Ref. 44 P.L.R. 288.
——846 Diss. I.L.R. 1942 Kar. 435.
——939 Ref. (1942) 2 M.L.J. 350.
40 Mad. 968=33 M.L.J.211(F.B.) Appr. (1942) 2 M.L.J. 390; Ref. I.L.R. 1942 All. 608 (619).
——976=33 M.L.J. 121 Rel. (1942) 2 M.L.J. 221.
——1083 Ref. (1942) 2 M.L.J. 223.
41 Mad. 136 Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——156=33 M.L.J. 729 (F.B.) Ref. (1942) 1 M.L.J. 585.
——241 Foll. 21 Pat. 223.
——265 Ref. 1942 N.L.J. 462=I.L.R. 1942 Nag. 685.
——286 (F.B.) Ref. I.L.R. 1942 Kar. 547.
——296 (P.C.) Foll. I.L.R. 1942 Nag. 555.
——365 Ref. 44 P.L.R. 87.
——370=33 M.L.J. 618 Rel. (1942) 2 M.L.J. 213.
——403 (P.C.) Dist. 21 Pat. 774.
——620 Ref. I.L.R. 1942 Nag.459
——622 Diss. 44 P.L.R. 116; Rel. 1942 A.L.J. 483.
——778 Foll. 44 P.L.R. 192.
——815=35 M.L.J. 90 Foll. (1942) 2 M.L.J. 742.
——886 (F.B.) Ref. I.L.R. 1942 Nag. 555.
——904 (F.B.) Foll. I.L.R. 1942 Nag. 156.
——985 (F.B.) Foll. I.L.R. 1942 Mad. 336=(1941) 2 M.L.J. 956 (F.B.); Ref. I.L.R. 1942 Bom. 636.
——998 (P.C.) Dist. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
——1026 Ref. 17 Luck. 572.
——1033 Rel. (1942) 1 M.L.J. 564
——1043 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
42 Mad. 52 Foll. I.L.R. 1942 Mad 60 (64)=(1941) 2 M.L.J. 125.
——61 Ref. 1942 O.W.N. 275.
——76 Ref. 21 Pat. 1.
——83 Ref. I.L.R. 1942 Bom. 534.
——161 Ref. (1942) 2 M.L.J. 350.
——185 (F.B.) Dist. 44 Bom.L.R. 894.
——271 Dist. I.L.R. (1942) 1 Cal. 533.
——296 Dist. ahd not Appr. I.L.R. (1942) 2 Cal. 268.
——310 Ref. 21 Pat. 1.
——319 Rel. I.L.R. 1942 Nag. 306.
——360 Ref. 1942 A.L.J. 334.
——451 Ref. (1942) 2 M.L.J.223.
——455=36 M.L.J. 226 Ref. (1942) 2 M.L.J. 722.
——475 (F.B.) Ref. (1942) 2 M.L.J. 414.
——523 Ref. I.L.R. 1942 All. 745 (748)=1942 A.L.J. 443.
——576 Foll. (1942) 2 M.L.J. 803.
——589 (P.C.) Ref. I.L.R. 1942 Lah. 252.
——684 Overr. I.L.R. 1942 Mad. 11 (9)=(1941) 2 M.L.J. 684 (F.B.)
42 Mad. 711 (F.B.) Ref. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——737 Ref. 1942 O.W.N. 596.
——873 Ref. 46 C.W.N 882=I.L.R. (1942) 2 Cal. 485.
43 Mad. 185 (F.B.) Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472; Rel. I.L.R. 1942 Mad. 264=(1941) 2 M.L.J. 904 (F.B.).
——214 (F.B.) Ref. I.L.R. 1942 Bom. 204.
——244 (P.C.) Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406; Rel. I.L.R. 1942 Nag. 73; 145; 1942 N.L.J. 570; I.L.R. 1942 Lah. 79.
——421 Ref. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——450 Ref. I.L.R. 1942 Nag. 62.
——464 Appr. I.L.R. 1942 Mad. 807 (F.B.)=(1941) 2 M.L.J. 292 (F.B.); Ref. I.L.R. 1942 All. 518.
——541 Rel. 1942 A.L.J. 94=I.L.R. 1941 All. 820.
——550=47 I.A. 33 Rel. I.L.R. 1924 Kar. 237.
——609=38 M.L.J. 532 (F.B.) Ref. (1942) 1 M.L.J. 485.
——640=38 M.L.J. 465 Ref. (1942 (2) M.L.J. 104.
——650 (P.C.) Dist. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
——720 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——760=39 M.L.J. 350 (F.B.) Ref. (1942) 2 M.L.J. 491.
——808 Ref. I.L.R. 1942 All. 509.
44 Mad. 156=40 M.L.J. 91 Ref. (1942) 2 M.L.J. 732.
——268 Ref. 44 P.L.R. 258.
——499 Ref. I.L.R. 1942 All. 759 (763); 1942 A.L.J. 289; 17 Luck. 72.
——544 Ref. I.L.R. 1942 Mad. 669=(1942) 1 M.L.J. 441.
——753 Ref. 1942 A.L.J. 732.
——773 Ref. I.L.R. 1942 All. 398.
——778 Ref. 1942 O.W.N. 268.
——801 Disappr. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——817 Appr. I.L.R. 1942 Mad. 868=(1942) 2 M.L.J. 104.
——823=41 M.L.J. 205 Dist. (1942) 1 M.L.J. 274.
——831 (P.C.) Ref. 21 Pat. 197; Rel. I.L.R. 1942 Nag. 92; 468; 555.
——883 (P.C.) Foll. 1942 N.L.J. 99.
——971 Dist. I.L.R. 1942 Nag. 182; Rel. (1942)1 M.L.J. 561.
45 Mad. 113 (F.B.) Dist. I.L.R. 1942 Bom. 293.
——246 Rel. I.L.R. 1942 Nag. 432.

45 Mad. 320 Ref. I.L.R. 1942 All. 518 (577).
——425 Foll. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——434, 442 Not Appr. I.L.R. 1942 Kar. 196.
——565 Ref. I.L.R. 1942 Nag. 555; 21 Pat. 197.
——620=42 M.L.J. 477 Appl. (1942) 2 M.L.J. 504; 624.
——648=42 M.L.J. 507 (F.B.) Rel. (1942) 1 M.L.J. 408.
——710 Ref. 44 P.L.R. 437.
——766 Rel. I.L.R. 1942 Kar. 299.
——785 Rel. I.L.R. (1942) 1 Cal. 245=46 C.W.N. 149.
——827 Foll. I.L.R. 1942 Bom. 636.
——900 Foll. 44 P.L.R. 133.
——913 Ref. 44 P.L.R. 38.
——922 Ref. I.L.R. 1942 Bom. 39.
——928, 947 (F.B.) Ref. I.L.R. 1942 Nag. 667.
——949 (F.B.) Not Foll. I.L.R. 1942 Mad. 807=(1942) 2 M.L.J. 292 (F.B.).
46 Mad. 60 Rel. 1942 O.W.N. 242.
——148 Appr. 1942 N.L.J. 520.
——190 Dist. I.L.R. 1942 Kar. 392.
——583 Dist. I.L.R. 1942 Bom. 704.
——659 Ref. I.L.R. (1942) 1 Cal. 427.
——768 (F.B.) Ref. I.L.R. 1942 Lah. 559 (F.B.).
——958 Ref. I.L.R. 1942 Lah. 592 (F.B.).
47 Mad. 47 Ref. I.L.R. 1942 Mad. 933=(1942) 2 M.L.J. 115.
——120 Not Foll. I.L.R. 1942 All. 848=1942 A.L.J. 399.
——136 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——181 Ref. 44 P.L.R. 133.
——190, 195 (P.C.) Dist. I.L.R. 1942 Nag. 309.
——229=45 M.L.J. 558 Ref. (1942) 1 M.L.J. 382.
——483=46 M.L.J. 415 (F.B.) Rel. (1942) 1 M.L.J. 428.
——572 (P.C.) Ref. 1942 N.L.J. 375.
——621 Ref. (1942) 1 M.L.J. 173; I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——713 Ref. I.L.R. 1942 Kar. 120.
——722 Rel. I.L.R. 1942 Nag. 494.
——800 Foll. 21 Pat. 735.
——837 Ref. I.L.R. 1942 Mad. 182=(1941) 2 M.L.J. 900 (S.B.).
——884 Ref. 1942 A.L.J. 334.
——920=47 M.L.J. 389 Ref. 44 P.L.R. 368; Rel. (1942) 2 M.L.J. 736.
48 Mad. 254 (P.C.) Dist. I.L.R. 1942 Nag. 24.
——312 (P.C.) Dist. I.L.R. 1942 Kar. 392.
48 Mad. 553=48 M.L.J. 419 Ref. (1942) 2 M.L.J. 463 (F.B.); 491; I.L.R. 1942 All. 832.
——605 (P.C.) Ref. I.L.R. 1942 Mad. 844.
——656 Ref. I.L.R. 1942 Mad. 757=(1941) 2 M.L.J. 178.
——827=49 M.L.J. 341 Ref. (1942) 2 M.L.J. 47.
——883 Ref. I.L.R. 1942 All. 259.
49 Mad. 232 Not Foll. I.L.R. 1942 Kar. 120.
——461 Ref. I.L.R. (1942) 1 Cal. 427.
——513=50 M.L.J. 364 Rel. (1942) 2 M.L.J. 520.
——580 Ref. 17 Luck. 391.
——728 (F.B.) Rel. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——820 (F.B.) Ref. (1942) 1 M.L.J. 373.
——836=51 M.L.J. 194 (F.B.) Ref. (1942) 1 M.L.J. 92; I.L.R. 1942 All. 862.,
——849 Not Foll. (1942) 2 M.L.J. 457 (F.B.); Ref. I.L.R. (1942) 2 Cal. 413=46 C.W.N. 808.
——869 Ref. 44 Bom.L.R. 819.
——969 Foll. I.L.R. 1942 Mad. 682=(1942) 1 M.L.J. 285.
50 Mad. 135 Ref. I.L.R. 1942 All. 121.
——228 Ref. I.L.R. 1942 Bom. 467.
——380 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——396 Rel. I.L.R. 1942 Nag. 518.
——548 Dist. I.L.R. 1942 Nag. 182.
——626 Ref. 1942 O.W.N. 672 (F.B.); Rel. I.L.R. 1942 Nag. 393.
——646 Appl. (1942) 2 M.L.J. 587; Ref. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——663 Overr. I.L.R. 1942 Mad. 24=(1941) 2 M.L.J. 263.
——687 (F.B.) Rel. I.L.R. 1942 Nag. 468.
——815 Ref. I.L.R. 1942 Lah. 517.
——927 Foll. I.L.R. (1942) 2 Cal. 13=46 C.W.N. 317.
51 Mad. 31 Ref. 17 Luck. 391.
——219=53 M.L.J. 568 Foll. (1942) 2 M.L.J. 463 (F.B.).
——333=53 M.L.J. 759 Foll. (1942) 2 M.L.J. 556.
——342=54 M.L.J. 674 Ref. (1942) 1 M.L.J. 318.
——344 Rel. I.L.R. 1942 Lah. 746 (F.B.); I.L.R. 1942 Nag. 710.
——347 Rel. 1942 N.L.J. 557.
——349 (P.C.) Rel. I.L.R. 1942 Kar. 203.
——361 (F.B.) Ref. I.L.R. (1942) Mad. 502=(1942) 1 M.L.J. 57 (F.B.); I.L.R. 1942 All. 509; I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
51 Mad. 417 (F.B.) Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——495 Ref. I.L.R. 1942 Nag. 710; Rel. I.L.R. 1942 Lah. 746 (F.B.).
——594 Foll. I.L.R. 1942 Mad. 316=(1941) 2 M.L.J. 778.
——664=55 M.L.J. 345 Foll. (1942) 1 M.L.J. 569; Ref. I.L.R. 1942 Kar. 61.
——672 Ref. I.L.R. 1942 Nag. 255.
——701 Rel. 23 P.L.T. 615.
——711=55 M.L.J. 471 Ref. (1942) 2 M.L.J. 500.
——798=55 M.L.J. 170 (F.B.) Ref. (1942) 2 M.L.J. 234 (F.B.).
——833 Ref. I.L.R. 1942 Lah. 517.
——866=55 M.L.J. 27 Rel. (1942) 1 M.L.J. 394.
——1006 Ref. 17 Luck. 52.
52 Mad. 142 Dist. 17 Luck. 506.
——151=55 M.L.J. 767 Cons. (1942) 2 M.L.J. 545.
——207=56 M.L.J. 525 Ref. (1942) 2 M.L.J. 663; Rel. (1942) 2 M.L.J. 722.
——246 Overr. (1942) 2 M.L.J. 457 (F.B.); Ref. I.L.R. (1942) 2 Cal. 413=46 C.W.N. 808.
——361=56 M.L.J. 369 (F.B.) Appl. (1942) 2 M.L.J. 667.
——398=56 M.L.J. 401 Ref. (1942) 1 M.L.J. 119.
——432=56 M.L.J. 50 Ref. (1942) 2 M.L.J. 112.
——584=57 M.L.J. 22 (F.B.) Dist. (1942) 2 M.L.J. 667.
——613 Dist. I.L.R. 1942 Nag. 426.
——620 (F.B.) Ref. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——827 Disappr. I.L.R. 1942 All. 425 (F.B.).
——856 =57 M.L.J. 720 Ref. (1942) 1 M.L.J. 222.
——866=57 M.L.J. 536 Ref. (1942) 2 M.L.J. 732.
53 Mad. 69 Ref. I.L.R. 1942 Bom. 115.
——84 Dist. I.L.R. 1942 All. 708 (739)=1942 A.L.J. 487.
——127 Ref. 23 P.L.T. 379.
——167, 170 (P.C.) Ref. I.L.R. 1942 Mad. 618=(1942) 1 M.L.J. 296.
——188 Ref. I.L.R. 1942 All. 518 (570); 17 Luck. 755=1942 O.W.N. 165 (F.B.).
——223 Ref. 1942 A.L.J. 722.
——248 Ref. (1942) 2 M.L.J. 707
——270 Dist. 21 Pat. 377.
——309 Foll. I.L.R. 1942 Nag. 294.
——449 Foll. 44 Bom.L.R. 673.
——549 Ref. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250; I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.

53 Mad. 645 Dist: I.L.R. 1942 Nag. 428.
——790 Rel. 23 P.L.T. 457.
——796=59 M.L.J. 225 Ref. (1942) 1 M.L.J. 575.
——805 Dist. 17 Luck. 249.
——870=59 M.L.J. 708 Rel. (1942) 2 M.L.J. 221.
——937 Ref. I.L.R. 1942 Mad. 322=(1941) 2 M.L.J. 534.
——943=58 M.L.J. 893 Ref. (1942) 1 M.L.J. 500.
54 Mad. 16 (F.B.) Disappr. I.L.R. 1942 Bom. 198.
——81 (F.B.) Foll. 21 Pat. 601=23 P.L.T. 354.
——112 Foll. I.L.R. 1942 Nag. 294.
——184=60 M.L.J. 721 Ref. (1942) 1 M.L.J. 396; (1942) 2 M.L.J. 520.
——252 Dist. I.L.R. 1942 Mad. 927=(1942) 2 M.L.J. 242.
——427 Ref. I.L.R. 1942 Kar. 306.
——440 (P.C.) Ref. I.L.R. 1942 Mad. 682=(1942) 1 M.L.J. 285.
——565=61 M.L.J. 111 Ref. (1942) 1 M.L.J. 561.
——576 Diss. I.L.R. 1942 Bom. 486.
——627 Dist. I.L.R. 1942 Nag. 764.
——671 Ref. 23 P.L.T. 588.
——900 Ref. 44 P.L.R. 437 (F.C.)
——989 Foll. I.L.R. 1942 Bom. 175.
——1011=61 M.L.J. 815 Ref. (1942) 2 M.L.J. 757.
55 Mad. 26 Ref. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——251 Diss. I.L.R. 1942 Bom. 636.
——256 Not Foll. 23 P.L.T. 707.
——268 (P.C.) Expl. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 344.
——343 Cons. 44 P.L.R. 7.
——352 (F.B.) Ref. 46 C.W.N. 326.
——436 Ref. 46 C.W.N. 371.
——549=62 M.L.J. 180 Ref. (1942) 2 M.L.J. 757.
——577 Ref. I.L.R. 1942 All. 759 (766)=1942 A.L.J. 289; 17 Luck. 72.
——641=62 M.L.J. 541 Rel. (1942) 1 M.L.J. 451; 44 Bom.L.R. 912.
——715 Dist. 21 Pat. 130=23 P.L.T. 494.
——758 Overr. I.L.R. 1942 Lah. 686 (P.C.).
——791 Rel. I.L.R. 1942 Nag. 208.
——801 (F.B.) Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.
——830 Ref. 23 P.L.T. 736.
——876, 881 Ref. I.L.R. 1942 Mad. 300=(1941) 2 M.L.J. 1002.
55 Mad. 949 Ref. I.L.R. 1942 Mad 851=(1942) 2 M.L.J. 406.
56 Mad. 1 (F.B.) Foll. 21 Pat. 615.
——169=63 M.L.J. 587 Ref. (1942) 2 M.L.J. 47.
——300 Ref. I.L.R. 1942 Mad. 949.
——490 (F.B.) Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.
——546 =64 M.L.J. 682 Ref. (1942) 1 M.L.J. 561.
——654 Dist. I.L.R. 1942 Kar. 72.
——833 Appr. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——879 Ref. 44 Bom.L.R. 894.
——886 Rel. I.L.R. 1942 Mad. 618=(1942) 1 M.L.J. 296.
57 Mad. 85=65 M.L.J. 405 Ref. (1942) 2 M.L.J. 277.
——95 Ref. 1942 N.L.J. 434.
——190 Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
——237=65 M.L.J. 518 Ref. (1942) 2 M.L.J. 732.
——271 (F.B.) Foll. I.L.R. 1942 Mad. 236=(1941) 2 M.L 529; Ref. I.L.R. 1942 Mad. 959.
——299=65 M.L.J. 693 Ref. (1942) 1 M.L.J. 190.
——308 Dist. I.L.R. 1942 Nag. 189.
——315 Ref. (1942) 2 M.L.J. 757.
——362=66 M.L.J. 98 Ref. (1942) 2 M.L.J. 757.
——411 Overr. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——593=66 M.L.J. 338 Ref. (1942) 2 M.L.J. 595.
——662 Dist. I.L.R. 1942 Nag. 661.
——696 Ref. 44 P.L.R. 368.
——772 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——849=67 M.L.J. 49 Ref. (1942) 1 M.L.J. 575.
——1003 Ref. I.L.R. 1942 Bom. 584.
——1023 Ref. I.L.R. 1942 Lah. 1 (P.C.).
——1082=67 M.L.J. 843 Rel. (1942) 1 M.L.J. 511.
58 Mad. 91 (P.C.) Ref. I.L.R. 1942 Nag. 468.
——105 Rel. 1942 N.L.J. 372.
——367 (F.B.) Ref. I.L.R. 1942 All. 377.
——418 Ref. I.L.R. 1942 Mad. 251=(1941) 2 M.L.J. 882 (F.B.).
——693=68 M.L.J. 81 (F.B.) Ref. (1942) 1 M.L.J. 289.
——721 (F.B.) Dist. I.L.R. 1942 Nag. 189.
——735 (F.B.) Dist. 44 Bom.L.R. 894.
——746 Ref. 1942 N.L.J. 332.
——794 Diss. 1942 A.L.J. 592 (F.B.).
58 Mad. 867=68 M.L.J. 348 Appr. (1942) 1 M.L.J. 360.
——908=69 M.L.J. 364 (F.B.) Rel. (1942) 1 M.L.J. 311.
——994=69 M.L.J. 451 (F.B.) Dist. (1942) 2 M.L.J. 658; Ref. (1942) 2 M.L.J. 520; Rel. (1942) 1 M.L.J. 396.
——1014=69 M.L.J. 856 Rel. (1942) 1 M.L.J. 311; 491.
59 Mad. 44=69 M.L.J. 903 Ref. (1942) 2 M.L.J. 47.
——72 Foll. I.L.R. 1942 Mad. 927=(1942) 2 M.L.J. 242.
——165 Cons. 44 P.L.R. 7; Dist. I.L.R. 1942 Mad 158 =(1941) 2 M.L.J. 618.
——188=59 M.L.J. 765 (F.B.) Dist. (1942) 2 M.L.J. 535.
——202=69 M.L.J. 750 (F.B.) Ref. (1942) 2 M.L.J. 603.
——245=69 M.L.J. 384 Ref. (1942) 1 M.L.J. 491.
——296=69 M.L.J. 898 Ref. (1942) 1 M.L.J. 318.
——303=69 M.L.J. 908 Rel. (1942) 1 M.L.J. 428.
——312 Foll. I.L.R. 1942 Nag. 145; Ref. 44 Bom.L.R 111.
——350 (F.B.) Ref. I.L.R. 1942 Bom. 169.
——359=70 M.L.J. 1 (F.B.) Dist. I.L.R. 1942 Nag. 309; Foll. 44 Bom.L.R. 415; Ref. (1942) 2 M.L.J. 47; 444; 17 Luck. 755 (F.B.).
——424 Foll. 21 Pat. 481.
——461 Rel. I.L.R. (1942) 2 Cal. 262=46 C.W.N. 631.
——539 (P.C.) Expl. 21 Pat. 710.
——622 Ref. I.L.R. 1942 Kar. 112.
——667 Not Foll. 23 P.L.T. 528.
——751 Ref. 17 Luck. 391.
——777 Appr. I.L.R. 1942 Mad. 677=(1942) 1 M.L.J. 281.
——805 Appr. I.L.R. 1942 Mad. 746=(1942) 1 M.L.J. 435.
——887=70 M.L.J. 695. Ref. (1942) 2 M.L.J. 472.
——928 Treated as *obiter* and Not Foll. I.L.R. 1942 Mad. 614=(1942) 1 M.L.J. 283; Foll. I.L.R. 1942 Nag. 377.
——966=70 M.L.J. 20 Expl. (1942) 2 M.L.J. 94.
I.L.R. 1937 Mad. 42=71 M.L.J. 568 Ref. (1942) 2 M.L.J. 47.
——112=71 M.L.J. 336 Dist. (1942) 1 M.L.J. 542; Ref. (1942) 2 M.L.J. 768.
——189=71 M.L.J. 624 Ref. (1942) 1 M.L.J. 491.
——197=(1937) 1 M.L.J. 475 Dist. (1942) 2 M.L.J. 687.
——263 (P.C.) Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——275=(1937) 1 M.L.J. 1 (F. B.) Ref. (1942) 1 M.L.J. 400.
——299=(1937) 1 M.L.J. 543 Ref. (1942) 2 M.L.J. 668.
——358=(1937) 1 M.LJ. 154 Ref. (1942) 2 M.L.J. 549.

I.L.R. 1937 Mad. 383 Ref. I.L.R. 1942 Bom. 39.
——517=(1937) 1 M.L.J. 515 (P.C.) Ref. (1942) 1 M.L.J. 77 (F.C.).
——532 (P.C.) Dist. I.L.R. 1942 Nag. 343.
——551 Ref. 1942 A.L.J. 732.
——616, 632 =(1937) 1 M.L.J. 453, 465 (F.B.) Ref. (1942) 1 M.L.J. 436; 542; 768; Rel. I.L.R. 1942 Nag. 245.
——695 Disc. I.L.R. (1942) 1 Cal. 436=46 C.W.N. 180.
——777=(1937) 2 M.L.J. 11. Appl. (1943) 1 M.L.J. 87.
——797 Appr. I.L.R. 1942 Lah. 1 (P.C.).
——841 Dist. I.L.R. 1942 Nag. 377; Ref. I.L.R. 1942 Lah. 517 (F.B.).
——880 (F.B.) Disappr. (1942) 2 M.L.J. 691 (F.B.); Expl. (1942) 2 M.L.J. 361; Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816; I.L.R. 1942 All. 509.
——1004=(1937) 1 M.L.J. 249 Ref. I.L.R. 1942 All. 509; Rel. (1942) 2 M.L.J. 361.
——1012 Ref. 46 C.W.N. 239.

I.L.R. 1938 Mad. 52 Ref. I.L.R. 1942 Lah. 603.
——216 Ref. 44 P.L.R. 288.
——326 (1938) 2 M.L.J. 95 Ref. (1942) 2 M.L.J. 768.
——335 Ref. 23 P.L.T. 528.
——431=(1937) 2 M.L.J. 744 Ref. (1942) 2 M.L.J. 512.
——568 (F.B.) Foll. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816; Rel. (1942) 2 M.L.J. 668.
——696 Ref. 46 C.W.N. 239.
——891=(1938) 1 M.L.J. 775 (F.B.) Cons. (1942) 2 M.L.J. 736.
——968 Appr. I.L.R. 1942 Mad. 251=(1941) 2 M.L.J. 883 (F.B.).
——1007 (F.B.) Foll. I.L.R. 1942 Lah. 548; Rel .I.L.R. 1942 Lah. 447 (F.B.).
——1063 Foll. I.L.R. 1942 Mad. 614=(1942) 1 M.L.J. 283; Ref. I.L.R. 1942 Nag. 377.

I.L.R. 1939 Mad. 73 Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
——135 Rel I.L.R. (1942) 1 Cal. 67.
——140 Ref. I.L.R. 1942 Mad. 251=(1941) 2 M.L.J. 882 (F.B.).
——218=(1938) 2 M.L.J. 1068 Dist. (1942) 1 M.L.J. 341; Foll. (1942) 1 M.L.J. 506; Ref. (1942) 1 M.L.J. 329; Rel. (1942) 2 M.L.J. 720.
——242 Diss. I.L.R. (1942) 1 Cal. 202=46 C.W.N. 379.
——358 (F.B.) Foll. I.L.R. 1942 All. 377.
I.L.R. 1939 Mad. 374=(1939) 1 M.L.J. 163 (F.B.) Ref. (1942) 2 M.L.J. 750.
——388 Ref. I.L.R. (1942) Mad. 598=(1942) 2 M.L.J. 158 (F.B.).
——422 Appr. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——443=(1939) 1 M.L.J. 812 Ref. (1942) 2 M.L.J. 47.
——600=(1939) 2 M.L.J. 72 Dist. (1942) 2 M.L.J. 47; I.L.R. 1942 Nag. 309; Diss. 44 Bom.L.R. 15.
——622=(1939) 1 M.L.J. 831 Reversed I.L.R. 1942 Mad. 419=(1942) 1 M.L.J. 132 (P.C.).
——853 Appr. 1942 N.L.J. 599.
——859=(1939) 2 M.L.J. 822 Rel. (1942) 1 M.L.J. 318.
——870 Diss. I.L.R. (1942) 1 Cal. 533=46 C.W.N. 261.
——947 Diss. 46 C.W.N. 180; Rel. 23 P.L.T. 475.
——1004 (1014) Ref. I.L.R. 1942 Lah. 832 (844).
——1035 Foll. I.L.R. 1942 All. 945; 21 Pat. 753.

I.L.R. 1940 Mad. 50 Dist. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250.
——60 =(1939) 2 M.L.J. 671 Ref. (1942) 2 M.L.J. 768.
——123 Appr. I.L.R. 1942 Mad. 271=(1941) 2 M.L.J. 622 (F.B.).
——195 Dist. I.L.R. 1942 M. 243=(1941) 2 M.L.J. 481.
——245=(1940) 1 M.L.J. 673 Overr. I.L.R. 1943 Mad. 15 =(1942) 2 M.L.J. 321.
——259 (F.B.) Ref. (1942) 2 M.L.J. 658;(1942) 2 M.L.J. 785.
——349 Rell. I.L.R. (1942) 1 Cal. 245=46 C.W.N. 149.
——358 Ref. I.L.R. (1942) 2 M.L.J. 281; 44 Bom.L.R. 894.
——441=(1940) 1 M.L.J. 228 (F.B.) Dist. (1942) 1 M.L.J. 38 Ref. (1942) 1 M.L.J. 310.
——526=(1940) 1 M.L.J. 482 (F.B.) Ref. (1942) 2 M.L.J. 607.
——599 (P.C.) Rel. I.L.R. 1942 Nag. 577.
——745=(1940) 1 M.L.J. 160 Ref. (1942) 2 M.L.J. 414.
——762 (F.B.) Rel. I.L.R. 1942 Nag. 667.
——815 Dist. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
——872 (F.B.) Expl. and Dist. I.L.R. 1942 Mad. 308=(1941) 2 M.L.J. 913; Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311; 21 Pat. 330.
——913 Ref. I.L.R. 1942 Nag. 543.

I.L.R. 1940 Mad. 969 (F.B.) Ref. I.L.R. 1940 Bom. 767.
I.L.R. 1941 Mad. 53 Ref. I.L.R. 1942 Mad. 669=(1942) 1 M.L.J. 441.
——61 Ref. 23 P.L.T. 35.
——109 =(1940) 2 M.L.J. 688 Ref. (1942) 2 M.L.J. 722.
——261 (F.B.) Dist. I.L.R. 1942 Mad. 654=(1942) 1 M.L.J. 390; Ref. (1942) 1 M.L.J. 366.
——322=(1940) 2 M.L.J. 897 Rel. (1942) 2 M.L.J. 269.
——335=(1940) 2 M.L.J. 872 Expl. (1942) 1 M.L.J. 516; Ref. (1942) 1 M.L.J. 506.
——356=(1941) 1 M.L.J. 1 (F.B.) Ref. (1942) 2 M.L.J. 340.
——389 Disappr. I.L.R. 1942 Mad. 746=(1942) 1 M.L.J. 435.
——438=(1941) 1 M.L.J. 45 Ref. (1942) 1 M.L.J. 386.
——455=(1940) 2 M.L.J. 688 Ref. (1942) 2 M.L.J. 722.
——513=(1941) 1 M.L.J. 441 (F.B.) Dist. (1942) 1 M.L.J. 535; 23 P.L.T. 665; Ref. (1942) 2 M.L.J. 742.
——785=(1941) 2 M.L.J. 79 (F.B.) Ref. (1942) 2 M.L.J. 340.
——807=(1941) 2 M.L.J. 175 Ref. (1942) 2 M.L.J. 403.
——850 =(1941) 2 M.L.J. 47 (F.B.) Rel. (1942) 2 M.L.J. 193.
——874=(1941) 2 M.L.J. 607 Doubted I.L.R. 1942 All. 302; Reversed (1942) 2 M.L.J. 327=23 P.L.T. 463 (F.C.).
——930=(1941) 1 M.L.J. 561 Appl. (1942) 1 M.L.J. 510; Dist. (1942) 2 M.L.J. 631.
I.L.R. 1942 Mad. 1 (F.B.) Ref. I.L.R. 1942 Mad. 862.
——199 Ref. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.
——355 Ref. I.L.R. 1942 Mad. 775.
——405 Appr. I.L.R. 1942 Mad. 590=(1942) 1 M.L.J. 469 (F.B.).
——513=(1941) 1 M.L.J. 441 (F.B.) Ref. (1942) 2 M.L.J. 742.
——647 Ref. I.L.R. 1942 Mad. 654=(1942) 1 M.L.J. 390.

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8 M.L.J. 64 Ref. (1942) 2 M.L.J. 750.
——124 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F.B.).
13 M.L.J. 367 Ref. (1942) 1 M.L.J. 318.
20 M.L.J. 479 Doubted I.L.R. 1942 Mad. 775=(1942) 2 M.L.J. 636.
21 M.L.J. 525 Ref. (1942) 1 M.L.J 213.

23 M.L.J. 118 Ref. I.L.R. 1942 Mad. 13=(1941) 2 M.L.J. 463 (F.B.).
——162 Ref. (1942) 2 M.L.J. 223.
24 M.L.J. 231 Ref. I.L.R. 1942 Nag. 45.
——474 Not Foll. I.L.R. 1942 Nag. 263.
27 M.L.J. 600 Overr. I.L.R. 1943 Mad. 15=(1942) 2 M.L.J. 321.
28 M.L.J. 384 Reaffirmed (1942) 2 M.L.J. 800 (F.B.).
29 M.L.J. 583 Doubted (1942) 2 M.L.J. 47.
30 M.L.J. 391 Ref. (1942) 2 M.L.J. 47.
——611 Foll. I.L.R. 1942 Mad. 614=(1942) 1 M.L.J. 283.
31 M.L.J. 502 Appr. I.L.R. 1942 Mad. 502=(1942) 1 M.LJ. 57 (F.B.).
34 M.L.J. 515 Ref. I.L.R. 1942 Bom. 94.
35 M.L.J. 451 Ref. I.L.R. 1942 Mad. 502=(1942) 1 M.L.J. 57 (F.B.).
——692 Ref. (1942) 2 M.L.J. 94.
40 M.L.J. 18 Dist. I.L.R. 1942 Mad. 464=(1942) 1 M.L.J. 250.
42 M.L.J. 51 Ref. I.L.R. 1942 Mad. 60 (64) =(1941) 2 M.L.J. 125.
——53 Rel. I.L.R. 1942 Mad. 189.
——308 Ref. (1942) 1 M.L.J. 575.
——364 Appr. (1942) 2 M.L.J. 321 (F.B.).
44 M.L.J. 171 (174) Ref. I.L.R. 1942 Mad. 360=(1941) 2 M.L.J. 1024.
——279 Ref. (1942) 2 M.L.J. 568.
——303 Ref. I.L.R. 1942 Mad. 862=(1942) 1 M.L.J. 588.
——427 Dist. (1942) 2 M.L.J. 115.
——485 Foll. (1942) 1 M.L.J. 490.
45 M.L.J. 166 Ref. 44 P.L.R. 324.
——324 Ref. I.L.R. (1942) Mad. 526=(1942) 1 M.L.J. 155.
——478 Ref. I.L.R. 1942 Lah. 559 (F.B.).
46 M.L.J. 371 Foll. I.L.R. 1942 Mad. 243=(1941) 2 M.L.J. 481.
47 M.L.J. 448 Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.
——598 Dist. (1942) 2 M.L.J. 175.
——671 Overr. I.L.R. 1942 Mad. 13 (23)=(1941) 2 M.L.J. 463 (F.B.).
48 M.L.J. 566 Ref. (1942) 2 M.L.J 673.
——616 Overr. I.L.R. 1942 Mad. 336=(1941) 2 M.L.J. 956.
49 M.L.J. 479 Ref. I.L.R. 1942 All. 708 (718).
——616 Ref. (1942) 2 M.L.J. 750.
——753 Ref. I.L.R. 1942 Kar. 428.
51 M.L.J. 414 Overr. I.L.R. 1942 Mad. 927=(1942) 2 M.L.J. 242.
——446 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——500 (F.B.) Ref. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
52 M.L.J. 303 Overr. I.L.R. 1943 Mad. 15=(1942) 2 M.L.J. 321.
53 M.L.J. 339 Rel. (1942) 2 M.L.J. 305.
——568 Dist. (1942) 2 M.L.J. 491.
54 M.L.J. 76 Appl. (1942) 2 M.L.J. 624.
——82, 87 (P.C.) Foll. I.L.R. 1942 Nag. 126.
——278 Appr. (1942) 2 M.L.J. 691 (F.B.).
56 M.L.J. 299 Ref. (1942) 2 M.L.J. 94.
——394 Cons. (1942) 2 M.L.J. 587; Ref. (1942) 2 M.L.J. 785.
——489 Appr. I.L.R. 1942 Mad. 1 (9)=(1941) 2 M.L.J. 684. (F.B.).
——750 (P.C.) Ref. I.L.R. 1942 Mad. 831=(1942) 2 M.L.J. 218.
59 M.L.J. 458 Not Foll. (1942) 1 M.L.J. 511.
——887 Ref. I.L.R. 1942 Nag. 62.
——928 Overr. I.L.R. 1942 Mad. 438=(1941) 2 M.L.J. 986; I.L.R. 1942 Mad. 205; Ref. 46 C.W.N. 1015.
60 M.L.J. 506 Ref. I.L.R. 1942 Kar. 479.
——765 Ref. 1942 O.W.N. 275.
61 M.L.J. 439 Dist. 1942 O.W.N. 429.
——860 Ref. (1942) 2 M.L.J. 549.
62 M.L.J. 39 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——664 Foll. (1942) 1 M.L.J. 70.
63 M.L.J. 394 Ref. 46 C.W.N. 355.
64 M.L.J. 24 Ref. (1942) 2 M.L.J. 785.
——401 Not Foll. (1942) 2 M.L.J. 768.
——735 Ref. (1942) 1 M.L.J. 113.
65 M.L.J. 390 Ref. 17 Luck. 755 (F.B.).
——455 Dist. I.L.R. (1942) Mad. 243=(1941) 2 M.L.J. 481.
66 M.L.J. 412 Ref. (1942) 1 M.L.J. 318.
68 M.L.J. 63 Ref. I.L.R. (1942) Mad. 590=(1942) 1 M.L.J. 469 (F.B.).
——104 Appr. (1942) 2 M.L.J 691 (F.B.); Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
——251 Rel. (1942) 1 M.L.J. 184.
——487 Dist. (1942) 1 M.L.J. 408.
——588 Ref. (1942) 2 M.L.J. 617.
69 M.L.J. 171 (P.C.) Ref. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 314.
69 M.L.J. 300 Ref. (1942) 2 M.L.J. 757.
——388 (P.C.) Ref. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——410 Dist. I.L.R. 1942 Mad. 807 (F.B.).
——722 Foll. (1942) 1 M.L.J. 564.
——791 Ref. (1942) 2 M.L.J. 425.
70 M.L.J. 262 Ref. (1942) 1 M.L.J. 272.
——619 Ref. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
——700 Ref. (1942) 2 M.L.J. 736.
71 M.L.J. 294 Overr. (1942) 1 M.L.J. 318.
——317 Not Foll. (1942) 2 M.L.J. 558.
——398 Appl. (1942) 2 M.L.J. 624.
——663 Appr. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968.
(1937) 1 M.L.J. 262 Ref. I.L.R. 1942 Mad. 868.
——262 Appl. (1942) 2 M.L.J. 104.
(1937) 2 M.L.J. 273 Overr. I.L.R. 1942 Mad. 355=(1941) 2. M.L.J. 968.
——273 Ref. I.L.R. 1942 Mad. 775=(1942) 2 M.L.J. 636.
——666 Foll. I.L.R. 1942 Mad. 438=(1941) 2 M.L.J. 986.
——717 Appr. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968.
——931 Ref. (1942) 2 M.L.J. 757.
(1938) 1 M.L.J. 113 Ref. (1942) 2 M.L.J. 350.
——139 Ref. (1942) 2 M.L.J. 418.
——206 Cons. (1942) 2 M.L.J. 359.
——485 Ref. (1942) 2 M.L.J. 472.
——487 Ref. (1942) 2 M.L.J. 350.
——710 Ref. (1942) 1 M.L.J. 418.
——829 Ref. (1942) 1 M.L.J. 500.
(1938) 2 M.L.J. 44 Appr. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968; Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.
——340 Dist. (1942) 1 M.L.J. 247.
——583 Ref. I.L.R. 1942 Mad. 696=(1942)2 M.L.J. 14.
(1939) 1 M.L.J. 114 Ref. (1942) 2 M.L.J. 750.
——203 Dist. I.L.R. 1942 Mad. 691=(1942) 1 M.L.J. 238.
——205 Overr. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178.
——317 Not Foll. (1942) 1 M.L.J. 569.
——412 Overr. I.L.R. 1942 Mad. 158= (1941) 2 M.L.J. 618.
——425 Ref. (1942) 2 M.L.J. 785.
——614 Overr. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——738 Ref. (1942) 2 M.L.J. 425
——889 Ref. (1942) 1 M.L.J. 318.
(1939) 2 M.L.J. 308 Ref. (1942) 1 M.L.J. 500.
——362 Ref. (1942) 2 M.L.J. 444.
——469 Rel. (1942) 1 M.L.J. 542.

(1939) 2 M.L.J. 495 Dist. (1942) 1 M.L.J. 559; Ref. (1942) 2 M.L.J. 487.
——509 Reversed (1941) 2 M.L.J. 786.
——533 Ref. (1942) 2 M.L.J. 47.
——686 Foll. (1942) 2 M.L.J. 303.
——727 Rel. (1942) 1 M.L.J. 413.
——864 Cons. (1942) 2 M.L.J. 768.
——926 Rel. (1942) 2 M.L.J. 558.
(1940) 1 M.L.J. 124 Rel. I.L.R. 1942 Kar. 587.
——152 Dist. (1942) 2 M.L.J. 781.
——313 Dist. (1942) 1 M.L.J. 289.
——340 Ref. (1942) 1 M.L.J. 500
——350 Dist. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178; (1942) 1 M.L.J. 403.
——553 Expl. (1942) 2 M.L.J. 457 (F.B.).
——647 Reversed (1941) 2 M.L.J. 932.
——779 Expl. (1942) 2 M.L.J. 206; Ref. (1942) 1 M.L.J. 28.
(1940) 2 M.L.J. 187 Appr. (1942) 1 M.L.J. 418.
——202 Cons. (1942) 2 M.L.J. 599.
——257 at 267 (F.B.) Rel. (1942) 1 M.L.J. 36.
——293 Expl. (1942) 2 M.L.J. 185
——322 Dist. (1942) 1 M.L.J. 90.
——402 Overr. I.L.R. 1942 Mad. 336=(1941) 2 M.L.J. 956.
——417 Appr. (1942) 1 M.L.J. 341.
——473 Cons. (1942) 2 M.L.J. 599
——478 Doubted (1942) 2 M.L.J. 346.
——491 Overr. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——520 Foll. I.L.R. 1942 Kar. 36.
——648 Dist. (1942) 2 M.L.J. 724
——651 Ref. (1942) 2 M.L.J. 41; 720.
——664 Dist. (1942) 1 M.L.J. 289.
——685 Ref. (1942) 1 M.L.J. 329.
——712 Rel (1942) 2 M.L.J. 154.
——760 Ref. (1942) 1 M.L.J. 448; (1942) 2 M.L.J. 775.
——786 Foll. (1942) 1 M.L.J. 88; (1942) 2 M.L.J. 41.
——817 Ref. (1942) 1 M.L.J. 327.
——825 Ref. (1942) 1 M.L.J. 366 =(1942) 2 M.L.J. 237.
——838 Rel. (1942) 2 M.L.J. 806.
——841 Dist. (1942) 1 M.L.J. 559.
——860 Rel. (1942) 2 M.L.J. 361.
——872 Foll. (1942) 2 M.L.J. 631.
——887 Appl. (1942) 2 M.L.J. 506; Dist. (1942) 1 M.L.J. 341; Rel. (1942) 2 M.L.J. 720.
——923 Rel. (1942) 1 M.L.J. 413.
——935 Rel. (1942) 2 M.L.J. 283.
——940 Ref. (1942) 1 M.L.J. 213.
(1941) 1 M.L.J. 39 Foll. (1942) 1 M.L.J. 88.
——Supp. 65=1940 F.C.R. 110 at 135 Ref. (1942) 2 M.L.J. 6 (F.C.).

(1941) 1 M.L.J. 106 Appr. (1942) 1 M.L.J. 341.
——178 Reversed (1942) 2 M.L.J. 120.
——197 Appr. (1942) 2 M.L.J. 398.
——216 Cons. (1942) 2 M.L.J. 724.
——250 Ref. (1942) 1 M.L.J. 491.
——547 Appl. (1942) 1 M.L.J. 510; Dist. (1942) 2 M.L.J. 631; Rel. (1942) 1 M.L.J. 506
——782 Dist. (1942) 1 M.L.J. 24; Foll. (1942) 1 M.L.J. 559.
——793 Ref. (1942) 1 M.L.J. 500.
——837 Ref. (1942) 1 M.L.J. 542.
(1941) 2 M.L.J. 75 Cons. (1942) 2 M.L.J. 512.
——109 Dist. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178; (1942) 1 M.L.J. 403.
——257 Expl. (1942) 2 M.L.J. 498.
——295 Rel. I.L.R. 1942 Mad. 60 ((71)=(1941) 2 M.L.J 125.
——311 (F.B.) Ref. (1942) 2 M.L.J. 233.
——359 Ref. (1942) 1 M.L.J. 314.
——456 N. Overr. I.L.R. 1942 Mad. 133=(1941) 2 M.L.J. 455.
——568 Ref. (1942) 1 M.L.J. 535.
——587 Foll. (1942) 1 M.L.J. 535.
——655 Ref. (1942) 1 M.L.J. 366; (1942) 2 M.L.J. 237.
——684 (F.B.) Ref. (1942) 1 M.L.J. 588.
——690 Overr. I.L.R. 1942 Mad. 448=(1942) 1 M.L.J. 11.
——827 Reversed (1942) 2 M.L.J. 191.
——918 Affirmed (1942) 2 M.L.J. 178.
——956 (F.B.) Foll. I.L.R. 1942 Bom. 636.
——972 (P.C.) Ref. 46. C.W.N. 537 (P.C.).
——1018 Cons. (1942) 2 M.L.J. 768.
——1050 Reversed (1942) 2 M.L.J. 691 (F.B.).
(1942) 1 M.L.J. 28 Reversed (1942) 2 M.L.J. 206.
——119 Affirmed (1942) 2 M.L.J. 678 (F.B.).
——166 Dist. (1942) 1 M.L.J. 338.
——173 Ref. (1942) 1 M.L.J. 177.
——418 Ref. (1942) 2 M.L.J. 41.
——506 Appl. (1942) 1 M.L.J. 510.
——510 Dist. (1942) 2 M.L.J. 631.
——542 Cons. (1942) 2 M.L.J. 768.
(1942) 2 M.L.J. 287 Ref. 1942 O.W.N. 596.
——655 Ref. (1942) 2 M.L.J. 237.

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1 L.W. 511 Appr. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
1 L.W. 772 Ref. (1942) 1 M.L.J. 318.
5 L.W. 158 Appr. I.L.R. 1942 Mad. 271=(1941) 2 M.L.J. 622 (F.B.).
——323 Ref. (1942) 1 M.L.J. 535.
——721 Ref. I.L.R. 1942 Mad. 204=(1941) 2 M.L.J. 816.
6 L.W. 448 Rel. (1942) 1 M.L.J. 219.
10 L.W. 178 Ref. (1942) 1 M.L.J. 400.
——498 Ref. (1942) 2 M.L.J. 47.
11 L.W. 256 Foll. I.L.R. 1942 Mad. 532=(1942) 1 M.L.J. 344.
12 L.W. 460 Ref. I.L.R. 1942 Mad. 868=(1942) 2 M.L.J. 104.
14 L.W. 38 Ref. (1942) 2 M.L.J. 757.
——317 Ref. (1942) 1 M.L.J. 396.
15 L.W. 186 Foll. (1942) 2 M.L.J. 425.
16 L.W. 678 Ref. I.L.R. 1942 Mad 360=(1941) 2 M.L.J. 1024.
20 L.W. 122 Overr. I.L.R. 1943 Mad. 15=(1942) 2 M.L.J. 321 (F.B.).
——503 Overr. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
——916 Foll. I.L.R. 1942 Mad. 410=(1941) 2 M.L.J. 401.
21 L.W. 661 Ref. (1942) 1 M.L.J. 383.
25 L.W. 151 Ref. I.L.R. 1942 Mad. 494=(1941) 2 M.L.J. 787.
33 L.W. 607 Overr. (1942) 1 M.L.J. 318.
34 L.W. 1001 Ref. (1942) 2 M.L.J. 750.
36 L.W. 408 Appr. I.L.R. 1942 Mad. 431=(1942) 1 M.L.J. 49.
——669 Not Foll. (1942) 1 M.L.J. 272.
37 L.W. 729 Overr. I.L.R. 1942 Mad. 173=(1941) 2 M.L.J. 803 (F.B.).
39 L.W. 161 Ref. (1942) 2 M.L.J. 321 (F.B.).
41 L.W. 416 Ref. (1942) 2 M.L.J. 525.
42 L.W. 295 Overr. (1941) 2 M.L.J. 318.
——399 Rel. (1942) 1 M.L.J. 511.
——757 Ref. (1942) 2 M.L.J. 757.
——798 Overr. I.L.R. 1943 Mad. 15=(1942) 2 M.L.J. 321 (F.B.).
43 L.W. 333 Rel. (1942) 1 M.L.J. 511.
——380 Dist. (1942) 2 M.L.J. 707.
44 L.W. 502 Dist. I.L.R. 1942 Mad. 438=(1941) 2 M.L.J. 986.
45 L.W. 767 Ref. I.L.R. 1942 Mad. 251=(1941) 2 M.L.J. 883 (F.B.).
47 L.W. 731 Dist. (1942) 2 M.L.J. 707.

50 L.W. 154 Ref. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
——571 Dist. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
51 L.W. 606 Overr. I.L.R. 1942 Mad. 346=(1941) 2 M.L.J. 855 (F.B.).

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1910 M.W.N. 834 Ref. I.L.R. 1942 Mad. 757=(1942) 2 M.L.J. 178.
1914 M.W.N. 168 Foll. (1942) 2 M.L.J. 556.
——502 Overr. I.L.R. 1942 Mad. 163=(1941) 2 M.L.J. 798 (F.B.).
——931 Expl. (1942) 1 M.L.J. 485
1924 M.W.N. 755 Ref. (1942) 2 M.L.J. 482.
1925 M.W.N. 28=87 I.C. 621 Ref. 46 C.W.N. 317.
1929 M.W.N. 395 Ref. I.L.R. 1942 Mad. 494=(1941) 2 M.L.J. 787.
——837 Appl. (1942) 2 M.L.J. 228.
1931 M.W.N. Cr. 262 Ref. I.L.R. 1942 Mad. 587=(1941) 2 M.L.J. 852.
1932 M.W.N. 722 Ref. (1942) 1 M.L.J. 108.
——1089 Ref. (1942) 2 M.L.J. 663.
1933 M.W.N. 729 Ref. (1942) 1 M.L.J. 108.
——1263 Appr. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
1934 M.W.N. Cr. 562 Ref. (1942) 1 M.L.J. 490.
1935 M.W.N. 179 Dist. & Foll. I.L.R. 1942 Mad. 410=(1941) 2 M.L.J. 401.
——230 (Cr) Ref. I.L.R. 1942 Mad. 322=(1941) 2 M.L.J. 534.
——475 Cons. (1942) 2 M.L.J. 134.
1936 M.W.N. 163 Cr. Ref. I.L.R. 1942 Mad. 322=(1941) 2 M.L.J. 534.
——(Cr.) 195 Ref. I.L.R. 1942 Mad, 322=(1941) 2 M.L.J. 534.
——410 Dist. (1942) 1 M.L.J. 408.
——547 Ref. (1942) 1 M.L.J. 542.
1937 M.W.N. 188 Foll. (1942) 2 M.L.J. 427.
——299 Appr. I.L.R. 1942 Mad. 677=(1941) 2 M.L.J. 281.
——465 Dist. (1942) 2 M.L.J. 515.
——1013 Dist. I.L.R. 1942 Lah. 212.
1938 M.W.N. 841 Doubted I.L.R. 1942 Mad. 635=(1942) 1 M.L.J. 306.
1939 M.W.N. 192 (1) Overr. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——320 Overr. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
1939 M.W.N. 774 Ref. (1942) 2 2 M.L.J. 468.
——903 Ref. I.L.R. 1942 Mad. 944
——1263 Cons. 44 P.L.R. 7.
1940 M.W.N. 867 Overr. I.L.R. 1942 Mad. 158=(1941) 2 2 M.L.J. 618.
1941 M.W.N. Cr. 100 Ref. (1942) M.L.J. 555.

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7 M.L.T. 271 Ref. (1942) 2 M.L.J. 468.
9 M.L.T. 216 Ref. I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848.
——300 Ref. I.L.R. 1942 Mad. 933.
17 M.L.T. 80 Foll. I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848.
18 M.L.T. 434 Ref. I.L.R. 1942 Mad. 682=(1942) 1 M.L.J. 285.
30 M.L.T. 348 Ref. (1942) 1 M.L. J. 490.
38 M.L.T. 139 Overr. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.

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1 Weir 422 Appr. (1942) 2 M.L.J. 545.
——585 Appr. I.L.R. 1942 Mad. 158 =(1941) 2 M.L.J. 618.

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1 M.H.C.R. 105 Ref. 1942 N.L.J. 434.
3 M.H.C.R. Ref. 1942 N.L.J. 434.
——384 Ref. I.L.R. 1942 Lah. 491 (F.B.); I.L.R. 1942 Lah. 517 (F.B.).
5 M.H.C.R. 90 Ref. I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848; I.L.R. 1941 Mad. 590 =(1941) 2 M.L.J. 469 F.B.).
——298 Ref. I.L.R. 1942 Bom. 94.
6 M.H.C.R. 122, 126 Ref. I.L.R. (1942) Mad. 376=(1942) 1 M.L.J. 137.
7 M.H.C.R. 37 Dist. I.L.R. 1942 Mad. 431=(1942) 1 M.L.J. 49.
——229 Ref. (1942) 2 M.L.J. 47.

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2 N.L.R. 34 Rel. I.L.R. 1942 Nag. 534.
——101 Appr. 1942 N.L.J. 96.
——130 (P.C.) Dist. I.L.R. 1942 Nag. 369.
——172 Ref. I.L.R. 1942 Nag. 740.
3 N..L.R. 131 Rel. I.L.R. 1942 Nag. 620.
4 N.L.R. 120 Foll. 1942 N.L.J. 207.
6 N.L.R. 72 Disappr. I.L.R. 1942 Nag. 405; Dist. I.L.R. 1942 Nag. 526.
——164 Appr. 1942 N.L.J. 557.
7 N.L.R. 190 Dist. I.L.R. 1942 Nag. 636.
8 N.L.R. 107 Dist. I.L.R. 1942 Nag. 107.
——133 Doubted 1942 N.L.J. 443.
9 N.L.R. 188 Overr. I.L.R. 1942 Nag. 405.
11 N.L.R. 126 Ref. 1942 N.L.J. 506.
——164 Ref. 1942 N.L.J. 375.
——189, 192 Ref. I.L.R. 1942 Nag. 126.
12 N.L.R. 12, 15 Ref. I.L.R. 1942 Nag. 214.
——57 Ref. I.L.R. 1942 Nag. 561.
——150 Dist. I.L.R. 1942 Nag. 526.
13 N.L.R. 109, 111 Rel. I.L.R. 1942 Nag. 281.
——114 Ref. 1942 N.L.J. 324.
——217 Rel. I.L.R. 1942 Nag. 393.
15 N.L.R. 68 (P.C.) Foll. I.L.R. 1942 Nag. 236.
16 N.L.R. 37 Rel. 1942 N.L.J 567.
——68 Rel. I.L.R. 1942 Nag. 498.
——84 Dist. I.L.R. 1942 Nag. 636
——91 Rel. I.L.R. 1942 Nag. 721.
——138 Ref. 1942 N.L.J. 338.
18 N.L.R. 85 Dist. I.L.R. 1942 Nag. 661.
——163 Rel. I.L.R. 1942 Nag. 405.
20 N.L.R. 87 Foll. I.L.R. 1942 Nag. 294.
——93 Dist. I.L.R. 1942 Nag. 198; Appr. 1942 N.L.J. 325.
21 N.L.R. 117 (P.C.) Ref. I.L.R. 1942 Nag. 405; 526.
——185 Dist. I.L.R. 1942 Nag. 405.
22 N.L.R. 5, 10 (F.B.) Rel. I.L.R. 1942 Nag. 281.
——86 Ref. 1942 N.L.J. 531.
——108 Ref. 1942 N.L.J. 30.
——160 Ref. 1942 N.L.J. 42.
23 N.L.R. 152 Rel. I.L.R 1942 Nag. 294.
——178 Rel. 1942 N.L.J. 567.
24 N.L.R. 40 (P.C.) Dist. I.L.R. 1942 Nag. 561.
——92 Rel. I.L.R. 1942 Nag. 393.
25 N.L.R. 19 Appr. 1942 N.L.J. 403.
——52 Dist. I.L.R. 1942 Nag. 636.
——68 =31 Bom.L.R. 728 (P.C.) Rel. I.L.R. 1942 Nag. 740.
——81 Foll. I.L.R. 1942 Nag. 294.
——107, 109 Rel. I.L.R. 1942 Nag. 405.
26 N.L.R. 46 Dist. I.L.R. 1942 Nag. 441.
——81 Foll. I.L.R. 1942 Nag. 294 =1942 N.L.J. 332.
——115 Rel. I.L.R. 1942 Nag. 625.
——130 Ref. I.L.R. 1942 Nag. 561.
——217 Dist. I.L.R. 1942 Nag. 107.

26 N.L.R. 277 Ref. I.L.R. 1942 Nag. 561.
——359 Foll. I.L.R. 1942 Nag. 701.
27 N.L.R. 186 (F.B.) Ref. I.L.R. 1942 Nag. 703=1942 N.L.J. 531; 1942 N.L.J. 531.
——327 Ref. I.L.R. 1942 Nag. 588.
——343 Dist. I.L.R. 1942 Nag. 24.
28 N.L.R. 282 Foll. I.L.R. 1942 Nag. 608.
——317 Ref. I.L.R. 1942 Nag. 377.
——332 Dist. & Foll. I.L.R. 1942 Nag. 45.
29 N.L.R. 17 Appr. 1942 N.L.J. 102.
——210 (P.C.) Ref. I.L.R. 1942 Nag. 405.
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——242 Foll. I.L.R. 1942 Nag. 608.
——249 Rel. I.L.R. 1942 Nag. 377.
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——410 Held overr. by I.L.R. 1939 Nag. 91; Ref. 1942 N. L.J. 455.
——425 Ref. I.L.R. 1942 Mad. 158=(1941) 2 M.L.J. 618.
——440 Foll. 44 Bom.L.R. 830; Rel. I.L.R. 1942 Nag. 539.
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——91 Dist. I.L.R. 1942 Nag. 764 =1942 N.L.J. 455; Ref. I.L.R. 1942 Nag. 357; Rel. I.L.R. 1942 Nag. 205.
——106 Ref. 1942 N.L.J. 91.
——206 (F.B.) Dist. I.L.R. 1942 Nag. 309.
——326 Ref. 1942 N.L.J. 506.
——370 Ref. 1942 N.L.J. 557.
——407 Not Foll. I.L.R. 1942 Nag. 777.
——489 Ref. I.L.R. 1942 Nag. 577=1942 N.L.J. 348.
——496 Rel. I.L.R. 1942 Nag. 721.

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——194 Dist. I.L.R. 1942 Nag. 294; 478.
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——350 Rel. I.L.R. 1942 Nag. 136.
——373 Dist. I.L.R. 1942 Nag. 636.
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——306 !Diss. I.L.R. 1942 Bom. 636.
——348 Ref. I.L..R 1942 Nag. 703=1942 N.L.J. 531.
——441 Rel. I.L.R. 1942 Nag. 369.
——468 Dist. I.L.R. 1942 Nag. 764; Foll. I.L.R. 1942 Nag. 777; Rel. I.L.R. 1942 Nag 205, 357.
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——522 Ref. I.L.R. 1942 Nag. 701.
——538 Rel. I.L.R. 1942 Nag. 407.
——573 (F.B.) Ref. I.L.R. 1942 Nag. 543.
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——337 Rel. I.L.R. 1942 Nag. 534.
——345 Overr. I.L.R. 1942 Nag. 615=(1942) N.L.J. 211.
——386 Ref. I.L.R. 1942 Nag. 703.
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1 N.L.J. 225 Foll. I.L.R. 1942 Nag 62.
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6 N.L.J. 119 Rel. I.L.R. 1942 Nag. 494.
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13 N.L.J. 102 Dist. I.L.R. 1942 Nag. 369.
15 N.L.J. 45 Rel. I.L.R. 1942 Nag. 588.
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——477 Dist. 1942 N.L.J. 450; Rel. 1942 Nag. 701.
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——183 Rel. I.L.R. 1942 Nag. 494.
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10 C.P.L.R. 40 Foll. 1942 N.L.J 207.
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——588 Foll. I.L.R. 1942 Nag. 294.
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——332 Diss. I.L.R. 1942 Lah. 460.
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10 O.C. 29 Dist. 1942 O.W.N. 439.
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11 O.C. 279 Dist. 1942 O.W.N. 784.
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13 O.C. 59 Rel. 1942 O.W.N. 206.
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19 Pat. 123 (F.B.) Rel. I.L.R. 1942 Lah. 447 (F.B.).
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5 P.L.J. 23 Foll. I.L.R. 1942 Nag. 695.
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6 P.L.J. 1 Ref. 23 P.L.T. 227.
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——764 Foll. 1942 O.W.N. 450.
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11 O.W.N. 909 Rel. 17 Luck. 376.
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——958 Dist. 1942 O.W.N. 440.
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——1080 Ref. 1942 O.W.N. 357.
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——234 Ref. 17 Luck. 494.
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22 S.L.R. 151 Rel. I.L.R. 1942 Kar. 120.
——386 Rel. I.L.R. 1942 Kar. 120.
25 S.L.R. 55 Diss. I.L.R. 1942 Kar. 553.
——395 Ref. I.L.R. 1942 Kar. 94.
——528 Not Foll. I.L.R. 1942 Kar. 448.
26 S.L.R. 210 Dist. I.L.R. 1942 Kar. 252.
27 S.L.R. 19 Dist. I.L.R. 1942 Kar. 252.
——109 Rel. I.L.R. 1942 Kar. 448.
——444 Rel. I.L.R. 1942 Kar. 473.
30 S.L.R. 32 Dist. I.L.R. 1942 Kar. 225.
——177 Rel. I.L.R. 1942 Kar. 79.
——196 Rel. I.L.R. 1942 Kar. 237.
——288 Rel. I.L.R. 1942 Kar. 160.
31 S.L.R. 442 (F.B.) Ref. I.L.R. 1942 Kar. 354; Rel. I.L.R. 1942 Kar. 488.
——470 Rel. I.L.R. 1942 Kar. 112
32 S.L.R. 129 Rel. I.L.R. 1942 Kar. 246.
——374 (P.C.) Rel. I.L.R. 1942 Kar. 346.
——567 (F.B.) Ref. I.L.R. 1942 Kar. 94.
——716 (P.C.) Rel. I.L.R. 1942 Kar. 112.

A.I.R. (PRIVY COUNCIL).

1914 P.C. 243 Ref. 1942 O.W.N. 639.
1917 P.C. 196 Rel. I.L.R. 1942 Kar. 340.
1922 P.C. 56 Dist. I.L.R. 1942 Nag. 661.
1924 P.C. 202 Dist. I.L.R. 1942 Nag. 118.

1925 P.C. 155 Ref. I.L.R. 1942 Lah. 491 (F.B.); Rel. I.L.R. 1942 Nag. 41.
——204 Rel. 1942 O.W.N. 580.
——216 Rel. I.L.R. 1942 Kar. 540.
——280 Ref. 1942 O.W.N. 328.
1928 P.C. 128 Dist. (1942) 2 M.L.J. 667; Ref. 1942 O.W.N. 21.
1929 P.C. 103 Dist. 23 P.L.T. 104.
——139 Ref. 17 Luck. 362.
——155 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——176 Ref. 1942 N.L.J. 47.
——181 Ref. I.L.R. 1942 All. 933.
1931 P.C. 93 Rel. I.L.R. 1942 Lah. 559 (F.B.).
——48 Ref. I.L.R. 1942 Nag. 781.
——79 Rel. I.L.R. 1942 Kar. 513.
——229 Dist. 17 Luck. 84; Foll. 44 Bom.L.R. 795.
——245 Ref. I.L.R. 1942 All. 241 (F.B.).
——299 Rel. I.L.R. 1942 Nag. 949.
1932 P.C. 118 Ref. 1942 O.W.N. 556.
——165 Rel. 1942 A.L.J. 952.
——234 Ref. 1942 O.W.N. 40.
——253 Foll. I.L.R. 1942 Nag. 592.
——275 Rel. 1942 O.W.N. 775.
1933 P.C. 113 Foll. 1942 O.W.N. 289.
——143 Ref. 17 Luck. 289.
——167 Foll. 1942 N.L.J. 460.—I.L.R. 1942 Nag. 685.
1934 P.C. 101 Dist. I.L.R. 1942 Kar. 25.
——107 Dist. 1942 O.W.N. 191.
——144 Ref. I.L.R. 1942 Nag. 969.
1935 P.C. 185 Ref. 1942 O.W.N. 240; Dist. 1942 O.W.N. 245.
1936 P.C. 60 Foll. 21 Pat. 854.
——114 Foll. 44 Bom.L.R. 987.
——242, 246 Rel. I.L.R. 1942 Nag. 749.
——281 Rel. I.L.R. 1942 Nag. 24.
——283 Ref. 44 P.L.R. 274.
——289 Ref. 17 Luck. 20, 150.
1937 P.C. 201 Ref. I.L.R. (1942) 2 Cal. 199.
1938 P.C. 34 Foll. 44 P.L.R. J. K. 1.
——121 Rel. I.L.R. 1942 Nag. 126.
——130 Foll. I.L.R. 1942 Nag. 208.
——189 Ref. 1942 N.L.J. 458.
——230 Dist. 23 P.L.T. 962.
1939 P.C. 200 Ref. I.L.R. 1942 All. 518.
1940 P.C. 1 Ref. 17 Luck. 580.
——173 Ref. 1942 N.L.J. 346.
——343 Ref. 1942 O.W.N. 328.
1941 P.C. 1 Ref. 46 C.W.N. 749.
——21 Foll. 24 P.L.R. 518.
——120 (126) Ref. I.L.R. 1942 All. 129 (788).
1942 P.C. 3 Rel. 23 P.L.T. 303.

A.I.R. (FEDERAL COURT).
1939 F.C. 43 Ref. I.L.R. 1942 Lah. 491 (F.B.).
1940 F.C. 10 Ref. I.L.R. 1942 All. 185 (F.B.).
——20 Ref. I.L.R. 1942 All. 185 (F.B.).
1941 F.C. 16 Foll. I.L.R. 1942 Lah. 603.

A.I.R. (ALLAHABAD).
1914 All. 430 (2) Ref. I.L.R. 1942 Nag. 333.
——526 Not Foll. I.L.R. 1942 Nag. 333.
1921 All. 86 Rel. I.L.R. 1942 Lah. 470.
1922 All. 310 Dist. 17 Luck. 319.
1923 All. 267 (1) Dist. I.L.R. 1942 Nag. 294.
——420 (1) Rel. I.L.R. 1942 Nag. 498.
——498 Rel. 1942 O.W.N. 450.
1924 All. 63 Foll. I.L.R. 1942 Nag. 198.
——95 Ref. 17 Luck. 327.
1925 All. 369 Rel. I.L.R. 1942 All. 259.
——437 Dist. 21 Pat. 285.
——718 Rel. 1942 O.W.N. 368.
——795 Dist. 1942 N.L.J. 487.
1926 All. 93 Rel. 1942 O.W.N. 582.
——143 Rel. I.L.R. 1942 All. 699.
——437 Rel. 17 Luck. 289.
——870 Dist. 1942 N.L.J. 528.
1927 All. 16 Ref. 17 Luck. 618.
——444 Dist. I.L.R. 1942 Mad. 489—(1942) 1 M.L.J. 250.
——637 Ref. 1942 O.W.N. 390.
——761 Ref. 1942 O.W.N. 692.
——809 Rel. 1942 O.W.N. 34.
1928 All. 211 Expl. I.L.R. 1942 Kar. 276.
——301 Dist. 17 Luck. 243.
——499 Rel. 17 Luck. 601.
——629 Rel. 17 Luck. 346.
——685 Dist. 17 Luck. 341.
——706 Ref. 1942 O.W.N. 582.
1929 All. 258 (F.B.) Rel. 1942 O.W.N. 319.
——377 Doubted 21 Pat. 644.
——382 Appr. 44 P.L.R. 116.
——734 Rel. 46 C.W.N. 879.
——780 Rel. I.L.R. 1942 Nag. 584.
——800 Ref. 1942 N.L.J. 353.
——891 Ref. 17 Luck. 580.
1930 All. 100 Dist. 1942 A.L.J. 362.
——122 Ref. I.L.R. 1942 All. 671 (677).
——269 Rel. 1942 O.W.N. 440.
——368 Rel. 1942 O.W.N. 343.
——437 Foll. 1942 O.W.N. 430.
——516 Dist. 1942 O.W.N. 784.
——529 (2) Rel. I.L.R. 1942 Kar. 516.
——561 Ref. 1942 O.W.N. 632 (F.B.).
——700 Dist. I.L.R. 1942 Nag. 784.
——730 Rel. 17 Luck. 711.
1931 All. 142 (2) Foll. I.L.R. 1942 Nag. 441.
1931 All. 323 Rel. 1942 O.W.N. 351.
——437 Dist. 1942 O.W.N. 39.
——703 Ref. I.L.R. 1942 Lah. 386.
1932 All. 41 Ref. (1942) 2 M.L.J. 504.
——250 Ref. 1942 O.W.N. 672 (F.B.).
——379 Foll. I.L.R. 1942 Bom. 712.
——413 Dist. 1942 N.L.J. 197.
——441 Diss. 17 Luck. 577—1942 O.W.N. 27; Ref. 1942 O.W.N. 379.
——580 Rel. 17 Luck. 755 (F.B.).
——584 Foll. 21 Pat. 764.
1933 All. 91 Ref. 17 Luck. 297.
——117 Dist. I.L.R. 1942 Mad. 879.
——149 Dist. I.L.R. 1942 Nag. 642.
——295 Ref. 17 Luck. 605.
——437 Dist. 1942 O.W.N. 27.
——641 Dist. I.L.R. 1942 All. 830 (835).
——755 Dist. 1942 O.W.N. 812.
——760 Rel. 44 P.L.R. 203.
——954 Ref. 1942 O.W.N. 699.
1934 All. 56 Dist. 21 Pat. 720.
——112 Ref. 1942 O.W.N. 379.
——193 Dist. 1942 O.W.N. 750; Rel. 17 Luck. 696.
——327 Rel. 23 P.L.T. 97.
——357 Dist. I.L.R. 1942 Nag. 196.
——548 Rel. I.L.R. 1942 Nag. 503.
——712 Rel. 1942 O.W.N. 764.
——807 Foll. 21 Pat. 720.
——951 Dist. 1942 O.W.N. 543.
——1007 Rel. 1942 O.W.N. 967.
——1026 Ref. 17 Luck. 311.
——1035 Ref. 17 Luck. 755 (F.B.).
1935 All. 98 Rel. I.L.R. 1942 Lah. 411 (F.B.).
——463 Cons. (1942) 1 M.L.J. 603.
——690 Not Foll. I.L.R. 1942 Nag. 145.
——697 Foll. 1942 O.W.N. 440.
——709 Ref. I.L.R. 1942 Nag. 208.
——877 Ref. I.L.R. 1942 All. 318.
——888 Dist. 1942 O.W.N. 300; Rel. I.L.R. (1942) 1 Cal. 169; 1942 O.W.N. 269.
——900 Ref. 1942 A.L.J. 966.
——1016 Rel. I.L.R. 1942 Lah. 359 (F.B.).
1936 All. 9 Ref. 1942 O.W.N. 275.
——94 Ref. 17 Luck. 482.
——286 Ref. 17 Luck. 446.
——336 Ref. 17 Luck. 753 (F.B.).
——452 Ref. 1942 N.L.J. 570.
——722 Dist. 1942 O.W.N. 300; Rel. I.L.R. (1942) 1 Cal. 169; 1942 O.W.N. 269.
——760 Ref. 17 Luck. 784.
——819 Foll. 1942 O.W.N. 96.
——820 Ref. 17 Luck. 906.
——879 Ref. I.L.R. (1942) 1 Cal. 468.

1937 All. 171 Ref. 1942 A.L.J. 677.
——189 Not Foll. I.L.R. 1942 Nag. 333.
——240 Ref. I.L.R. 1942 Lah. 129 (F.B.).
——300 Ref. 1942 O.W.N. 522.
——389 Ref. 23 P.L.T. 91.
——513 Foll. 44 Bom.L.R. 656.
——588 (F.B.) Dist. I.L.R. 1942 Nag. 309.
——678 Rel. 1942 O.W.N. 784.
——696 Not Foll. I.L.R. 1942 Nag. 608.
——724 Ref. 17 Luck. 198.
——740 Rel. I.L.R. 1942 Nag. 625.
1938 All. 17 Ref. 1942 O.W.N. 494.
——32 Rel. 1942 A.L.J. 386.
——49 Ref. 1942 O.W.N. 446.
——85 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——116 Disappr. I.L.R. 1942 Bom. 132.
——479 Ref. 1942 O.W.N. 110.
——539 Dist. 21 Pat. 366.
1939 All. 22 Diss. 1942 O.W.N. 394.
——28 Ref. 1942 O.W.N. 275.
——46 Ref. (1942) 2 M.L.J. 425.
——75 Ref. 17 Luck. 597.
——174 Ref. 1942 O.W.N. 275.
——177 Ref. 1942 O.W.N. 582.
——202 Dist. 1942 O.W.N. 300; Rel. 1942 O.W.N. 269.
——327 Rel. I.L.R. 1942 Bom. 456.
——529 Ref. 17 Luck. 558.
——689 Ref. 44 P.L.R. 87.
——698 Ref. 17 Luck. 327.
——713 Ref. 17 Luck. 198.
1940 All. 16 Foll. I.L.R. 1942 Bom. 132.
——114 Rel. I.L.R. 1942 Nag. 506.
——148 Ref. 17 Luck. 623.
——446 Ref. 1942 O.W.N. 520.
——448 Dist. 1942 O.W.N. 245.
——524 Diss. 1942 O.W.N. 394.
1941 All. 95 Dist. I.L.R. 1942 Nag. 506.
——180 (F.B.) Ref. 1942 O.W.N. 527.
——363 Rel. 1942 O.W.N. 463.

A.I.R. (BOMBAY).

1914 Bom. 198 Ref. 17 Luck. 52.
1923 Bom. 113 Ref. 46 C.W.N. 882; I.L.R. (1942) 2 Cal. 485.
1924 Bom. 420 Ref. I.L.R. 1942 All. 448.
1925 Bom. 168 Diss. I.L.R. 1942 Nag. 721.
——431 Rel. 1942 O.W.N. 313.
——432 Dist. 1942 O.W.N. 335.
1926 Bom. 28 Dist. 1942 O.W.N. 319.
1927 Bom. 96 Ref. 46 C.W.N. 163.
——239 Not Foll. 1942 N.L.J. 520.
——368 Rel. 1942 N.L.J. 353.
1928 Bom. 526 Ref. 1942 O.W.N. 766.
1929 Bom. 24 Ref. (1942) 2 M.L.J. 47.
——398 Ref. I.L.R. 1942 Lah. 517
——417 Not Foll. I.L.R. 1942 Nag. 45.
1930 Bom. 167 Ref. 17 Luck. 663.
——244 Disc. (1942) 1 Cal. 436.
1931 Bom. 263 Ref. 17 Luck. 346.
——325 Ref. 17 Luck. 52.
——388 Ref. 17 Luck. 391.
——391 Ref. 17 Luck. 391.
——411 Ref. 1942 O.W.N. 709; Rel. 1942 O.W.N. 448.
——444 Dist. 21 Pat. 644.
1932 Bom. 252 Rel. I.L.R. 1942 Nag. 414.
——311 Ref. I.L.R. 1942 All. 242.
——338 Ref. I.L.R. 1942 Lah. 517.
——610 Rel. I.L.R. 1942 Kar. 94.
1933 Bom. 105 Dist. 1942 O.W.N. 549.
——135 Diss. I.L.R. (1942) 1 Cal. 202.
——153 Ref. I.L.R. 1942 Nag. 510.
——262 Cons. (1942) 2 M.L.J. 563.
——381 Rel. 17 Luck. 530.
——465 Rel. 1942 O.W.N. 773.
1934 Bom. 91 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——168 Ref. 1942 O.W.N. 307.
——452 Rel. I.L.R. 1942 Nag. 45.
1935 Bom. 54 Dist. I.L.R. 1942 Nag. 642.
——333 Ref. 1942 N.L.J. 308.
1936 Bom. 37 Dist. I.L.R. 1942 Nag. 205.
——162 Ref. 1942 A.L.J. 352.
——166 Ref. 1942 N.L.J. 197.
——191 Ref. I.L.R. 1942 All. 518.
——268 Ref. 17 Luck. 346.
——423 Cons. (1942) 1 M.L.J. 580.
1938 Bom. 121 Ref. 44 P.L.R. 87.
——182 Dist. I.L.R. 1942 Lah. 800.
——223 Foll. I.L.R. 1942 Nag. 294.
——471 Ref. I.L.R. (1942) 1 Cal. 211.
1939 Bom. 112 Ref. 1942 O.W.N. 593.
——252, 256 Dist. (1942) 2 M.L.J. 610; Ref. I.L.R. 1942 Mad. 590=(1942) 1 M.L.J. 469 (F.B.); I.L.R. 1942 Mad. 405=(1941) 2 M.L.J. 848; 1942 O.W.N. 582.
——454 Ref. 1942 O.W.N. 315.
——457 Ref. 17 Luck. 128.
1940 Bom. 121 Ref. 1942 A.L.J. 611.
——200 Rel. 1942 A.L.J. 147.
1941 Bom. 186 Rel. I.L.R. 1942 Kar. 351.
1942 Bom. 218 Ref. 1942 O.W.N. 582.

A.I.R. (CALCUTTA).

1917 Cal. 696 Ref. 17 Luck. 462.
1921 Cal. 94 Rel. 1942 O.W.N. 206.
——166 Ref. 1942 O.W.N. 672 (F.B.).
——344 Diss. I.L.R. 1942 Lah. 402.
——687 Ref. 44 P.L.R. 31.
——750 Ref. 1942 O.W.N. 34.
——774 Ref. I.L.R. 1942 All. 360.
1922 Cal. 19 Ref. 1942 O.W.N. 593.
1923 Cal. 252 Dist. 17 Luck. 249.
——690 Ref. I.L.R. 1942 Mad. 494=(1941) 2 M.L.J. 787.
1924 Cal. 56 Not Good Law 23 P.L.T. 644.
——74 Ref. 1942 O.W.N. 766.
——159 Ref. 1942 O.W.N. 699.
——240 Ref. 17 Luck. 98.
——364 Foll. I.L.R. (1942) 1 Cal. 202.
——567 Ref. 17 Luck. 558.
1925 Cal. 296 Foll. 21 Pat. 300.
——304 Dist. 1942 O.W.N. 439.
——625 Ref. 17 Luck. 52.
——1118 Diss. 1942 O.W.N. 307.
1926 Cal. 180 Diss. I.L.R. 1942 Bom. 712.
——467 Ref. 17 Luck. 128.
——486 Ref. I.L.R. 1942 All. 708 (737).
——672 Rel. I.L.R. 1942 Nag. 498.
1927 Cal. 41 Appr. 1942 N.L.J. 392=I.L.R. 1942 Nag. 736.
——45 Dist. I.L.R. 1942 Nag. 636.
——106 Foll. 21 Pat. 233.
——460 Rel. 17 Luck. 516.
——796 Dist. I.L.R. 1942 Nag. 642.
——887 Foll. I.L.R. 1942 Nag. 236.
1928 Cal. 722 Foll. 21 Pat. 682.
——835 Ref. I.L.R. 1942 All. 832 (838).
——865 Ref. (1942) 2 M.L.J. 603.
1929 Cal. 130 Ref. 46 C.W.N. 861 =I.L.R. (1942) 2 Cal. 406.
——136 Foll. 21 Pat. 799.
——444 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——785, 787 Foll. I.L.R. 1942 Nag. 277.
1930 Cal. 57 Ref. (1942) 1 M.L.J. 205.
——92 Foll. (1942) 2 M.L.J. 518.
——247 Foll. 1942 N.L.J. 99.
——263 Rel. I.L.R. 1942 Lah. 604.
——422 Ref. 1942 O.W.N. 582.
——466 Foll. I.L.R. 1942 Nag. 608.
——590 Rel. I.L.R. 1942 Lah. 746 (F.B.).
1931 Cal. 251 Ref. 1942 O.W.N. 672 (F.B.).
——617 Ref. 17 Luck. 182; Rel. 23 P.L.T. 18.
——626 Dist. 1942 O.W.N. 448.
——646 Ref. 1942 O.W.N. 388.

1931 Cal, 779 Rel. I.L.R. 1942 Nag. 136.
1932 Cal. 600 Ref. 44 P.L.R. 87.
——623 Ref. 44 P.L.R. 324.
1933 Cal. 222 Ref. 1942 O.W.N. 34.
——295 Ref. 1942 N.L.J. 405.
——516 Rel. 1942 A.L.J. 383.
——559 Ref. 1942 O.W.N. 812.
——679 Ref. I.L.R. 1942 All. 899; Rel. 1942 A.L.J. 383.
——752 Overr. I.L.R. (1942) 2 Cal. 75=46 C.W.N. 452 (F. B.).
1934 Cal. 59 Ref. I.L.R. 1942 All. 942.
——59 Rel. 1942 A.L.J. 611.
——63 Dist. I.L.R. 1942 Lah. 800.
——187 Ref. 1942 O.W.N. 766.
——393 Ref. 17 Luck. 52
——626 Ref. 17 Luck. 67.
1935 Cal. 190 Foll. I.L.R. 1942 Nag. 441.
——419 (F.B.) Ref. I.L.R. 1942 Lah. 411 (F.B.); 1942 O.W. N. 6.
——513 Ref. 1942 O.W.N. 403.
——636 Foll. 44 P.L.R. 167.
——644 Ref. 17 Luck. 327.
——752 Disc. I.L.R. (1942) 2 Cal. 268.
——764 Ref. 44 P.L.R. 236.
——779 Ref. I.L.R. 1942 Lah. 252
——792, 797 Rel. I.L.R. 1942 Nag. 721.
1936 Cal. 239 Ref. 17 Luck. 618.
——277 Ref. 46 C.W.N. 882; I.L.R. (1942) 2 Cal. 485.
——434 Ref. 1942 A.L.J. 399.
1937 Cal. 252 Foll. I.L.R. (1942) 2 Cal. 13.
——483 Ref. 46 C.W.N. 657.
——516 Foll. I.L.R. 1942 Nag. 459.
1938 Cal. 81 Foll. 44 Bom.L.R. 146.
——202 Rel. 1942 O.W.N. 725.
——325 Diss. I.L.R. 1942 Bom. 287.
——415 Foll. 44 P.L.R. 455.
——490 Ref. 1942 N.L.J. 570.
——681 Rel. 23 P.L.T. 742.
——689 Ref. I.L.R. 1942 All. 708 (718).
——857 Foll. 21 Pat. 1530.
1939 Cal. 308 Ref. I.L.R. (1942) 1 Cal. 67.
——588 Ref. 44 P.L.R. 368.
1940 Cal. 285 Foll. 21 Pat. 173.
——388 Ref. 17 Luck. 52.
1941 Cal. 32 Dist. I.L.R. 1942 Mad. 153 (156)=(1941) 2 M.L.J. 353.
——378 Ref. 1942 O.W.N. 596.
1942 Cal. 40 Diss. 1942 O.W.N. 394.

A.I.R. (LAHORE).

1916 Lah. 295 Ref. I.L.R. 1942 All. 943.
1917 Lah. 93 Ref. I.L.R. 1942 Mad. 802=(1942) 1 M.L.J. 228.
1917 Lah. 336 Rel. 17 Luck. 189.
1918 Lah. 211 Appr. I.L.R. 1942 Lah. 460.
——291 (F.B.) Ref. 44 P.L.R. 330 (F.B.).
1921 Lah. 327 Rel. I.L.R. 1942 All. 162.
——331 Ref. I.L.R. 1942 Lah. 746 (F.B.).
1922 Lah. 185 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——444 Ref. 23 P.L.T. 91.
1923 Lah. 103 Ref. 44 P.L.R. 368.
——147 Rel. I.L.R. 1942 Lah. 212.
——344 Dist. 1942 O.W.N. 440.
1924 Lah. 157 Rel. 1942 O.W.N. 281.
——281 Ref. I.L.R. 1942 Lah. 252.
——377 Ref. (1942) 2 M.L.J. 47.
——412 Ref. I.L.R. 1942 Lah. 491 (F.B.).
——457 Ref. 1942 O.W.N. 307.
——659 Diss. I.L.R. 1942 Nag. 459.
——660 Dist. 1942 O.W.N. 440.
1925 Lah. 131 Ref. 17 Luck. 663.
——137 Ref. 44 P.L.R. 38.
——174 Diss. 44 P.L.R. 342.
——189 Ref. 1942 A.L.J. 334.
——210 Ref. 1942 A.L.J. 677.
——358 Foll. I.L.R. 1942 Nag. 45.
——493 Ref. 1942 O.W.N. 480.
——648 Ref. 44 P.L.R. 382.
1926 Lah. 141 Rel. 1942 O.W.N. 313.
——242 Ref. 1942 N.L.J. 197.
——262 Rel. 1942 A.L.J. 383.
——642 Ref. 1942 A.L.J. 419.
——664 Rel. I.L.R. 1942 Lah. 212.
1927 Lah. 68 Rel. I.L.R. 1942 Lah. 212.
——414 Foll. 1942 O.W.N. 560.
——610 Ref. I.L.R. 1942 Lah. 411 (F.B.).
——701 Not Foll. 34 P.L.R. 41.
1928 Lah. 221 Ref. I.L.R. 1942 Lah. 41.
——271 Ref. I.L.R. 1942 Nag. 625.
——550 Dist. I.L.R. 1942 Nag. 414.
——674 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——716 Diss. 44 P.L.R. 203.
——937 Ref. I.L.R. 1942 Lah. 252.
1929 Lah. 83 Ref. 44 P.L.R. 236.
——171 Ref. 1942 O.W.N. 685.
——477 Ref. 1942 O.W.N. 685.
——479 Foll. 21 Pat. 644.
——498 (1) Diss. I.L.R. 1942 Nag. 459.
——684 Ref. 44 P.L.R. 80.
——711 Dist. I.L.R. 1942 Nag. 661.
——806 (F.B.) Ref. I.L.R. 1942 Kar. 496.
——872 (1) Rel. I.L.R. 1942 Nag. 523.
1930 Lah. 99 Diss. I.L.R. 1942 Bom. 776.
1930 Lah. 106 Appr. I.L.R. 1942 Lah. 559 (F.B.).
——111 Ref. I.L.R. 1942 Lah. 41.
——450 Foll. I.L.R. (1942) 2 Cal. 144.
——747 Ref. 1942 O.W.N. 766.
——857 Foll. I.L.R. 1942 Nag. 62
1931 Lah. 5 Ref. I.L.R. 1942 Bom. 1.
——66 Ref. I.L.R. 1942 Lah. 386.
——310 Ref. 1942 O.W.N. 480.
——501 Ref. 17 Luck. 530.
——637 Rel. 44 P.L.R. 518.
——748 Diss. 1942 A.L.J. 634.
1932 Lah. 231 Ref. 1942 O.W.N. 275.
——249 Rel. I.L.R. 1942 Lah. 307 (F.B.).
——264 Appr. I.L.R. 1942 Lah. 746 (F.B.).
——321 Foll. I.L.R. 1942 Nag. 441.
——470 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——559 Not Foll. I.L.R. 1942 Nag. 62.
——595 Dist. I.L.R. 1942 All. 121.
——611 Dist. I.L.R. 1942 Nag. 333.
——619 Not Foll. 44 P.L.R. 41.
1933 Lah. 1 Diss. 44 P.L.R. 342.
——213 Ref. I.L.R. 1942 Lah. 41.
——661 Ref. I.L.R. 1942 Lah. 129 (F.B.).
——697 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——997 Ref. I.L.R. 1942 Nag. 710.
1934 Lah. 194 (1) Ref. (1942) 1 M.L.J. 113.
——262 Dist. 44 P.L.R. 54.
——393 Rel. I.L.R. 1942 Lah. 603.
——465 Dist. I.L.R. 1942 Bom. 822.
——589 Ref. I.L.R. 1942 Lah. 50.
——657 Ref. 17 Luck. 720.
——708 Not Foll. 44 P.L.R. 41.
——800 Foll. 1942 N.L.J. 389.
——840 Ref. I.L.R. 1942 Mad. 802=(1942) 1 M.L.J. 228.
——913 Ref. I.L.R. 1942 Lah. 41.
1935 Lah. 26 Diss. 44 P.L.R. 342.
——84 Ref. I.L.R. 1942 Lah. 217 (F.B.).
92 Foll. I.L.R. 1942 Nag. 484.
——93 Foll. 1942 N.L.J. 589.
——164 Ref. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.
——168 Ref. 1942 O.W.N. 275.
——200 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——313 Appr. I.L.R. 1942 Lah. 364 (F.B.).
——414 Ref. I.L.R. 1942 Bom. 441.
——465 (F.B.) Dist. I.L.R. 1942 Nag. 539; Foll. 44 Bom. L.R. 830.
——528 Ref. I.L.R. 1942 Nag. 625.
——560 Not Foll. I.L.R. 1942 Nag. 325.

1935 Lah. 596 (F.B.) Ref. 46 C. W.N. 561.
——689 Ref. 1942 N.L.J. 197.
——733 Diss. I.L.R. 1942 Lah. 548 Overr. I.L.R. 1942 Lah. 441 (F.B.).
——736 Dist. (1942) 2 M.L.J. 515.
——808 Ref. I.L.R. 1942 Lah. 190 (F.B.).
——853 Ref. 17 Luck. 327.
——901 Dist. 44 P.L.R. 420 (F.B.)
——935 Dist. I.L.R. 1942 Nag. 710.
——942 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——949 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——982 Ref. 44 P.L.R. 275.
1936 Lah. 26 Ref. 1942 O.W.N. 546.
——116 Rel. 1942 O.W.N. 1.
——196 Diss. 44 P.L.R. 342.
——401 Overr. I.L.R. 1942 Lah. 517 (F.B.).
——540 Rel. 44 P.L.R. 518.
1937 Lah. 53 Rel. I.L.R. 1942 Kar. 375.
——220 Ref. 17 Luck. 327.
——309 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——389 Rel. I.L.R. 1942 Kar. 38.
——608 Dist. 44 P.L.R. 415.
——637 Overr. 44 P.L.R. 420 (F.B.).
——798 Disappr. I.L.R. 1942 Lah. 364 (F.B.); Ref. I.L.R. 1942 Lah. 41.
——851 Rel. I.L.R. (1942) 2 Cal. 539.
——890 Ref. I.L.R. 1942 Nag. 608.
——912 Rel. I.L.R. 1942 Lah. 379.
——934 Ref. 1942 N.L.J. 30.
1938 Lah. 4 Rel. I.L.R. 1942 Lah. 212.
——35 Ref. 17 Luck. 327.
——145 Ref. 17 Luck. 362.
——193 (F.B.) Rel. 1942 A.L.J. 656.
——207 Overr. I.L.R. 1942 Lah. 441 (F.B.).
——217 Ref. I.L.R. 1942 Mad. 448=(1942) 1 M.L.J. 11.
——326 Dist. 21 Pat. 366.
——503 Ref. I.L.R. 1942 Lah. 282 (F. B.).
——511 Ref. I.L.R. 1942 Lah. 282 (F.B.).
——723 Appr. 44 P.L.R. 41.
——725 Appr. I.L.R. 1942 Lah. 447 (F.B.); Foll. I.L.R. 1942 Lah. 548.
——753 Dist. 44 P.L.R. 109.
——767 Ref. I.L.R. 1942 Lah. 517 (F.B.); I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968.
——827 Appr. I.L.R. 1942 Lah. 386.
——850 Dist. 1942 O.W.N. 440.
1938 Lah. 856 Diss. I.L.R. 1942 Mad. 1 (6)=(1941) 2 M.L.J. 684 (F.B.).
1939 Lah. 79 Ref. 1942 O.W.N. 275.
——222 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——330 Ref. I.L.R. 1942 Lah. 252.
——455 Ref. I.L.R. 1942 Lah. 252.
——492 Ref. 1942 O.W.N. 631.
——539 Ref. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.
1940 Lah. 6 Rel. I.L.R. 1942 Kar. 375.
——65 Ref. I.L.R. 1942 Mad. 640=(1942) 1 M.L.J. 292.
——71 Ref. I.L.R. 1942 Nag. 343.
——87 Rel. I.L.R. 1942 Nag. 510
——106 Ref. I.L.R. 1942 Mad. 590=(1942) 1 M.L.J. 469 (F.B.).
——205 Ref. I.L.R. 1942 Mad. 526=(1942) 1 M.L.J. 155.
——230 Rel. I.L.R. 1942 Lah. 349 (F.B.).
——337 Not Foll. 21 Pat. 366.
——425 Ref. I.L.R. (1942) 1 Cal. 562.
——460 Ref. 1942 A.L.J. 587.
——466 Dist. 1942 O.W.N. 440.
1941 Lah. 167 Ref. I.L.R. 1942 Kar. 535.
——316 Ref. 17 Luck. 271.
1942 Lah. 92 Ref. I.L.R. 1942 Kar. 535.

A.I.R. (MADRAS).

1915 Mad. 782 Ref. I.L.R. 1942 All. 103.
1916 Mad. 624 Ref. 1942 O.W.N. 582.
1917 Mad. 805 Ref. 1942 O.W.N. 582.
1920 Mad. 209 Foll. 21 Pat. 743.
——819 Ref. 46 C.W.N. 882=I.L.R. (1942) 2 Cal. 485.
1922 Mad. 62 Rel. I.L.R. 1942 Nag. 208.
1923 Mad. 163 Ref. 17 Luck. 1.
——237 (2) Ref. 1942 A.L.J. 587.
——327 Foll. 44 P.L.R. 455.
——339 Dist. I.L.R. 1942 Nag. 426.
——553 Rel. 1942 O.W.N. 281.
1924 Mad. 197 Rel. 1942 O.W.N. 725.
——489 (2) Dist. I.L.R. 1942 Nag. 636.
——541 Diss. 1942 O.W.N. 307.
——851 Diss. I.L.R. 1942 Lah. 402.
1925 Mad. 62 Ref. 17 Luck. 755 =1942 O.W.N. 165 (F.B.).
——230 Ref. 44 P.L.R. 368.
——265 Overr. I.L.R. 1942 Mad. 336=(1941) 2 M.L.J. 956 (F.B.).
——348 Rel. I.L.R. 1942 Lah. 324
——688 Ref. 1942 O.W.N. 269.
——834 Foll. 1942 N.L.J. 99.
——861 Diss. I.L.R. (1942) 2 Cal. 13.
——1043 Ref. 44 P.L.R. 87.
1925 Mad. 1113 Ref. 44 P.L.R. 258.
1926 Mad. 958 (1) Ref. 1942 A.L.J. 419.
——1190 Ref. 17 Luck. 1.
1927 Mad. 93 Dist. 1942 O.W.N. 549.
——182 Ref. 1942 O.W.N. 546.
——189 Ref. I.L.R. 1942 Mad. 550=(1942) 1 M.L.J. 166.
——506 Ref. I.L.R. 1942 Mad. 696=(1942) 2 M.L.J. 14.
——790 Ref. I.L.R. 1942 Nag. 1.
——797 Ref. 17 Luck. 430.
——983 Dist. I.L.R. 1942 Nag. 377.
——1071 Ref. I.L.R. 1942 All. 671 (679).
1928 Mad. 97 Appr. I.L.R. 1942 Mad. 893 (P.C.).
——261 Appr. I.L.R. 1942 Mad. 893 (P.C.).
——375 Appr. I.L.R. 1942 Mad. 893 (P.C.).
——496 (1) Ref. (1942) 1 M.L.J. 190.
——713 Cons. (1942) 1 M.L.J. 580.
——820 Ref. I.L.R. 1942 All. 862.
——859 Rel. I.L.R. 1942 Kar. 120
——929 Ref. (1942) 2 M.L.J. 785.
——1032 (F.B.) Ref. 21 Pat. 1.
——1113 Dist. I.L.R. 1942 Nag. 564.
1929 Mad. 157 Rel. I.L.R. (1942) 1 Cal. 278.
——291 Ref. 1942 O.W.N. 240.
——323 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——479 Not Foll. (1942) 2 M.L.J. 431.
——480 Ref. I.L.R. 1942 Lah. 517.
——756 Diss. I.L.R. 1942 Lah. 402.
1930 Mad. 154 Appr. 1942 A.L.J. 588.
——251 Ref. (1942) 2 M.L.J. 452.
——268 Rel. I.L.R. 1942 Nag. 294
——305 Ref. 1942 O.W.N. 699.
——342 Ref. 17 Luck. 271.
——662 Ref. 46 C.W.N. 239.
——714 Ref. 1942 N.L.J. 557.
——738 Ref. I.L.R. 1942 Mad. 251=(1941) 2 M.L.J. 883 (F.B.).
——796 Ref. (1942) 2 M.L.J. 452.
——930 Ref. 17 Luck. 482, 720.
1931 Mad. 17 Ref. 17 Luck. 430.
——118 Doubted (1942) 1 M.L.J. 318.
——242 Ref. 17 Luck. 52.
——312 Ref. 44 Bom.L.R. 111.
——729 Ref. I.L.R. 1942 All. 756 (F.B.).
——775 Foll. 21 Pat. 138.
1932 Mad. 1 Not F. (1942) 2 M. L. J. 427; Ref. I.L.R. 1942 Nag. 1.
——73 Ref. 17 Luck. 618.
——316 Diss. I.L.R. 1942 Nag. 428.
——319 Ref. 1942 O.W.N. 34.
——328 Appr. 1942 N.L.J. 405.

1932 Mad. 409 Dist. 1942 N.L.J. 372; Ref. 1942 O.W.N. 556.
——428 Ref. 17 Luck. 430.
——495 Ref. 17 Luck. 430.
——519 Foll. 1942 O.W.N. 222.
——612 (F.B.) Ref. 21 Pat. 1.
——671 Dist. 1942 N.L.J. 372.
——734 Ref. 17 Luck. 530.
——762 Ref. 1942 A.L.J. 152; Rel. 1942 A.L.J. 94=I.L.R. 1941 All. 820.
1933 Mad. 200 Rel. (1942) 1 M.L.J. 408.
——217 Not Foll. (1942) 1 M.L.J. 278.
——410 Rel. I.L.R. 1942 Nag. 294.
——457 Ref. 17 Luck. 555.
——622 Ref. I.L.R. 1942 All. 862.
——755 Foll. I.L.R. 1942 Nag. 340.
——826 Ref. 1942 O.W.N. 672 (F.B.).
1934 Mad. 202 Diss. 44 P.L.R. 71; Ref. 1942 O.W.N. 387.
——587 Ref. 46 C.W.N. 561.
——638 Rel. I.L.R. 1942 All. 360.
——713 Dist. I.L.R. 1942 Nag. 263.
——735 (1)=36 Cr.L.J. 381 (1) Foll. I.L.R. 1942 Nag. 333.
1935 Mad. 55 Ref. I.L.R. 1942 All. 121.
——161 Dist. 21 Pat. 838.
——295 Foll. 1942 N.L.J. 462=I.L.R. 1942 Nag. 685.
——307 Ref. 23 P.L.T. 11.
——367 Ref. I.L.R. 21 Pat. 1.
——428 Ref. I.L.R. 1942 Bom. 636.
——464 Dist. I.L.R. 1942 Kar. 343.
——551 Ref. 1942 O.W.N. 25.
——775 Ref. I.L.R. 1942 All. 518.
——799 Dist. 1942 O.W.N. 319.
——815 Not Foll. 1942 O.W.N. 359.
——885 Ref. 17 Luck. 366.
——907 Foll. I.L.R. 1942 Mad. 635=(1942) 1 M.L.J. 306.
1936 Mad. 170 Ref. I.L.R. 1942 Mad. 562=(1942) 1 M.L.J. 472.
——171 Ref. 1942 O.W.N. 165 (F.B.).
——333 (F.B.) Rel. I.L.R. 1942 Kar. 284.
——424 Rel. I.L.R. 1942 Nag. 732.
——613 Dist. I.L.R. 1942 Nag. 245.
1937 Mad. 24 Ref. 1942 O.W.N. 307.
——95 Foll. I.L.R. 1942 Mad. 949.
——295 Ref. I.L.R. 1942 Lah. 252.
——433 Diss. 1942 A.L.J. 592 (F.B.).
——631 Ref. (1942) 2 M.L.J. 47.
——767 Ref. I.L.R. 1942 Lah. 577 (F.B.).
1937 Mad 826 Rel. I.L.R. 1942 Nag. 393.
——975 Ref. 1942 O.W.N. 379.
1938 Mad. 13 Ref. 44 P.L.R. 136; Rel. 17 Luck. 1.
——35 Dist. 1942 O.W.N. 39.
——60 Ref. (1942) 2 M.L.J. 350.
——193 Ref. I.L.R. 1942 Bom. 357.
——307 Ref. I.L.R. 1942 Lah. 307 (F.B.).
——349 Rel. 1942 O.W.N. 446.
——372 Ref. 1942 O.W.N. 596.
——415 Foll. 44 Bom.L.R. 146.
——465 Ref. (1942) 2 M.L.J. 500.
——591 Rel. 1942 O.W.N. 39.
——631 Ref. I.L.R. 1942 All. 242.
——688 Ref. I.L.R. 1942 Lah. 517 (F.B.).
——718 Appr. I.L.R. 1942 All. 421.
——779 Ref. (1942) 2 M.L.J. 47.
——821 Diss. 1942 N.L.J. 575.
——832 Dist. 1942 O.W.N. 448.
——898 Diss. 1942 A.L.J. 592 (F.B.).
——982 Dist. 17 Luck. 249.
1939 Mad. 157 Foll. 1942 O.W.N. 315.
——289 Not Foll. (1942) 1 M.L.J. 278.
——368 Cons. 44 P.L.R. 7.
——508 Foll. I.L.R. 1942 Nag. 340.
——892 Ref. 1942 O.W.N. 315.
——905 Ref. 17 Luck. 430.
——927 Ref. 1942 O.W.N. 242.
——949 Ref. 17 Luck. 755 (F.B.).
1940 Mad. 73 Foll. I.L.R. 1942 Nag. 236.
——90 Not Foll. I.L.R. 1942 Nag. 588.
——111 Rel. 1942 A.L.J. 607.
——372 Rel. 1942 O.W.N. 303.
——733 Foll. I.L.R. 1942 Mad. 691=(1942) 1 M.L.J. 238.
——814 Ref. (1942) 1 M.L.J. 41.
——831 Dist. 44 P.L.R. 540.
1941 Mad. 40 Ref. 1942 O.W.N. 315.
——538 Not Foll. I.L.R. 1942 Kar. 45.
1942 Mad. 353 Ref. 1942 O.W.N. 582.

A.I.R. (NAGPUR).

1920 Nag. 249 Appr. 1942 N.L.J. 242.
1921 Nag. 88 Appr. 1942 N.L.J. 355.
1922 Nag. 261 Ref. 1942 N.L.J. 487.
1923 Nag. 287 Diss. I.L.R. 1942 Nag. 320.
1924 Nag. 84 Dist. 17 Luck. 249.
——189 Ref. I.L.R. 1942 Nag. 561.
1925 Nag. 160 (1) Not Foll. I.L.R. 1942 Nag. 325.
——297 Ref. I.L.R. 1942 Kar. 120.
——375 Rel. 1942 N.L.J. 324.
——455 Dist. I.L.R. 1942 Nag. 441.
1926 Nag. 17 Ref. I.L.R. 1942 Bom. 704.
——53 Ref. I.L.R. 1942 Nag. 510.
1927 Nag. 9 Dist. I.L.R. 1942 All. 671 (672).
——62 Appr. 1942 N.L.J. 355.
——82 Diss. 1942 N.L.J. 589.
——113 Rel. I.L.R. 1942 Nag. 73.
——161 Ref. 1942 N.L.J. 207.
1928 Nag. 24 Ref. I.L.R. 1942 Nag. 625.
——27 Ref. 1942 O.W.N. 546.
——58, 63 Dist. I.L.R. 1942 Nag. 277.
——194 Ref. 44 P.L.R. 275.
1929 Nag. 70 Foll. I.L.R. 1942 Nag. 294.
——241 Foll. I.L.R. 1942 Nag. 294.
——257 Foll. I.L.R. 1942 Nag. 294.
1930 Nag. 73 Dist. I.L.R. 1942 Nag. 636.
——282 Ref. (1942) 1 M.L.J. 522.
1932 Nag. 5 Rel. 17 Luck. 289.
——83 Foll. I.L.R. 1942 Nag. 620.
1933 Nag. 38 Foll. 21 Pat. 644.
——287 Dist. 1942 N.L.J. 39.
1934 Nag. 82 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——169 Dist. I.L.R. 1942 Nag. 189.
——226 Ref. 17 Luck. 284.
——243 Not Foll. I.L.R. 1942 Nag. 136.
——261 Foll. 44 P.L.R. 540.
1935 Nag. 68 Foll. I.L.R. 1942 Nag. 701.
——129 Dist. I.L.R. 1942 Nag. 159.
——168 Ref. 17 Luck. 462.
——177 Ref. I.L.R. 1942 Nag. 122.
——185 Dist. I.L.R. 1942 Nag. 88.
——221 Ref. I.L.R. 1942 Lah. 282 (F.B.).
1936 Nag. 145 Ref. 17 Luck. 586.
——174 Ref. 17 Luck. 530.
1937 Nag. 37 Ref. 17 Luck. 271.
——135 Diss. I.L.R. 1942 Mad. 143=(1941) 2 M.L.J. 541.
——154 Not Appr. I.L.R. 1942 All. 377.
——327 Ref. I.L.R. 1942 Nag. 214.
——372 Ref. 17 Luck. 755 (F.B.).
——376 Ref. 1942 N.L.J. 47.
——402 Not Foll. I.L.R. 1942 Lah. 324.
1938 Nag. 89 Dist. I.L.R. 1942 Nag. 564.
——109 Rel. I.L.R. 1942 Nag. 675.
1939 Nag. 7 Foll. 1942 N.L.J. 99.
——191 Ref. (1942) 2 M.L.J. 803.
——232 Foll. 44 P.L.R. 540.
——301 Not Foll. I.L.R. 1942 Mad. 355=(1941) 2 M.L.J. 968.
1940 Nag. 65 Appr. I.L.R. 1942 Lah. 74.
——79 Rel. 1942 O.W.N. 593.

1940 Nag. 221 Rel. I.L.R. 1942 Nag. 749.
——264 Foll. I.L.R. 1942 All. 945 = 1942 A.L.J. 607.
——370 Dist. 1942 N.L.J. 207; Rel. I.L.R. 1942 Nag. 53.
——410 Ref. 1942 O.W.N. 59.
1941 Nag. 181 Ref. I.L.R. 1942 Mad. 562 = (1942) 1 M.L.J. 472.
——297 Ref. I.L.R. 1942 All. 759 (766).

A.I.R. (OUDH).

1914 Oudh 125 Ref. 1942 O.W.N. 582.
1922 Oudh 109 Rel. I.L.R. 1942 Nag. 333.
1923 Oudh 18 Ref. 21 Pat. 1.
——118 Ref. 17 Luck. 605.
1924 Oudh 147 Ref. 17 Luck. 289.
——311 Ref. 17 Luck. 755 (F.B.).
1925 Oudh 301 Ref. I.L.R. 1942 Bom. 441.
——473 Rel. 1942 O.W.N. 39.
——494 Ref. 1942 O.W.N. 639.
——548 Ref. 1942 O.W.N. 305.
——598 Ref. 17 Luck. 755 (F.B.).
1926 Oudh 369 Ref. 1942 O.W.N. 727.
1927 Oudh 39 Rel. 17 Luck. 289.
——55 Ref. 17 Luck. 755 (F.B.).
——275 Ref. 1942 O.W.N. 275.
——297 Dist. 17 Luck. 456.
——450 Ref. 1942 O.W.N. 731.
——575 Dist. 17 Luck. 702.
1928 Oudh 4 Dist. 1942 O.W.N. 750.
1929 Oudh 215 Rel. 1942 O.W.N. 191.
——337 Rel. I.L.R. 1942 Nag. 608.
——362 Rel. 17 Luck. 215.
1930 Oudh 49 Ref. 17 Luck. 487.
1931 Oudh 58 Rel. 1942 O.W.N. 797.
——253 Ref. 17 Luck. 636.
——273 Rel. 1942 O.W.N. 786.
1932 Oudh 199 Ref. 17 Luck. 215.
——224 Dist. I.L.R. 1942 Nag. 636.
1933 Oudh 276 Ref. 17 Luck. 591.
——355 Rel. 1942 O.W.N. 3.
——426 Ref. I.L.R. 1942 All. 708 (737) = 1942 A.L.J. 487.
——531 Ref. 17 Luck. 755 (F.B.).
1934 Oudh 129 Overr. 17 Luck. 755 (F.B.).
——165 Ref. 17 Luck. 636.
——233 Ref. 17 Luck. 636.
——276 Ref. 1942 O.W.N. 786.
——505 Ref. 17 Luck. 145.
1935 Oudh 16 Rel. 17 Luck. 327.
——197 Ref. 1942 A.L.J. 668.
1936 Oudh 209 Ref. 17 Luck. 327.
——247 Foll. I.L.R. 1942 Nag. 294.
1937 Oudh 524 Diss. I.L.R. 1942 All. 945 = 1942 A.L.J. 607.
——220 (F.B.) Dist. I.L.R. 1942 Bom. 822 = 44 Bom.L.R. 678
1938 Oudh 186 Rel. 1942 O.W.N. 21.
1939 Oudh 40 Ref. 1942 O.W.N. 110.
——110 Ref. 17 Luck. 690 (F.B.).
——145 Ref. 1942 O.W.N. 145.
——225 Rel. I.L.R. 1942 Nag. 506.
——284 Not Foll. I.L.R. 1942 Kar. 120.
——1105 Dist. 1942 O.W.N. 440.
1940 Oudh 269 Ref. 1942 N.L.J. 478.
——342 Ref. 17 Luck. 623.
——405 Dist. I.L.R. 1942 Nag. 414.
1941 Oudh 87 Ref. 1942 O.W.N. 384.
——219 Ref. 17 Luck. 327.
——226 Ref. 17 Luck. 755.

A.I.R. (PATNA).

1917 Pat. 37 Rel. I.L.R. 1942 All. 821 (827).
1918 Pat. 653 Dist. I.L.R. 1942 Nag. 484.
1920 Pat. 738 Overr. A.I.R. 1942 Pat. 195.
1921 Pat. 311 Ref. 46 C.W.N. 561.
1923 Pat. 187 Foll. I.L.R. 1942 Nag. 236.
——375 Rel. I.L.R. 1942 Nag. 642.
1924 Pat. 76 Foll. I.L.R. 1942 Bom. 636.
——829 Rel. I.L.R. 1942 Lah. 470.
1925 Pat. 125 Dist. 1942 O.W.N. 307.
1926 Pat. 25 Ref. 21 Pat. 1.
——180 Rel. 1942 O.W.N. 191.
1927 Pat. 51 Foll. 21 Pat. 300.
——117 Not Foll. I.L.R. 1942 Nag. 172.
——175 Ref. 1942 O.W.N. 305.
1928 Pat. 83 Ref. I.L.R. 1942 All. 498.
——193 Ref. 21 Pat. 102.
1929 Pat. 620 Ref. 17 Luck. 530.
1930 Pat. 338 Ref. 44 P.L.R. 269.
——368 Expl. (1942) 2 M.L.J. 345.
1932 Pat. 126 Rel. 1942 A.L.J. 376.
——308 Ref. 17 Luck. 605.
——329 Rel. 1942 O.W.N. 1.
1933 Pat. 165 Ref. 44 P.L.R. 87.
——203 Rel. 23 P.L.T. 97.
——656 Ref. 46 C.W.N. 169.
1934 Pat. 52 (2) Ref. 17 Luck. 712.
——284 Ref. 1942 O.W.N. 596.
——287 Rel. 23 P.L.T. 42.
——463 Expl. 23 P.L.T. 243.
——627 Ref. I.L.R. 1942 Bom. 1.
1935 Pat. 148 Rel. 17 Luck. 727.
——220 Ref. 1942 O.W.N. 307.
1936 Pat. 191 Ref. 1942 O.W.N. 620.
——512 Ref. 1942 O.W.N. 379.
——636 Diss. 1942 O.W.N. 59.
——637 Ref. 17 Luck. 494.
1937 Pat. 92 Foll. I.L.R. 1942 Nag. 139.
——246 Ref. I.L.R. 1942 Mad. 494 = (1941) 2 M.L.J. 787.
——280 Ref. 44 P.L.R. 87.
——337 Ref. 1942 A.L.J. 352.
——352 Foll. (1942) 2 M.L.J. 790.
——586 Foll. 21 Pat. 309.
1938 Pat. 33 Rel. 1942 O.W.N. 793.
——39 Ref. I.L.R. 1942 Nag. 333.
——60 Ref. 21 Pat. 153.
——273 Reversed (1942) 1 M.L.J. 8 (P.C.).
——352 Ref. 21 Pat. 153.
——427 Ref. 23 P.L.T. 361.
——532 Ref. 17 Luck. 755 = 1942 O.W.N. 165 (F.B.).
1939 Pat. 21 Foll. 21 Pat. 300.
——33 Ref. 44 P.L.R. 368.
——225 Dist. I.L.R. 1942 Nag. 498.
——260 Ref. 21 Pat. 441.
——347 Not Foll. I.L.R. 1942 Nag. 588.
——430 Foll. I.L.R. 1942 Bom. 636; Ref. 46 C.W.N. 561.
1940 Pat. 149 Diss. I.L.R. (1942) 1 Cal. 161.
1941 Pat. 1 Dist. I.L.R. 1942 Nag. 772.
——9 Expl. & Dist. 21 Pat. 778.
——65 (F.B.) Ref. 44 P.L.R. 288.
——197 Affirmed 23 P.L.T. 396.
——213 Rel. 1942 A.L.J. 352.
——362 Ref. 21 Pat. 102.
——418 Dist. 21 Pat. 281.
——440 Ref. I.L.R. 1942 Lah. 559 (F.B.).
——616 Foll. 23 P.L.T. 342.

A.I.R. (RANGOON).

1927 Rang. 1 Dist. 1942 O.W.N. 549.
——136 Ref. 17 Luck. 271.
1928 Rang. 194 Ref. 1942 O.W.N. 275.
1929 Rang. 109 Foll. I.L.R. 1942 Bom. 712.
——152 Ref. 46 C.W.N. 561.
1930 Rang. 64 Foll. 21 Pat. 481.
——164 Rel. I.L.R. 1942 Nag. 432.
1931 Rang. 27 Ref. 17 Luck. 271.
——79 Ref. 17 Luck. 462.
——318 Ref. 1942 A.L.J. 419.
1932 Rang. 24 Foll. I.L.R. 1942 Nag. 236.
——195 Ref. 17 Luck. 462.
1933 Rang. 186 Foll. I.L.R. 1942 Bom. 132.
——416 Rel. 17 Luck. 189.
1934 Rang. 206 Rel. I.L.R. (1942) 1 Cal. 169; 1942 O.W.N. 269.
——208 Rel. I.L.R. 1942 Nag. 441.
——271 Ref. (1942) 2 M.L.J. 140.
1935 Rang. 118 Ref. 1942 O.W.N. 34.
——163 Cons. 44 P.L.R. 7.
——376 Ref. 44 P.L.R. 31.
1936 Rang. 189 Ref. (1942) 2 M.L.J. 479 (F.B.).

1936 Rang. 363 Rel. I. L. R. 1942 All. 848 (859).
——393 Rel. 1942 A.L.J. 399.
——473 Rel. I.L.R. 1942 Nag. 695.
——525 Ref. (1942) 1 M.L.J. 113.
1937 Rang. 42 Ref. 17 Luck. 430.
——234 Ref. (1942) 2 M.L.J. 202.
——324 (329) Ref. I.L.R. 1942 All. 103.
1938 Rang. 88 Foll. 21 Pat. 743.
——94 Disc. I.L.R. (1942) 2 Cal. 507.
——130 (F.B.) Ref. I.L.R. 1942 Mad. 376=(1942) 1 M.L.J. 137.
——177 Ref. 1942 O.W.N. 403.
——400 Ref. 1942 N.L.J. 308.
1939 Rang. 92 Ref. 1942 O.W. N. 596.
——332 Ref. 1942 A.L.J. 37.
1941 Rang. 227 Ref. I.L.R. 1942 Lah. 491 (F.B.).

A.I.R. (SIND).

1925 Sind 88 Dist. I.L.R. 1942 Nag. 193.
——116 Ref. I.L.R. 1942 Nag. 510.
——181 Ref. 1942 O.W.N. 766.
1926 Sind 123 Foll. I.L.R. 1942 Nag. 441.
1928 Sind 192 Rel. I.L.R. 1942 Kar. 89.
1929 Sind 50 Rel. I.L.R. 1942 Kar. 5.
——52 Rel. I.L.R. 1942 Kar. 5.
——161 (1) Rel. I.L.R. 1942 Nag. 432.
1930 Sind 93 Ref. 1942 A.L.J. 592 (F.B.).
1933 Sind 191 Foll. 44 P.L.R. 455.
1935 Sind 27 Rel. 1942 O.W.N. 448.
1936 Sind 143 Rel. I.L.R. 1942 Kar. 120.
1937 Sind 177 Ref. 1942 N.L.J. 405.
1938 Sind 202 Ref. I.L.R. 1942 Lah. 129 (F.B.).
1939 Sind 49 Ref. 17 Luck. 346.
——134 Ref. I.L.R. 1942 Bom. 287.
——206 Ref. I.L.R. 1942 Mad. 775.
1940 Sind 215 Ref. 44 P.L.R. 401.

A.I.R. (PESHAWAR).

1934 Pesh. 3 Ref. 17 Luck. 121.
1936 Pesh 57 Diss. 1942 O.W.N. 319.
1937 Pesh. 73 Foll. I.L.R. 1942 Nag. 523; Ref. 1942 O.W. N. 379.
1942 Pesh. 9 Rel. 1942 O.W.N. 394.

INDIAN CASES.

1 I.C. 938 Ref. I.L.R. 1942 Lah. 386.
2 I.C. 157 Ref. I.L.R. 1942 Lah. 491.
2 I.C. 675 Ref. 23 P.L.T. 636.
——865 Ref. 1942 O.W.N. 699.
3 I.C. 77 Ref. I.L.R. 1942 Mad. 42=(1941) 2 M.L.J. 406.
——175 Not Foll. I.L.R. 1942 Nag. 172.
——346 Ref. 1942 O.W.N. 546.
5 I.C. 582 Ref. 23 P.L.T. 218.
——931 Ref. 1942 O.W.N. 766.
6 I.C. 16 Foll. 21 Pat. 330.
——153 Rel. I.L.R. 1942 Kar. 452.
7 I.C. 986 Ref. I.L.R. 1942 Lah. 517 (F.B.).
8 I.C. 657 Rel. I.L.R. 1942 Lah. 349 (F.B.).
——732 Rel. 23 P.L.T. 81.
——793 Rel. 17 Luck. 494.
9 I.C. 747 Ref. 21 Pat. 1.
10 I.C. 630 Ref. 1942 A.L.J. 449.
11 I.C. 55 Rel. 1942 O.W.N. 195.
——851 Ref. I.L.R. 1942 All. 155.
——863 Ref. 1942 O.W.N. 546.
13 I.C. 508 Foll. 17 Luck. 158.
14 I.C. 578 Rel. 1942 O.W.N. 784.
——759 Foll. 21 Pat. 743.
15 I.C. 849 Ref. 17 Luck. 623.
16 I.C. 987 Ref. 1942 O.W.N. 275.
17 I.C. 155 Foll. 17 Luck. 78.
——473 Ref. I.L.R. 1942 All. 518.
——646 Ref. 1942 O.W.N. 546.
20 I.C. 1 Rel. 1942 O.W.N. 206.
——420 Ref. 21 Pat. 1.
——646 Ref. 17 Luck. 435.
23 I.C. 755 Ref. 46 C.W.N. 561.
24 I.C. 57 Rel. 1942 I.L.R. Lah. 79.
——259 Ref. 17 Luck. 67.
25 I.C. 405 Ref. I.L.R. 1942 Kar 306.
26 I.C. 964 Dist. I.L.R. 1942 Lah. 212.
27 I.C. 129 Ref. I.L.R. 1942 Lah. 386.
——269 Not Foll. I.L.R. 1942 Lah 324.
——343 Ref. I.L.R. 1942 All. 242.
——635 Ref. 1942 O.W.N. 446.
——891 Ref. 17 Luck. 605.
28 I.C. 930 Ref. 1942 O.W.N. 357.
29 I.C. 811 Dist. 23 P.L.T. 588.
30 I.C. 372 Ref. 1942 N.L.J. 434.
31 I.C. 12 Diss. 1942 O.W.N. 435.
——152 Ref. 23 P.L.T. 167.
——528 Ref. I.L.R. 1942 Kar. 306.
32 I.C. 524 Not Foll. 1942 O.W.N. 1.
——690 Rel. 1942 O.W.N. 281.
——985 Cons. 23 P.L.T. 363.
33 I.C. 54 Ref. (1942) 1 M.L.J. 92.
——253 Ref. I.L.R. 1942 Lah. 50.
34 I.C. 494 Ref. 1942 N.L.J. 353.
——867 Dist. 21 Pat. 366.
35 I.C. 235 Ref. I.L.R. 1942 Lah. 252.
——667 Ref. 1942 O.W.N. 431.
36 I.C. 128 Ref. 23 P.L.T. 227.
——389 Ref. I.L.R. 1942 Mad. 95=(1941) 2 M.L.J. 311 (F.B.).
38 I.C. 191 Ref. 1942 O.W.N. 546.
——823 Ref. 1942 O.W.N. 631.
41 I.C. 361 Ref. 44 P.L.R. 87.
——377 Ref. 1942 O.W.N. 699.
42 I.C. 326 Dist. 21 Pat. 778.
——598 Cons. 23 P.L.T. 368.
——803 Ref. 17 Luck. 462.
43 I.C. 163 Rel. 1942 O.W.N. 1.
——352 Ref. 17 Luck. 555.
——399 Ref. 1942 O.W.N. 275.
——962 Rel. 17 Luck. 205.
44 I.C. 930 Ref. I.L.R. 1942 Lah. 411 (F.B.).
45 I.C. 289 Ref. 17 Luck. 494.
——963 Rel. 23 P.L.T. 81.
46 I.C. 224 Dist. 21 Pat. 287.
47 I.C. 400 Ref. 17 Luck. 158.
——594 Ref. (1942) 2 M.L.J. 595.
——626 Ref. 1942 O.W.N. 639.
——997 Ref. I.L.R. 1942 Kar. 504.
49 I.C. 37 Rel. I.L.R. 1942 Kar. 92.
——150 (F.B.) Foll. I.L.R. 1942 Nag. 633.
——907 Ref. I.L.R. 1942 All. 518.
50 I.C. 552 Ref. 1942 N.L.J. 434.
——774 Not Foll. I.L.R. 1942 Nag. 598.
61 I.C. 653 Dist. I.L.R. 1942 Nag. 198.
52 I.C. 262 Ref. 1942 O.W.N. 157.
——869 Rel. 17 Luck. 494.
53 I.C. 649 Rel. I.L.R. 1942 Kar 501.
——833 Ref. 1942 O.W.N. 699.
——866 Ref. I.L.R. 1942 All. 518.
55 I.C. 113 Rel. I.L.R. (1942) 2 Cal. 378.
——258 Disc. I.L.R. 1942 Mad. 455=(1941) 2 M.L.J. 962.
57 I.C. 583 Dist. 17 Luck. 78.
60 I.C. 422 Foll. 21 Pat. 113.
——763 Dist. 21 Pat. 287.
63 I.C. 222 Rel. 1942 O.W.N. 206.
——280 Ref. 1942 O.W.N. 157.
64 I.C. 61 Foll. 17 Luck. 78.
——226 Ref. 17 Luck. 67.
——726 Appl. 44 P.L.R. 54.
66 I.C. 551 (P.C.) Dist. I.L.R. 1942 Lah. 155 (F.B.).
——722 Foll. I.L.R. 1942 Nag. 633.
67 I.C. 64 Ref. 1942 O.W.N. 654.
68 I.C. 577 Ref. 23 P.L.T. 218.
——615 (F.B.) Ref. 21 Pat. 102.
69 I.C. 557 Ref. 17 Luck. 712.
73 I.C. 359 Dist. 23 P.L.T. 540.
——711 Diss. 1942 N.L.J. 405.
74 I.C. 58 Ref. I.L.R. 1942 All. 708 (718).
——561 (P.C.) Ref. I.L.R. 1942 Lah. 252.
75 I.C. 679 Ref. 17 Luck. 472.
76 I.C. 655 Ref. 17 Luck. 311.
80 I.C. 827 (P.C.) Ref. 1942 O.W. N. 25.
82 I.C. 588 Foll. 21 Pat. 322.
84 I.C. 116 Dist. 17 Luck. 215.
——122 Rel. 23 P.L.T. 412.
85 I.C. 433 Doubted 23 P.L.T. 46.
——538 Ref. 23 P.L.T. 218.
88 I.C. 753 Rel. 1942 O.W.N. 494.
89 I.C. 574 Ref. 17 Luck. 623.
91 I.C. 34 Ref. 23 P.L.T. 62.
——525 Rel. 23 P.L.T. 481.

92 I.C. 667 Rel. 1942 O.W.N. 63.
94 I.C. 79 Foll. 21 Pat. 223.
——717 Ref. 1942 O.W.N. 564.
95 I.C. 84 Ref. 17 Luck. 215.
——204 Rel. (1942) 1 M.L.J. 511.
97 I.C. 351 Not Foll. I.L.R. 1942 Kar. 45.
——433 Ref. (1942) 1 M.L.J. 535.
99 I.C. 71 Foll. 23 P.L.T. 670.
100 I.C. 126 Ref. 1942 O.W.N. 440.
——827 Ref. 1942 O.W.N. 564.
103 I.C. 867 Foll. 23 P.L.T. 734.
104 I.C. 378 Ref. I.L.R. 1942 Mad 879=(1942) 2 M.L.J. 202.
——518 Ref. (1942) 1 M.L.J. 485.
——800 Ref. 1942 O.W.N. 699.
105 I.C. 553 Rel. I.L.R. 1942 Kar. 45.
106 I.C. 537 Ref. I.L.R. 1942 Lah. 252.
107 I.C. 210 Foll. I.L.R. 1942 Nag. 441.
——510 Rel. 1942 O.W.N. 63
110 I.C. 484 Dist. 23 P.L.T. 588.
——511 Overr. I.L.R. 1942 Mad. 336=(1941) 2 M.L.J. 956 (F.B.).
——554 Foll. 21 Pat. 300.
113 I.C. 897 (P.C.) Rel. 23 P.L.T. 620 (P.C.).
114 I.C. 49 Rel. 44 P.L.R. 518.
119 I.C. 837 Rel. 23 P.L.T. 481.
122 I.C. 161 Foll. (1942) 2 M.L.J. 148.
126 I.C. 153 Ref. 23 P.L.T. 544.
128 I.C. 108 Ref. 23 P.L.T. 167.
129 I.C. 85 Rel. 23 .P.L.T. 243.
——824 Ref. 23 P.L.T. 218.
130 I.C. 894 Ref. 23 P.L.T. 167.
131 I.C. 119 Expl. 23 P.L.T. 267.
——423 Ref. 17 Luck. 391.
134 I.C. 1164 Ref. I.L.R. 1942 Lah. 592 (F.B.).
136 I.C. 771 Ref. 23 P.L.T. 91.
138 I.C. 335 Ref. 17 Luck. 605.
140 I.C. 191 Ref. 23 P.L.T. 218.
145 I.C. 243 Rel. 23 P.L.T. 540.
——780 Ref. 1942 O.W.N. 639.
——858 Dist. 23 P.L.T. 588.
147 I.C. 699 Ref. 23 P.L.T. 167.
150 I.C. 590 Ref. 23 P.L.T. 167.
——665 Ref. 23 P.L.T. 91.
152 I.C. 195 Ref. 23 P.L.T. 736.
153 I.C. 466 Ref. 21 Pat. 258.
154 I.C. 184 Ref. 23 P.L.T. 644.
——437 Ref. 46 C.W.N. 1015.
——465 Rel. 23 P.L.T. 412.
155 I.C. 88 Rel. 23 P.L.T. 644.
——610 Rel. I.L.R. 1942 Kar. 435.
157 I.C. 381 Appr. I.L.R. 1942 All. 624 (655).
——1010 Foll. 23 P.L.T. 267.
159 I.C. 129 Ref. 17 Luck. 482.
160 I.C. 150 Ref. I.L.R. 1942 Lah. 592 (F.B.).
161 I.C. 539 Rel. 23 P.L.T. 23.
162 I.C. 461 (P.C.) Rel. 44 P.L.R. 192.
163 I.C. 36 Ref. I.L.R. 1942 Lah. 252.
168 I.C. 17 Ref. 23 P.L.T. 368.
170 I.C. 29 Ref. 23 P.L.T. 725.
171 I.C. 337 Not Foll. I.L.R. 1942 Nag. 143.
172 I.C. 722 Ref. 23 P.L.T. 167.
——833 Dist. 23 P.L.T. 310; Rel. 23 P.L.T. 387.
179 I.C. 156 Rel. 23 P.L.T. 494.
——821 Ref. 23 P.L.T. 91.
182 I.C. 767 Ref. 23 P.L.T. 167.
185 I.C. 310 Rel. 23 P.L.T. 475.
190 I.C. 71 Diss. 1942 O.W.N. 440
——467 Rel. 1942 O.W.N. 786.
192 I.C. 861 Foll. 23 P.L.T. 384 Rel. 23 P.L.T. 379.
193 I.C. 72 Affirmed 23 P.L.T. 304.
194 I.C. 413 Affirmed 23 P.L.T. 502 (F.C.).
196 I.C. 449 Rel. 17 Luck. 435.

THE
YEARLY DIGEST, 1942.

I—INDIAN DECISIONS.

ABADI—Custom of non-transferability—Onus. *See* CUSTOM—ATTRIBUTES. **1942 R.D. 552=1942 O. W.N. 368.**

———*Disputed site, if forms part of agricultural village—Test—Entries in the* wajib-ul-arz*—Binding nature.*

The true test in determining whether a particular disputed area is included within an agricultural village or not depends on whether one set of revenue records has been prepared for the village and the disputed area. Where one map, one *khasra* and one *wajib-ul-arz* was prepared for a whole agricultural village and no separate papers were prepared for the disputed area which had developed into a bazaar town and it was also clear that the disputed area was not measured separately as a distinct entity apart from the village itself, it was held that the disputed area was an integral part of the village itself and that although it had grown in the course of time to be a flourishing place of trade, it could not but be regarded as part and parcel of the entire village and as such governed by the customs recorded in the *wajib-ul-arz* and applicable to the whole village. (*Ghulam Hasan and Madeley, JJ.*) SADHANT *v.* BARKHANDE MAHESH PRATAP NARAIN SINGH. **200 I.C. 622=1942 O.A. 276=1942 R.D. 552=15 R.O. 30=1942 A.W.R. (C.C.) 255=1942 O.W.N. 368=A.I.R. 1942 Oudh 401.**

———*Limits to the applicability of presumption of zamindar's possession—Acquisition of title by adverse possession.*

There is a presumption in the case of agricultural villages that a zamindar is in possession of all the village sites, but this presumption cannot be applied to a town. Where a plaintiff taluqdar and proprietor of a mauza alleged that the suit house was given to the ancestors of the defendants for the purpose of administering to the spiritual needs of the people of the locality and that they were wrongfully constructing a temple on it and prayed for possession, when it was found that the plaintiff failed to prove the case set up by him and that the defendants never acknowledged the plaintiff's title and that they had been holding the house for a considerably long time and far in excess of the statutory period it was held that the defendants had acquired a title to the house by adverse possession. (*Bennett and Agarwal, JJ.*) IQBAL HUSAIN *v.* SHANKAR DAYAL. **200 I.C. 744=15 R.O. 43=1942 R.D. 548=1942 O W.N. 351=1942 A.W.R. (C.C.) 234=1942 O.A. 255 =A.I.R. 1942 Oudh 427.**

———*Town or agricultural village—Test.*

Where the District Gazetteer describes a certain area as a town and also states that there is a bazaar carrying on a flourishing trade in grain, a police station, a post office and that it is administered under Act X of 1856, and that houses are assessed to taxation and other documents indicate that there was an inn in the place and that out of a total number of 374 houses only 49 belonged to agriculturists and the rest to persons following other professions, the place is a town and not an agricultural village. (*Bennett and Agarwal, JJ.*) IQBAL HUSAIN *v.* SHANKAR DAYAL. **200 I.C. 744=15 R.O. 43=1942 R. D. 548=1942 O. W.N. 351=1942 A.W.R. (C. C.) 234=1942 O.A. 255 =A.I.R. 1942 Oudh 427.**

ACCOUNTS.

———*Unauthorised construction—Demolition—Relative rights of parties.*

A man should not be deprived of his legal rights unless he has acted in such a way as to make it fraudulent for him to set up those rights. A defendant in order to avoid a decree for demolition must prove that he acted under a mistaken belief and that the plaintiff knew that he was acting under such mistaken belief and had acquiesced in that. Where the defendant was found to have without rights made some constructions on the *abadi* land of the plaintiff, it was *held* that the plaintiff could not be deprived of his legal rights to get such a construction demolished merely on the ground that the land on which such construction had been made was of no practical use to the plaintiff. (*Agarwal and Madeley, JJ.*) BIRENDKA BIKRAM SINGH *v.* HANOMAN PRASAD. **17 Luck. 610=199 I. C. 12=1942 O.W.N. 113=1942 O.A. 66=14 R.O. 474=1942 A.W.R. (C.C.) 88=1942 R. D. 188=A.I.R. 1942 Oudh 306.**

ACCOUNTS—"Dharm Khata"—Meaning—Presumption. *See* 1941 Dig., Col. 2. RAM KISHAN *v.* OM PRAKASH. **197 I.C. 481=14 R.L. 241.**

———*Origin and discharge of liability to account—Stated or settled account and account stated or settled—Distinction.*

The right in *A* to an account by *B* is established when facts are alleged and proved by *A* that *B* is an accounting party and that *B* has not accounted at all or properly. But the obligation on the part of *B* is *prima facie* discharged if he alleges and proves either (1) that accounts have been rendered or taken and stated or settled or (2) that he has received *X* and has accounted for *X*. Stated or settled account means something different from an account stated or settled which would, by agreement based on consideration, found between *A* and *B* an implied promise to pay. There is a broad difference between the position where an account is rendered and where an account is stated or settled. In the former case the accounting party must support it in the Court. In the latter case the other party is bound unless it can be opened. An account rendered may be

ACCOUNT BOOKS.

turned into an account stated or settled if it is not challenged for such a time that an acceptance of it will be implied. Right to open the account discussed. (*Stone, C. J. and Bose, J.*) RADHIKA PRASAD *v.* NAND KUMAR. 1942 N.L.J. 355.

ACCOUNT BOOKS—*Evidentiary value.*

Account books, standing by themselves, are not evidence of the truth of the matters contained in them. If they are regularly kept and are supported by vouchers or other evidence of the truth of the entries in them, and are otherwise reliable then they may well be accepted as *prima facie* evidence. It is open to the Judge to accept part of the books as *prima facie* evidence and part not. (*Stone, C. J. and Bose, J.*) RADHIKA BRASAD *v.* NAND KUMAR. 1942 N.L.J. 355.

ACCOUNT STATED—*Fresh cause of action—Items barred by limitation, reopening of.*

Where the entry in the accounts between the parties show that the account between the parties had been settled, it affords a fresh cause of action and it is immaterial that some of the items were barred by time. The Court need not see whether any portion of the amount found due and admitted by the defendant was legally due to the plaintiff or not. The account stated is binding on the parties and it cannot be reopened on any ground except fraud or mistake. (*Agarwal and Madeley, JJ.*) PIAREY LAL *v.* MAHADEO PRASAD. 199 I.C. 698=1942 R.D. 320=14 R.O. 514=1942 A.W.R. (C.C.) 109=1942 O.W.N. 157=1942 O.A. 88 =A.I.R. 1942 Oudh 311.

ACT OF STATE—Cession of territory—Pre-cession rights—Enforcement in Municipal Courts. *See* 1941 Dig., Col. 3. SECRETARY OF STATE *v.* RUSTAM KHAN. I.L.R. (1941) Kar. (P.C.) 94= 1942 A.L.J. 167 (P.C.).

ADMINISTRATION—Contract of suretyship—Mal-administration—Discharge of surety—Powers of Court. *See* 1941 Dig., Col. 4. GHULAM ALI *v.* RAHMATULLAH KHAN. 198 I.C. 243=14 R.R. 188.

———*Suit for—Necessity—Suit by creditor and heir against assets in hands of himself and other heirs—If maintainable.*

A suit by one of the heirs of a deceased person making himself and the other heirs as defendants to enforce a promissory note executed by the deceased in his favour against the assets of the deceased in the hands of himself and the others is maintainable, when the deceased has not left any other debt and the assets left by him vastly exceed the debt in suit. In these circumstances, neither an administration suit nor a suit for partition and accounts is necessary. (*Mitter and Khundkar, JJ.*) LALIT MOHAN PAL *v.* MANMATHA NATH PAL. 75 C.L.J. 353.

———*When comes to an end—Executor—Position thereafter.*

Administration comes to an end when the administration business is completed, upon which an executor either becomes a constructive trustee or an express trustee, or may be deemed to have made over to the legatees, although remaining in control as manager. An executor may become a trustee on completing the administration business without being designated trustee in the will. (*Ameer Ali, J.*) SRIDHAR JIU *v.* SOSHMUKHI DASI. I.L.R. (1942) 1 Cal. 365

ADMINISTRATION SUIT — Maintainability — Creditor obtaining decree against debtor's heir—Right to institute separate suit for administration of estate——Remedy. *See* C. P. CODE, SS. 47 AND 52. 55 L.W 308=(1942) 1 M.L.J. 580.

ADVERSE POSSESSION.

ADVANCEMENT.

See also (1) BENAMI.
(2) TRUSTS.
(3) TRUSTS ACT, S. 82.

——— Doctrine of—If applicable to Indian Christians when husband purchases in name of wife. *See* TRUSTS ACT, S. 82. (1942) 1 M.L.J. 528.

———*Applicability of equitable doctrine to India—Purchase by father or husband in name of child or wife—Onus—Result of failure to discharge it.*

The English equitable doctrine of advancement is not applicable to India. Hence where a father or husband pays the money and purchases the property in the name of a child or wife as there is no presumption of advancement the burden of proving lies on the child or wife to show that the father or husband had put them into their names by way of gift or advancement. If they fail to prove this the presumption would arise that the father or husband who provided the money is the rightful owner. (*Braund and Yorke, JJ.*) HASAN RAZA *v.* ASHFAQ-UN-NISSA. 1942 A.L.W. 324.

———Money deposited by husband in bank in names of himself and his wife—Presumption as to. *See* COMPANY—WINDING UP—SET OFF. (1942) 1 M.L.J. 161.

ADVERSE POSSESSION—Acquisition of title—Estate held under rules of Government as inalienable and impartible and passing to successor unencumbered by debts or charges—Alienation by holder—Validity—Alienee in possession for over 12 years—Effect—Adverse possession—Successor—If bound by adverse possession against predecessor. *See* LIMITATION ACT, ART. 134 B. 44 Bom.L.R. 146.

———Acquisition of title—Fluctuating and indefinite body—Non-secular property—Effect of long possession by members of a particular caste. *See* 1941 Dig., Col. 5. ORENDRA CHANDRA SINGH *v.* BULAQI RAM. I.L.R. (1942) All. 1=198 I. C. 82=14 R. A. 261= A.I.R. 1942 All. 1.

———*Acquisition of title—Hindu lady on disappearance of her husband claiming widow's estate—Her possession, if adverse to her husband.*

The nature of title which a person acquires by prescription depends upon the nature of his assertion, and where a Hindu lady acquires by prescription title to immovable property on the assertion that she had been possessing it as a Hindu widow, that is, as heir to her husband, that property becomes a part of her husband's estate. It does not become her stridhan, and on her death it would be inherited, not by her heirs but by the heirs of her husband. She, in claiming the widow's estate, does not cherish any animus to exclude her husband, on the other hand her animus is one of recognition of her husband's title. The wife's possession on disappearance of her husband is accordingly possession not adverse to her husband. It is necessarily on his behalf. (*K. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. 202 I. C. 551=15 R.C. 355=47 C.W.N. 9=A.I.R. 1942 Cal. 498 (S.B.).

———*Acquisition of title—Trust property held by Hindu father and son—Father trustee in respect of property—Possession of son adversely for twelve years—Effect—Title—If acquired.*

If two persons are in joint enjoyment of property belonging to another adversely to the latter, but one of them is disabled by his fiduciary relationship to the owner (*e.g.*, being a trustee) from acquiring any interest in the property by adverse possession, the other who is under no such disability can acquire title to the property to the extent of his enjoyment. The fact that the two

persons happen to be members of a joint Hindu family owning other properties as a unit with no defined shares therein (*e.g.*, father who is a trustee and his son) can make no difference to the application of this principle. The adverse possession of the son will not be affected by the fiduciary disability attaching to the father in his capacity as trustee, and there would be nothing to prevent his acquiring title by adverse possession to a half-share in the property. (*Patanjali Sastri, J.*) ANJANEYA SASTRI *v.* RAJAGOPALA CHETTIAR. **204 I.C. 131=1942 M.W.N. 548=55 L.W. 509=A.I.R. 1942 Mad. 699=(1942) 2 M.L.J. 187.**

———*Burden of proof—Suit for declaration of title—Property held by defendant's predecessor under settlement of* 1865—*Limitation Act, S.* 28.

In a suit for a declaration of title to certain lands held by the defendant's predecessor under the first settlement of the district made in 1865, it is for the plaintiff to establish that the defendant's title to the lands had been extinguished under S. 28 of the Limitation Act by the adverse possession of the plaintiff or his predecessors for the appropriate statutory period of limitation. (*Lord Thankerton.*) JAGATJIT SINGH *v.* PARTAB BAHADUR SINGH. **8 B.R. 831=1942 O.A. 390=1942 A.W.R. (P.C.) 37=1942 O.W.N. 508=201 I.C. 499=18 R.P.C. 19=55 L.W. 597=1942 A.L.W. 488=1942 P.W.N. 213=44 Bom.L.R. 868=47 C.W.N. 38=A.I.R. 1942 P.C. 47=(1942) 2 M.L.J. 384 (P.C.).**

———Constructive possession—Doctrine of—Availability to trespasser. *See* 1941 Dig., Col. 6. HEMANTA KUMARI DEBI *v.* MIDNAPORE ZAMINDARY CO., LTD. **201 I.C. 134=15 R.C. 135=A.I.R. 1942 Cal. 283.**

———*Constructive possession—If available to a trespasser for acquiring title by adverse possession.*

The doctrine that possession follows title is a well-recognised one. It means that when a rightful owner is not in actual physical possession, he would in the eye of the law be deemed to be in possession. The benefit of such a presumption can accrue only in favour of a rightful owner but not in favour of a wrong-doer. The latter can acquire a title only by actual physical possession. A constructive possession cannot be implied in his favour so as to enable him thereby to obtain a title by limitation. (*Niyogi, J.*) NAGO RAO *v.* JAGESHWAR. **1942 N.L.J. 375.**

———*Constructive possession—If sufficient for prescribing against existing title.*

It is well established that adverse possession against an existing title must be actual and cannot be constructive. (*Lord Thankerton.*) JAGATJIT SINGH *v.* PARTAB BAHADUR SINGH. **8 B.R. 831=1942 O.A. 390=1942 A.W.R. (P.C.) 37=1942 O.W.N. 508=201 I.C. 499=18 R.P.C. 19=55 L.W. 597=1942 A.L.W. 488=1942 P.W.N. 213=44 Bom. L.R. 868=47 C.W.N. 38=A.I.R. 1942 P.C. 47=(1942) 2 M.L.J. 384 (P.C.).**

———Co-owners—Essentials—Proof of ouster—Necessity. *See* 1941 Dig., Col. 7. VISHNU JANARDAN *v.* MAHADEV KESHAV. **I.L.R. (1942) Bom. 14=198 I.C. 550=14 R.B. 318=A.I.R. 1942 Bom. 44.**

———Co-owners—Possession on behalf of all—Presumption — Ouster — Proof — Mahomedan family—Non-receipt of profits—Inference of ouster. *See* 1941 Dig., Col. 7. MAHOMED AMINUD-DIN *v.* MAHOMED ABDUR RAHMAN. **I.L.R. (1942) Nag. 608=198 I.C. 653=14 R.N. 235.**

———*Co-owner—Proof of ouster.*

In order to make out a case of ouster there must be a clear refusal to allow the other co-owner to participate in the enjoyment of the property. Where there has been neither an open denial of title nor any ouster to the

knowledge of the co-owner intended to be ousted, it cannot be said that the possession of the co-owner claiming adverse possession creates a title by prescription. (*Ghulam Hasan, J.*) USUF HASAN *v.* RAUNAQ ALI. **203 I.C. 391=15 R.O. 205=1942 O.W.N. 522=1942 A.W.R. (C.C.) 324 (3)=1942 O.A. 438=A.I.R. 1943 Oudh 54.**

———*Co-sharers—Mortgage by one—If amounts to repudiation of title of others.*

The mere fact that a co-sharer has mortgaged the joint property is not sufficient to show that he was repudiating the title of the other co-sharers. The mortgage in such a case may be held to be subject to the adjustment of the shares of the parties at the time of partition. (*Bhide, J.*) KHUDA BAKHSH *v.* ATA MOHAMMAD. **201 I.C. 159=15 R.L. 33=44 P.L.R. 133=A.I.R. 1942 Lah. 135.**

———*Co-sharers—Ouster—Proof required.*

A co-sharer, in order to prove ouster of the other co-sharers by him has not only to prove that he was treating the joint property as though it belonged exclusively to him but also that this fact was known to the other co-sharers. (*Bhide, J.*) KHUDA BAKHSH *v.* ATA MOHAMMAD. **201 I.C. 159=15 R.L. 33=44 P.L.R. 133=A.I.R. 1942 Lah. 135.**

———Co-sharers—Shamilat land—Transfer of portion by one of the proprietors — Transferee in exclusive possession for 12 years—If acquires prescriptive title. *See* 1941 Dig., Col. 8. GHULAM NABI *v.* UMAR BAKHSH. **197 I.C. 609=14 R.L. 263.**

———*Co-tenants—Ouster — Necessity — Mahomedan families with lady members—Proof of exclusion.*

Although the possession of one co-tenant is not deemed adverse to the other co-tenants, the existence of the relation of co-tenants does not preclude one co-tenant from establishing an adverse possession in fact as against the other co-tenants. Much stronger evidence is required to show an adverse possession held by a tenant-in-common than by a stranger. A co-tenant will not be permitted to claim the protection of the statute of limitations unless it clearly appears that he has repudiated the title of his co-tenant and is holding adversely to him ; it must further be established that the fact of adverse holding was brought home to the co-owner, or there must be outward acts of exclusive ownership of such a nature as to give notice to the co-tenant that an adverse possession and disseisin are intended to be asserted. Mere possession, however exclusive or long continued, if silent, cannot give one co-tenant in possession title as against the other co-tenant. In the case of Mahomedan families the practice is common of leaving to the males the whole management of the family property including their (the women's) share and being content not to demand what they are entitled to receive but to receive such maintenance or care as the males choose to give them. In that state of fact it does not prove a custom of exclusion that women are in fact excluded. Nor does it suffice to prove ouster. One can no more prove ouster than one can prove custom to exclude by merely showing that in fact the women have been content to be looked after and have not inquired and have not been told what is being done by the males as regards the shares. (*Stone, C.J. and Bose, J.*) FARDOSEJAHAN BEGUM *v.* KAZI SHAJIUDDIN. **I.L.R. (1942) Nag. 781=201 I.C. 825=15 R.N. 40=1942 N.L.J. 261=A.I.R. 1942 Nag. 75.**

———Essentials—Actual knowledge of the owner—If essential. *See* 1941 Dig., Col. 9. RAGHUBARPRASAD *v.* BALLOO. **198 I.C. 345=14 R.N. 217.**

———Essentials—Actual knowledge of real owner—If essential—Real owner absent from British India not

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voluntarily but under sentence of transportation—Relevancy. *See* 1941 Dig., Col. 8. KUPPUSAMI NAIDU *v.* KUPPUSWAMI NAIDU. 200 I. C. 239=15 R.M. 21=(1941) 2 M.L J. 255.

———*Essentials—Actual knowledge of rightful owner—Necessity—Acts which would change nature of permissive possession or that held in fiduciary capacity.*

Adverse possession need not be shown to have been brought to the knowledge of the rightful owner, but this rule can apply only to one who is a complete stranger. Ordinarily ignorance on the part of the true owner of his right or of its infringement does not prevent the operation of the statute but when one is in possession which is either permissive or held in a fiduciary capacity, one cannot by a mere secret and undisclosed wish alter the character of one's possession so as to get the time running in one's own favour. (*Niyogi, J.*) NAGO RAO *v.* JAGESHWAR. 1942 N.L.J. 375.

———Essentials—Continuity of possession—Proof required. *See* 1941 Dig., Col. 9. HEMANTA KUMARI DEBI *v.* MIDNAPORE ZAMINDARY CO., LTD. 201 I. C. 134=15 R.C. 135=A.I.R. 1942 Cal. 233.

———*Essentials—Exclusiveness and continuity.*

A person was in possession till 8th May 1909 when he dissappeared and after his reappearance he began to collect rent and nazar on or before 5th May 1921, that is within twelve years. The suit was instituted in 1930, *i.e.*, within 12 years from the time when he first began to collect rent.

Held, that those acts of possession on his part destroyed the adequacy and interrupted that exclusiveness and continuity which is demanded from any person challenging by possession the title of a rightful owner. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. 202 I.C. 551 =15 R.C. 355=47 C.W.N. 9=A.I.R. 1942 Cal. 498 (S.B.).

———*Essentials of.*

To constitute adverse possession, the possession should be *nec vi, nec clam, nec precario*. It is not necessary that the adverse possession should be brought to the knowledge of the owner. It is sufficient that the possession should be overt and without any attempt at concealment. The evidence however must be sufficiently definite and convincing. (*Broomfield and Macklin, JJ.*) PRABHAKAR BHASKAR *v.* KRISHNARAO MOROBA. 203 I. C. 443=44 Bom.L.R. 718=A. I. R. 1942 Bom. 317.

———Evidence—Compact plot of land—Test of adverse possession—Proof of possession of every inch of land—If necessary—Part of land tenanted and part untenanted—Proof necessary. *See* 1941 Dig., Col. 10. HAFIZ MAHOMED FATEH NASIB *v.* SWARUP CHAND HUKUM CHAND. I.L.R. (1941) 2 Cal. 434=200 I. C. 822=15 R.C. 81=A.I.R. 1942 Cal. 1.

———Exercise of rights of ownership—True owner having no knowledge—Tenant bila tasfia, possession of, if can become adverse. *See* 1941 Dig., Col. 10. MAHOMED TAQI *v.* EWAZ MAHOMED. A.I.R. 1942 Oudh 70.

———Interruption—Decree of Court declaring possession wrongful—Effect of. *See* 1941 Dig., Col. 11. VISHNU JANARDHAN *v.* MAHADEV KESHAV. I.L.R. (1942) Bom. 14=198 I.C. 550=14 R.B. 318=A.I.R. 1942 Bom. 44.

———Interruption—Adverse possessor inheriting property before 12 years—Effect on adverse possession. *See* 1941 Dig., Col. 11. SRINIVASA RAO *v.* SESHACHARLU. I.L.R. (1942) Mad. 42=198 I.C. 169= 14 R.M. 394=A.I.R. 1942 Mad. 106= (1941) 2 M. L.J. 406.

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———Interruption—Adverse possessor inheriting property before 12 years—Effect on adverse possession. *See* 1941 Dig., Col. 10. SATYANARAYANA SIDHANTI *v.* BERHAMPORE MUNICIPAL COUNCIL. 198 I.C. 271=14 R.P. 416=8 B.R. 404=A.I.R. 1942 Pat. 42.

———Interruption—Rightful owner obtaining forcible possession—Effect of—Subsequent decree for possession in favour of trespasser under S. 9, Specific Relief Act—Suit by rightful owner within 12 years of his forcible possession—If barred. *See* LIMITATION ACT, ART. 142. 1942 M.W.N. 478.

———*Interruption—Rival claimants—Government taking over possession—Effect.*

Any break or interruption of the continuity of possession is fatal to the claim of the party setting up title by adverse possession; and the length of time a break or interruption in the possession exists is immaterial. If the Government holds possession of property to realize the Government revenue and pays over the surplus proceeds to one of the rival alleged owners, in such a case no question of adverse possession as between the rival owners, arises and it is only when the property is set free by the Collector that the possession of one of the claimants can become adverse as against the other. (*Nawal Kishore, C.J. and Ranjitmal, J.*) BHOMSINGHJI *v.* MUKANSING. (1942) M.L.R. 86 (Civil).

———*Interruption—Symbolical possession in pursuance of purchase at rent sale—If interrupts possession of trespasser.*

The plaintiff (a purchaser at a rent sale), having obtained a sale certificate obtained symbolical delivery of possession though he was entitled to get actual possession of the property purchased after removal of the defendant who had all along been living in a building in the holding purchased by the plaintiff. In a suit by the plaintiff for possession within 12 years of the symbolical delivery, the defendant pleaded that the suit was barred and that she had been in possession adversely for over 12 years before suit and that the symbolical delivery did not interrupt her adverse possession.

Held, that the taking of symbolical possession did interfere with the possession of the defendant and that the latter could therefore start her adverse possession only from the date of the symbolical delivery. (*Kuppuswami Ayyar, J.*) SATHAPPA CHETTI *v.* THAYYANAYAKI AMMAL. 1942 M.W.N. 543=55 L.W. 548= A.I.R. 1942 Mad. 698=(1942) 2 M.L.J. 305.

———*Licensee.*

A licensee cannot claim title only from possession, however long, unless it is proved that the possession was adverse to that of the licensor, to his knowledge and with his acquiescence. (*Manohar Lall, J.*) PHULCHAND *v.* NATEE MIRZA. 199 I. C. 421=14 R. P. 574=8 B. R. 564=23 Pat. L. T. 678=A. I. R. 1942 Pat. 325.

———Limited interest—Burden of proof. *See* 1941 Dig., Col. 12. HEMANTA KUMARI DEBI *v.* MIDNAPORE ZAMINDARY CO., LTD. 201 I.C. 134=15 R.C. 135=A.I.R. 1942 Cal. 233.

———Limited interest—Extent of title acquired. *See* 1941 Dig., Col. 12. HEMANTA KUMARI DEBI *v.* MIDNAPORE ZAMINDARY CO., LTD. 201 I.C. 134=15 R. C. 135=A.I.R. 1942 Cal. 233.

———*Limited interest—Permanent tenancy—Lease creating permanent tenancy unregistered—Admissibility to show nature of possession—Tenant holding land for 12 years under lease and paying rent to landlord—Acquisition of permanent right.*

A limited interest in immovable property can be acquired by adverse possession. Where a document

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such as a lease deed purporting to create or confer a permanent tenure is invalid for want of registration, otherwise, and the lessee has been holding the land for a period of twelve years in assertion of a permanent right, he would certainly acquire a right by adverse possession, especially when it is shown that the landlord has been receiving rent from him. The lease, though inadmissible in evidence, can be looked into and relied on for the purpose of ascertaining the nature of possession of the claimant-lessee. (*Nagesvara Iyer and Subramanya Aiyar, JJ.*) HUCHANNA *v.* VENKATAPPA. **20 Mys. L J. 224=46 Mys. H.C R. 660.**

———Limited interest—Permanent tenancy—Permanent lease invalid for want of registration—Possession under—Conduct showing possession as permanent tenant or mirasdar—Effect—Acquisition of permanent tenancy. *See* REGISTRATION ACT, S. 49, PROVISO. **44 Bom.L.R. 534.**

———Possession—Nature of—What is connoted by adverse possession. *See* 1941 Dig., Col. 14. NARAINBHAI ICHHARAM *v.* NARBADA PRASAD. **I.L.R. (1942) Nag. 564=197 I.C. 612=14 R N. 184.**

———Possession of Mutwalli under void wakf—Nature of. *See* 1941 Dig., Col. 15. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. **200 I.C. 392=15 R.C. 7=46 C.W.N. 561=A.I.R. 1942 Cal. 180.**

———*Possession of successive* mutwallis, *if can be tacked on.*

When a *mutwalli* dies or ceases to act the cause of action for the next claimant goes back to the *wakf* and any scheme framed thereon. His tenure of office of *mutwalli* cannot be regarded as continuous with and derived from the tenure of his predecessor. Hence the periods during which the predecessors in interest of a *mutwalli* had acted as such cannot enure for his benefit so as to give a prescriptive right by reason of adverse possession. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. **1942 O.A. 536=1942 O.W.N. 657=1942 A.W.R. (C.C.) 346 (2).**

———Possession under voidable lease—Lease by mutawalli without sanction of Court—Expiry of term—Possession of lessee—If adverse to endowment. *See* MAHOMEDAN LAW—MOSQUE—MUTAWALLI. **(1942) 2 M.L.J. 164.**

———*Submerged land—Rule—Land not losing identity by submergence—Constructive possession of true owner—Principle of—If applicable—Constructive possession—If can be set up in second appeal for first time.*

No general proposition can be laid down that there can be no possession of land while it is under water. The principle of constructive possession of the true owner over submerged land during the period of submergence can have no application to cases where the submergence is of such a nature that it does not interfere with the ordinary use and occupation of the land. Whether the submergence does or does not cause such interference is a question of fact to be determined in each case with reference to the nature of the land and the extent and duration of the submergence. Where the question has not been seriously pressed or argued in the Courts below, and the land in question is a small plot which does not lose its identity by the submergence, the party laying claim to it relying on the admission of the rival claimant that the land is *jhil*, cannot successfully set up a case of constructive possession in second appeal without findings of fact to support it. (*Rowland and Chatterji, JJ.*) ABDUL LATIF KHAN *v.* SOMAR KUNJRA. **21 Pat. 441=199 I.C. 725=14 R.P. 623=**

AGRA TENANCY ACT (1901), S. 11.

8 B.R. 621=23 Pat.L.T. 692=1942 P.W.N. 100=A.I.R. 1942 Pat. 341.

———*Trespasser's title—Scope and extent.*

Any title which a trespasser may acquire is strictly limited to what he has actually possessed. Hence in the case of a trespasser possession of a part cannot found a presumption of possession of the whole. A party who is in possession without title, can have no constructive possession beyond the limits of his actual possession. If the premises form a connected and unbroken entirety there may be a presumption of constructive possession even in favour of a trespasser. (*Niyogi, J.*) NAGO RAO *v.* JAGESHWAR. **1942 N.L.J. 375.**

———*Zamindar and inamdar—Inamdar's possession adverse to zamindar for 12 years—Sufficiency for acquisition of title—Possession for 60 years—If necessary—Government's right to resume inam—Relevancy of.*

Where the only question is whether an inamdar has established his title adversely to a zamindar, the question of Government's right to resume the inam cannot possibly come up for any kind of consideration. In such a case the ordinary rule will apply which prescribes a period of only 12 years for the perfecting of title by adverse possession, and not the rule of 60 years. (*King, J.*) VENKATACHARLU *v.* RAJAH OF VIZIANAGARAM. **55 L.W. 614=1942 M.W.N. 803=A.I.R. 1942 Mad. 725=(1942) 2 M.L.J. 415.**

AGENCY. *See* (1) PRINCIPAL AND AGENT.
(2) CONTRACT ACT, CH. X.

AGRA PRE-EMPTION ACT (XI OF 1922), Ss. 4, 10 and 11—*Sale by reversionary heir—Property in possession of prior transferees without title—Vendee to bear expenses for recovery of possession—Maintainability of suit for pre-emption.*

Where after the reversion opened, the reversionary heir sells for a definite sum of money the entire property of the last holder which was in the possession of prior transferees without title and for the recovery of which the vendee was to bear the expenses, the transaction amounts to a sale as defined in S. 54, Transfer of Property Act, for a definite and ascertained sum and as such a suit for pre-emption in respect of the transaction is maintainable. (*Iqbal Ahmad, C.J., Ismail and Dar, JJ.*) JAGAT PRASAD *v.* DEONATH SINGH. **I.L.R. (1942) All. 169=198 I. C. 257=14 R. A. 272=1942 O.A. (Supp.) 56=1942 R.D. 67=1942 A.W.R. (H.C.) 1=1942 A.L.W. 1=1942 A.L.J. 1=A.I.R. 1942 All. 71 (F.B).**

———**S. 19**—*'Decree'—Meaning of—Cardinal date for determining rights of parties.*

The decree referred to in S. 19 of the Agra Pre-emption Act is the decree originally passed by the trial Court in favour of the plaintiff and not the decree that may, in consequence of any order of remand by an appellate Court, have to be again passed by the trial Court in favour of the plaintiff. The loss of interest subsequent to any decree for pre-emption cannot affect pre-emptor's claim. The cardinal date for the determination of rights of parties is the date of the original decree of the trial Court. (*Iqbal Ahmad, C.J. and Dar, J.*) SURENDRA BAHADUR SINGH *v.* RAJENDRA BAHADUR SINGH. **I.L.R. (1942) All. 165=199 I.C. 469=1942 R.D. 177=14 R.A 382=1942 A.L.J. 45 =1942 O.W.N. 61=1942 A.L.W. 54=1942 O.A. (Supp.) 61 (1)=1942 A.W.R. (H.C.) 35=A.I.R. 1942 All. 128.**

AGRA TENANCY ACT (II OF 1901), S. 11—*Seven years' lease—Test—Presumption—Exclusion of period from computation under S. 11—Circumstances negativing.*

AGRA TENANCY ACT (1926), S. 3.

Though there may be some ground for assuming that a tenant had agreed to hold under a 7 years' lease in the case of leases executed early in the year, the same thing cannot be said in respect of leases executed later in the year in the absence of clear evidence to that effect. Hence in the case of a lease executed after the commencement of the agricultural year where there is no evidence apart from the recital in the lease to show that the tenant had agreed either before or at the commencement of the agricultural year to hold the land on a 7 years' lease, it is not a lease for a term of not less than 7 years and therefore the period of such lease could not be excluded from computation under S. 11, Agra Tenancy Act. (*Sathe, J.M.*) SHEO PRASAD *v.* SUNDER SINGH. 1942 O.A. (Supp.) 484=1942 O. W. N. (B.R.) 689.

——(III OF 1926), S. 3 (2)—'*Land*'—*Use of land for purposes other than agriculture for which it was let—If and when it ceases to be 'land'.*

A tenant's holding does not cease to be 'land' under the Agra Tenancy Act merely because he uses it for other than agricultural purposes. But if a tenant sublets his land to a sub-tenant for other than agricultural purposes, the land would not be 'land' under the Act in a dispute between the tenant and his sub-tenant though it would be 'land' so far as a dispute between the zamindar and the tenant is concerned. (*Shirreff, J.M. and Sathe, J.M.*) SAKHAWAT ALI *v.* MAHBOOB ALI. 1942 O.W.N. (B.R.) 79=1942 O.A. (Supp.) 46=1942 R.D. 111=1942 A.W.R. (Rev.) 46.

——Ss. 3 (4) and 226—Sayar income derived by holding land for purpose of brick kiln—If can be taken into account in suit under S. 226. *See* 1941 Dig., Col. 17. RAM DAS *v.* ATA HUSAIN. 197 I.C. 851=14 R.A. 255.

——S. 3 (15) and United Provinces Tenancy Act (1939), S. 3 (6)—*Grove—Existence of trees and open spaces—Cultivation possible—Character of land—Determination—Factors to be taken into consideration.*

Where there were half a dozen small self-grown trees in the northern two-thirds portion of a plot and that part was not cultivated but the existence of the trees and the shade did not prevent cultivation in the southern portion, it was held that the character of the land must be determined by considering the plot as a whole and not piecemeal and that considered by that standard the plot was not groveland. (*Shirreff, S.M.*) RAGHUNATH SAHAI *v.* RASHID AHMAD KHAN. 1942 O.W.N. (B.R.) 131=1942 A.W.R. (Rev.) 146 (3)=1942 O.A. (Supp.) 166 (3)=1942 R.D 197.

——S. 3 (15) and Expln. 11, United Provinces Tenancy Act (1939), S. 3 (6)—*Grove—Plot containing* Bel *trees near the boundary and guavas, pomegranates and plantains in the rest of the area.*

Where a plot contains 36 Bel trees standing on or near the boundary, the rest of the area being covered with guavas, pomegranates and plantains, it does not make it groveland under the definition in S. 3 (15) of the Agra Tenancy Act read with the second explanation. It may become groveland under the definition in the U. P. Tenancy Act. (*Shirreff, S.M.*) RAGHUNATH SAHAI *v.* RASHID AHMAD KHAN. 1942 R.D. 197=1942 O.W.N. (B.R.) 131=1942 A.W.R. (Rev.) 146 (3)=1942 O.A. (Supp.) 166 (3).

——S. 4 (d)—Sir—*Requirement as to being 'recorded as the* khudkasht *of the landlord'—Strict construction—Necessity.*

The requirement in S. 4 (*d*) of the Agra Tenancy Act that the land should be 'recorded as the *khudkasht* of the landlord' is to be construed strictly and hence when land is not so recorded one of the chief conditions of the definition is not fulfilled and the land cannot be said to be '*sir*' under S. 4 (*d*). (*Shirreff, S.M.*) DEOKI KUNWAR *v.* KESRI. 1942 R.D. 266=1942 O.W.N. (B.R.) 200=1942 A.W.R. (Rev.) 148 (2)=1942 O.A. (Supp.) 168 (2).

AGRA TENANCY ACT (1926), S. 18.

——Ss. 6 and 14—*Ex-proprietary rights—Failure to claim by a co-sharer on sale of share of joint* sir—*Effect.*

When one out of several joint *sir* holders transfers his property without claiming any ex-proprietary rights, the holding becomes the *sir* of the remaining *sir* holders. (*Sathe, J.M.*) GORDHANA *v.* BIRBAL. 1942 O.W.N. (B.R.) 67=1942 R.D. 99=1942 A.W.R. (Rev.) 171 (1)=1942 O.A. (Supp.) 191 (1).

——S. 14 and T. P. Act, S. 52—*Family gift pendente lite by* sir *holder, judgment-debtor—Effect—Subsequent sale in execution of that property—Rights of parties.*

The effect of S. 52, T. P. Act, is by no means that a transfer *pendente lite* is entirely void. In the case of a family alienation by a gift by the judgment-debtor of his zamindari property including *sir* lands, no ex-proprietary rights are created and the donees become not only proprietors but *sir* holders, subject only to the rights of the decree-holder. They become ex-proprietary tenants in the *sir* land after sale in execution of the decree. (*Yorke, J.*) RAGHUBIR *v.* RAGHUBIR SARAN. 1942 O.W.N. 87=1942 A.L.W. 62=1942 D.R. 158.

——S. 14 (1)—*Acquisition of ex-proprietary rights under—Determining period.*

The conditions of the year on which the partition papers are to be based should determine the question whether ex-proprietary rights have arisen or not. (*Harper, S.M. and Sathe, J.M.*) DAL SINGH *v.* SHANKER BUX SINGH. 1941 R.D. 1137=1941 O.A. (Supp.) 927=1941 A.W.R. (Rev.) 1158.

——S. 15 (2)—*Privilege under if confined to vendor only—Vendor resiling from surrender—Vendee, if can enforce fulfilment of surrender.*

The privilege of applying for surrender is conferred by S. 15 (2), Agra Tenancy Act, on the vendor only. When his application is rejected and an appeal by him is requested to be also rejected, no right is conferred on the vendee to enforce the fulfilment of the surrender. (*Shirreff, S.M. and Sathe, J.M.*) RIRKU *v.* PARMATMA SARAN. 1942 O.W.N. (B.R.) 235 (2)=1942 O.A. (Supp.) 162 (2)=1942 A.W.R. (Rev.) 142 (2).

——S. 17—*Applicability—Admission of co-tenant to existing tenancy.*

Where a co-tenant is admitted to an already existing tenancy the provisions of S. 17 of the Agra Tenancy Act does not apply. (*Sathe, A.M.*) NANHI *v.* GOPI CHAND. 1942 O.W.N. (B.R.) 22 (2)=1942 O.A. (Supp.) 15=1942 A.W.R. (Rev.) 15=1942 R.D. 38 (2).

——S. 18—*Application under—Absence of verification before Court—Effect.*

Where an application under S. 18, Agra Tenancy Act, is not verified before Court as required by that section, if it has not resulted in any material injustice to the parties should be condoned under S. 99, C. P. Code. (*Sathe, J.M.*) MIR IBRAHIM *v.* SUBHAN KHAN. 1942 O.A. (Supp.) 373 (1)=1942 A.W.R (Rev.) 347 (1)=1942 O.W.N. (B.R.) 563=1942 R.D. 691.

——S. 18—*Order in proceedings under—Second appeal.*

In proceedings under S. 18 for the record of occupancy rights there is no second appeal. (*Sathe, J.M.*) MIR IBRAHIM *v.* SUBHAN KHAN. 1942 O.A. (Supp.) 373 (1)=1942 A.W.R. (Rev.) 347 (1)=1942 O.W.N. (B.R.) 563=1942 R.D. 691.

AGRA TENANCY ACT (1926), S. 19.

——**S. 19**—*Admission to tenancy—Acceptance of rent for six years.*

Where there has been an acceptance of rent for six years and the regular management of the estate is not proved, it is right to infer that the tenant was not holding without consent. (*Shirreff, J. M.*) KAMLAKAR SINGH *v.* THENGAI. **1942 O.A. (Supp.) 44 (1) = 1942 O.W.N. (B.R.) 38 (1) = 1942 A.W.R. (Rev.) 44 (1) = 1942 R.D. 54 (1).**

—— **S. 23 (2) (b), Proviso**—*Scope and object of.*

The proviso to S. 23 (2) (*b*) of the Agra Tenancy Act (corresponding to S. 33 (2) (*c*) of the U. P. Tenancy Act) explains what is meant by a co-tenant in connection with the clause which renders it legal for a tenant to release or transfer his interest in favour of a co-tenant. It was probably intended to cover all legal aspects of co-tenancy but it is not quite exhaustive as a definition, for cases may arise in which a person becomes a co-tenant by estoppel. (*Shirreff, S.M.*) LACHHMI NARAIN *v.* RAM DEI. **1942 O.W.N. (B.R.) 315 = 1942 R.D. 404 = 1942 A.W.R. (Rev.) 276 (1) = 1942 O.A. (Supp.) 302 (1).**

——**S. 24**—Chela—*Right to succeed* guru *under S. 24—If can also claim by blood relationship.*

A *chela* is not entitled to succeed his *guru* under S. 24 of the Agra Tenancy Act. But there is nothing to prevent him from claiming by reason of blood relationship. (*Sathe, J.M.*) GURCHARAN PRASAD *v.* BIKRAMA RAM SANT. **1942 A.W.R. (Rev.) 122 (2) = 1942 R.D. 255 = 1942 O.W.N. (B.R.) 189 = 1942 O.A. (Supp.) 139 (2).**

——**S. 24**—*Co-sharing in cultivation by collateral—Absence of pooling of resources—When and when not countable against claim to succession.*

The absence of proof of pooling of resources with the deceased by the co-sharer claiming to succeed though may not be counted against him if as a matter of fact he had no agricultural resources of his own which he could have pooled, would prevent him from succeeding where it is shown that he did have such resources and did not pool them with those of the deceased. (*Sathe, J.M.*) DEO SARAN PANDEY *v.* RAM KISHAN MAL. **1942 O.W.N. (B.R.) 307 = 1942 R.D. 396 = 1942 A.W.R. (Rev.) 262 (1) = 1942 O.A. (Supp.) 288 (1).**

——**S. 24**—*Co-sharing—Joint living with deceased—Joint cultivation—Sufficiency.*

Where the collaterals concerned have been living with the deceased tenant as a member of a joint family, there could be no separate resources to be pooled together and the joint cultivation must be held to fall within the category of co-sharing according to law. (*Sathe, J.M.*) VIBHUTI NARAIN SINGH *v.* CHHAKURI SINGH. **1942 O.W.N. (B.R.) 155 = 1942 O.A. (Supp.) 125 = 1942 R.D. 221 = 1942 A.W.R. (Rev.) 108.**

——**S. 24**—*Co-sharing—One of the holdings in possession of third party in lieu of interest—Joint holding in respect of others—Presumption of co-sharing, if can arise.*

Where a holding is in the possession of a third party in lieu of interest, a claimant cannot succeed to it on the basis of co-sharing. Co-sharing in cultivation might be presumed from the fact of the last owner living jointly with the claimant and cultivating other holdings also jointly with him. But where co-sharing was physically impossible owing to the mortgage no such presumption can be drawn. (*Shirreff, S.M. and Sathe, J.M.*) CHUNNI LAL *v.* SANTU CHAMAR. **1942 R.D. 717 = 1942 O.A. (Supp.) 403 = 1942 O.W.N. (B.R.) 589 = 1942 A.W.R. (Rev.) 377.**

——**S. 24**—*Co-sharing — Pooling of resources—Necessity.*

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Pooling of resources where there are any resources to be pooled is an essential condition for proving co-sharing. (*Sathe, A.M.*) NANAK CHAND *v.* MOHAN SINGH. **1941 A.W.R. (Rev.) 1128 (2) = 1941 O.A. (Supp.) 909 (2).**

——**S. 24**—*Co-sharing—Requisites—Existence of agricultural resources—Necessity of proving pooling.*

Where a collateral has agricultural resources of his own, it must be shown that they were pooled with the resources of the deceased before it can be held that there was legal co-sharing. (*Shirreff, S.M. and Sathe, J.M.*) INDRAJIT SINGH *v.* BIPAT. **1942 A.W.R. (Rev.) 123 = 1942 R.D. 257 = 1942 O.W.N. (B.R.) 191 = 1942 O.A. (Supp.) 140.**

——**Ss. 24 and 25**—*Co-tenants—Relation between—Succession on the death of one—Law applicable.*

Co-tenants in a holding are tenants in common and not joint tenants and when one of such co-tenants dies, succession is governed by Ss. 24 and 25 of the Agra Tenancy Act and the corresponding sections in the new Act. A joint holding does not go to the survivors only by the right of survivorship. (*Shirreff, S.M. and Sathe, J.M.*) RAGHUBIR *v.* LAKHI. **1942 A.W.R. (Rev.) 188 = 1942 O.W.N. (B.R.) 308 = 1942 O.A. (Supp.) 208 = 1942 R.D. 397.**

——**S. 24**—*Heir not succeeding under—Liability for arrears of rent owed by deceased—Enforceability of decree.*

The heir of a deceased tenant is liable for arrears of rent owed by the latter even if the former did not succeed to the holding under S. 24 of the Agra Tenancy Act. Any decree that may be obtained will be executable under S. 52, C. P. Code. (*Shirreff, J.M. and Sathe, A.M.*) DUNI CHAND *v.* MAQSOODI. **1942 O.W.N. (B.R.) 20 (1) = 1942 O.A. (Supp.) 17 (1) = 1942 A.W.R. (Rev.) 17 (1) = 1942 R.D. 36 (1).**

——**S. 25**—*Widow inheriting holding, remarrying—Effect—Right of sons by second marriage to inherit the holding.*

Where a widow inheriting a holding remarries, her rights are automatically extinguished from the date of remarriage. But if she is allowed to cultivate the holding as before she acquires fresh rights in her own right, if the zamindar knew of the remarriage and her sons by the second marriage are entitled to inherit those rights under S. 25 (2) of the Agra Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) HARNATH *v.* SUNDER BIBI. **1942 R.D. 732 = 1942 A.W.R. (Rev.) 393 = 1942 O.A. (Supp.) 424 = 1942 O.W.N. (B.R.) 604.**

—— **Ss. 25 (2) (b) and 26**—*Succession to occupancy holding—Husband if can succeed to wife succeeding her father prior to* 1901.

Where a daughter succeeds to her father's rights as a co-tenant in an occupancy holding prior to 1901, it is under the personal law and her right is only to a limited estate and it ceases on her death. Hence though she might die after 1926, the position would not be changed and her interest would pass by survivorship to the other co-tenants under S. 26, Agra Tenancy Act and her husband cannot inherit it under S. 25 (2) (*b*). (*Shirreff, S.M. and Sathe, J.M.*) SURAJBHAN *v.* JAGANNATH. **1942 R.D. 366 = 1942 O.A. (Supp.) 171 (2) = 1942 O.W.N. (B.R.) 277 = 1942 A.W.R. (Rev.) 151 (2).**

——**S. 26**—*Acquisition of holding, if for joint family—Onus—Evidence of payment of rent and possession of part of land—Value.*

The burden of proving that a holding has been acquired for the whole joint family lies under S. 26, Agra Tenancy Act, on the party which asserts jointness and not on the party in whose name alone the holding is shown in the papers. Mere possession of part of the land in

AGRA TENANCY ACT (1926), S. 32.

dispute and payment of rent direct to zamindar do not constitute conclusive evidence that the holding is joint. (*Shirreff, J.M. and Sathe, A.M.*) NAWAJA *v.* KEWAL. **1941 R.D. 1125=1941 O.A. (Supp.) 931=1941 A. W.R. (Rev.) 1162.**

——S. 32—*Effect of surrender on sub-tenancy—Rights of new lessee.*

When a tenant in chief surrenders, with the termination of his rights, the rights of the sub-tenant terminate under S. 32 of the Agra Tenancy Act. The new lessee becomes the landholder so far as the actual cultivation is concerned and is thus entitled to exercise his option as to whether the interest of the sub-tenant should be maintained or not. If he decides that he should not be maintained the former sub-tenant becomes a trespasser. His status remains the same irrespective of whether the lease conferred on the new lessee the rights of a non-occupancy tenant or any superior tenancy rights. (*Harper, S.M.*) MANGRU *v.* SAHDEI. **1942 O.A. (Supp.) 206=1942 A.W.R. (Rev.) 186=1942 O.W. N.(B.R.) 539.**

——S. 32 (1), Proviso—*Sub-tenant allowed to continue after extinguishment of interest of tenant in chief—Effect.*

According to the proviso to sub-sec. (1) to S. 32 of the Agra Tenancy Act, when the interests of the tenant in chief is extinguished and the landlord allows the sub-tenant to continue then all covenants previously binding and enforceable as between the tenant and sub-tenant thereupon become binding and enforceable as between the landholder and sub-tenant. His liability to pay the same rent which he was paying continues. (*Shirreff, S.M. and Sathe, J.M.*) KHUSHIYALI *v.* MUHEMA. **1942 O.A. (Supp.) 35=1942 A.W.R. (Rev.) 35=1942 O.W.N. (B.R.) 45=1942 R.D. 77.**

——S. 32 (3)—*Surrender of chief tenancy—Subsistence of sub-tenancy—Lease of tenancy in chief—If can be made only after expiry of sub-tenancy.*

When at the time of a surrender by the tenant in chief, the land is in possession of a sub-tenant entitled to retain possession of it, it is unnecessary for the zamindar to wait until the sub-tenancy rights of the sub-tenant expire before leasing out the tenancy-in-chief. (*Shirreff, J. M. and Sathe, A.M.*) KALLAN *v.* JHANDOO. **1941 O.A. (Supp.) 955 (2)=1941 A.W.R. (Rev.) 1207.**

——S. 35 (f)—*Dispossession of ex-proprietary tenant by a co-sharer—Extinguishment of rights—Period.*

Where one of the co-sharers dispossesses an ex-proprietary tenant and is in possession from 1342-F., it is not enough to extinguish the ex-proprietary rights of the tenant who has a period of 12 years within which to sue for the ejectment of the co-sharer and he is hence entitled to have his name retained as an ex-proprietary tenant in the khatauni. (*Shirreff, S.M. and Sathe, J.M.*) MEWA RAM *v.* DURGA DAS. **1942 O.W.N. (B.R.) 691=1942 O.A. (Supp.) 483.**

——S. 41 and U. P. Tenancy Act (1939), S. 54—*Refusal to acquire—Proper reason—Reasonableness of the application—Test.*

The reasonableness of the application for acquisition has to be judged from the grounds on which the zamindar desires the acquisition of the land in question and not from the consequences which the acquisition will entail to the tenant, such as his being left with very little other land for his maintenance which is not a ground for refusal to acquire under S. 41 of the Act. (*Harper, S.M. and Sathe, J.M.*) UMAKANT PANDE *v.* KANDHAIYA LAL. **1942 O.A. (Supp.) 226 (2)=1942 O. W.N. (B.R.) 522=1942 A.W.R. (Rev.) 200 (2).**

AGRA TENANCY ACT (1926), S. 44.

——S. 41 (1) (e) and U.P. Tenancy Act (1939), S. 54—*Construction—Acquisition for building houses to be let within Municipal limits—If can be made.*

The phrase 'necessary for the management or development of the estate' occurring in S. 41 (1) (*e*) of the Agra Tenancy Act does not qualify the words 'building houses' occurring in the beginning of that sub-clause and hence land can be acquired for building houses within Municipal limits even if those houses are meant for being let out or for personal occupation. (*Harper, S.M. and Sathe, J.M.*) UMAKANT PANDE *v.* KANDHAIYA LAL. **1942 O.A. (Supp.) 226 (2)=1942 O.W.N. (B. R.) 522=1942 A.W.R. (Rev.) 200 (2).**

——S. 41 (1) (e)—*Construction—Purpose of acquisition.*

The qualification of sub-Cl. (*e*) to Cl. (1) of S. 41 of the Agra Tenancy Act to the effect that the purpose must be for the management or development of the estate does not apply to the term 'houses' in that sub-section for if it did, there would be no need to repeat the words 'other buildings'. (*Harper, S.M. and Sathe, J.M.*) MOHAN LAL *v.* MANGAT. **1942 O.A. (Supp.) 226 (1)=1942 A.W.R. (Rev.) 200 (1)=1942 O.W.N. (B.R.) 521.**

——S. 44—*Date of trespass—Tenant-in-chief acquiescing in the possession and later treating it as trespass.*

Where a tenant-in-chief acquiesces in the possession of another for some time and then treats him as trespasser, it cannot be said as a general proposition that the other person becomes a trespasser from the time the tenant-in-chief treats him as trespasser. (*Shirreff, S. M.*) SUMMER *v.* RAM PRASAD. **1942 A.W.R. (Rev.) 124=1942 O. A. (Supp.) 141=1942 O.W.N. (B.R.) 222=1942 R.D. 288.**

——S. 44—*Decree under—Nature of—Limitation applicable.*

A decree under S. 44 of the Agra Tenancy Act is not a money decree and the limitation for such a decree is therefore one year under serial 5 of group F of the 4th Schedule of the Agra Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) RAM LAL SINGH *v.* MOAZZAM ALI. **1942 O.A. (Supp.) 170=1942 R.D. 391=1942 O.W.N. (B.R.) 302=1942 A.W.R. (Rev.) 150.**

——S. 44—*'Landholder' for purposes of—Widow of fixed rate tenant given certain plots in a compromise with the reversioner.*

Where certain plots were given to the widow of a fixed rate tenant for her maintenance under a compromise with the reversioner and she is to pay the rent, she is the tenant and being the tenant she is entitled to be regarded as landholder for the purpose of a suit under S. 44 of the Agra Tenancy Act. (*Shirreff, J.M.*) MATI CHAUBEY *v.* MANKI. **1942 O.A. (Supp.) 29 (2)=1942 A.W.R. (Rev.) 29 (2).**

——S. 44—*Liability to ejectment under—Tenant of* sir—*Ex-proprietary rights not claimed in proceedings under S. 36, U. P. Land Revenue Act.*

Where in proceedings under S. 36 of the U. P. Land Revenue Act ex-proprietary rights are not claimed, the tenant of *sir* becomes the non-occupancy tenant of khalsa land from the date of the termination of such proceedings and a suit under S. 44, Agra Tenancy Act, to eject such a tenant as a trespasser is misconceived. He could not be ejected as a trespasser. (*Sathe, J. M.*) SAMUN SINGH *v.* FAUJDAR LONIA. **1942 R.D. 371=1942 O.A. (Supp.) 172=1942 O.W.N. (B. R.) 282=1942 A.W.R. (Rev.) 152.**

——S. 44 and United Provinces Tenancy Act (XVII of 1939), S. 29 (a)—*Pendency of suit under S. 44 when new Act came into force—*

AGRA TENANCY ACT (1926), S. 44.

Defendant found to be non-occupancy tenant—Plaintiff if entitled to any relief—Rights of defendant.

Where the defendant in a suit brought under S. 44, Agra Tenancy Act is found to be a non-occupancy tenant and the suit is pending when the new Act came into force, the plaintiff not having taken any proceedings against the defendant as non-occupancy tenant, is not entitled to relief against him as such under that Act. It also follows that when the U. P. Tenancy Act came into force, the defendant, who had been non-occupancy tenant, became a hereditary tenant under S. 29 (*a*) of the U. P. Tenancy Act, when no longer liable to ejectment as non-occupancy tenant. (*Shirreff, S. M.*) RAGHUNANDAN SINGH *v.* NATHU. **1942 A.W.R. (Rev.) 405=1942 O.A. (Supp.) 431=1942 O.W.N. (B.R.) 491.**

——**S. 44**—*Right to sue under—Collecting co sharer in divided patti, if can sue to eject another co-sharer.*

A collecting co-sharer in a divided patti conld sue for the ejectment of another co-sharer who had taken possession of tenant's land without his permission. (*Shirreff, S.M. and Sathe, J.M.*) OUDH NARAIN *v.* SARDAR. **1942 O.A. (Supp.) 103=1942 O.W.N. (B.R.) 127=1942 R.D. 193=1942 A.W.R. (Rev.) 90 =1942 A.L.J. (Supp.) 30.**

——**S. 44 and U. P. Tenancy Act (1939), S. 180**—*Right to sue under—Lambardar if can sue to eject co-sharer taking unauthorized possession of plots included in an ex-proprietary holding.*

If a tenant in chief does not choose to take action against a person who has committed trespass against him, it is still open to the Zamindar to take action against the trespasser on his own account if he considers that the trespass committed against his tenant is likely to affect his (the Zamindar's) constructive possession over the land. Hence where a co-sharer in a Mahal takes unauthorized possession of plots included in an ex-proprietary holding, it is open to the lambardar to sue to eject him even if the tenants do not take any steps in the matter. (*Shirreff, S. M. and Sathe, J. M.*) BAHADUR SINGH *v.* SHER SINGH. **1942 O.W.N. (B.R.) 321=1942 A.W.R. (Rev.) 208=1942 O.A. (Supp) 234=1942 R.D. 410.**

——**S. 44**—*Right to sue under—Landholder—Widow of fixed rate tenant in possession of plots allotted for maintenance under compromise with reversioners—Trespasser, if can object to her status.*

Where a widow of a fixed rate tenant under a compromise with the reversioners is in possession of certain plots given to her for her maintenance and has to pay the rent herself in respect of them, she is a tenant and as such being regarded as a landholder for the purpose of a suit under S. 44, Agra Tenancy Act, when the compromise is not objected to by zamindar, a trespasser cannot question it and deny the right of the widow to file the suit. (*Shirreff, J. M.*) MOTI CHAUBEY *v.* MST. MANKI. **1942 O.W.N. (B.R.) 98 (2)=1942 R. D. 130 (2).**

——**S. 44**—*Right to sue under—Lessee of land possession of which was with a trespasser.*

A lease given by a Zamindar to another is not invalid merely because actual possession of the plot in question was with a trespasser. The lease is a valid one and the lessee acquires tenancy rights under it and is entitled to sue for the ejectment of the trespasser. (*Shirreff, S.M. and Sathe, J.M.*) INDERJIT *v.* CHEDU. **1942 O.A. (Supp.) 39 (1)= 1942 A.W.R. (Rev.) 39 (1)=1942 O.W.N. (B.R.) 88=1942 R.D. 120**

——**S. 44**—*Right to sue under—Zamindar if can sue for ejectment of trespasser when tenant does not choose to sue.*

AGRA TENANCY ACT (1926), S. 50.

If the tenant does not choose to take action against a person who commits trespass against him, it is still open to the zamindar to take action against the trespasser on his own account if he considers that the trespass committed against his tenant is likely to affect his (zamindar's) constructive possession over the land. (*Shirreff, S.M. and Sathe, J.M.*) OUDH NARAIN *v.* SARDAR. **1942 O.A. (Supp.) 103=1942 O.W.N. (B.R.) 127=1942 A.W.R. (Rev.) 90=1942 R.D. 193=1942 A.L.J. (Supp.) 30.**

——**S. 44**—*Suit under—Onus—Disputed entries in patwari papers—Value.*

In suits under S. 44, Agra Tenancy Act, the burden of proving that the land in dispute is settled with the defendant is on the latter who sets up such a defence. Entries in the patwari papers which have been in dispute ever since they were made, cannot constitute sufficient evidence for discharging the burden of proof. (*Shirreff, J.M. and Sathe, A.M.*) ASA RAM *v.* NIADER. **1941 R.D. 1111=1941 O.A. (Supp.) 945 (1)=1941 A.W. R. (Rev.) 1194 (1).**

——**S. 44**—*Suit under—Plea in defence of being tenant in chief—Onus—Marafat entry, if can create title.*

Where the defendant in a suit under S. 44 of the Agra Tenancy Act claims that he is the tenant in chief, the burden of proving his title lies on him. The mere existence of a *marafat* entry cannot create title and is totally inadequate to prove the title set up. (*Shirreff S.M. and Sathe, J.M.*) JOET AHIR *v.* TIMAL AHIR. **1942 R.D. 308=1942 O.W.N. (B.R.) 242=1942 A. W.R. (Rev.) 243 (2)=1942 O.A. (Supp.) 269 (2).**

——**S. 44**—*Suit under—Plea of ex-proprietary tenancy—Absence of evidence—Reliance on judgment not deciding question.*

The judgment in an arrears of rent suit against certain alleged ex-proprietary tenants dismissing it on the ground that defendants were either *sir* or *khudkasht* holders of the land in dispute cannot be used as an authority for holding in a subsequent suit under S. 44 of the Agra Tenancy Act against the same defendants, that they are ex-proprietors of the land in dispute in the absence of evidence to show how and when they became ex-proprietary tenants. (*Sathe, J.M.*) MEGH SINGH *v.* LALA RAM. **1942 A.W.R. (Rev.) 55 (2)=1942 O.W.N. (B.R.) 116=1942 O.A. (Supp.) 55 (2)=1942 R.D. 148.**

——**Ss. 44 and 99**—*Termination of right of tenant in chief—Date—Applicability of S. 99—Condition necessary—Treating suit under S. 44 as one under S. 99.*

A tenant in chief cannot lose his right merely because the zamindar has begun to treat a trespasser whom he had not put into possession as the tenant in chief. The time for a suit to eject such a tenant runs from the date the zamindar recognizes the trespasser as a tenant. Every litigious claim made by a defendant that he is holding the particular land from the zamindar does not render S. 99, applicable to the case. Before a case can fall under the section it must be shown that the claim to hold the land from the Zamindar is a *bona fide* one. A suit under S. 44 can be treated as one under S. 99. (*Shirreff, S.M. and Sathe, J.M.*) PUTTOO LAL *v.* HIRA LAL. **1942 O.A. (Supp.) 52=1942 A.W.R. (Rev.) 52=1942 O.W.N. (B.R.) 150=1942 R.D. 216.**

——**S. 50**—*Applicability—Document stating particular sum as legal rent which was being paid and asking for correction—Tenant if estopped from denying that the amount stated was not the actual rent—*

AGRA TENANCY ACT (1926), S. 54.

Effect of admission in the document—Document, if an agreement to enhance rent.

Where a document merely began by reciting that the legal rent which the tenant had been paying and which the Zamindar had been collecting was Rs. 75 although only Rs. 37 was shown in the Patwari's papers and ended up with a prayer that the correct figure of rent might be entered in the Patwari's papers and was signed by both the Zamindar and the tenant, it was held *firstly* that the document was nothing more than an application containing two admissions by the parties (1) as to the legal rent and (2) as to its having been paid to the Zamindar in the past. *Secondly* that where there was nothing to show that the admission operated as an estoppel against the tenant, it was open to him to prove that the legal rent was only Rs. 37 notwithstanding his admission to the contrary. *Thirdly* that the admission of the parties contained in the document that the legal rent was Rs. 78 had no evidential value under S. 21 of the Evidence Act, for what is the legal rent is a point of law and any figure said to be the legal rent by the parties could not become the legal rent merely for that reason and even if the Zamindar actually collected more than the legal rent it did not become legal rent and the difference between the two figures remained *Zaid Matalba* and was not recoverable by process of law. *Fourthly* that the document could not be taken to be an agreement for enhancement of rent. (*Sathe, J.M.*) PARCHAND BIR SINGH *v.* GAYA. **1942 R.D. 363 = 1942 O.A. (Supp.) 176 = 1942 O.W.N. (B.R.) 274 = 1942 A.L.J. (Supp.) 32 = 1942 A.W.R. (Rev.) 156.**

——**S. 54**—Suit under — Pendency when new Act came into force—If can be decided under S. 114 of the new Act. *See* UNITED PROVINCES TENANCY ACT, SS. 296 AND 114 AND AGRA TENANCY ACT, S. 54. **1942 A.W.R. (Rev.) 271.**

——**S. 69**—*Applicability—Sub-tenants.*

S. 69 of the Agra Tenancy Act does not apply to enhancement of a sub-tenant's rent. Hence a registered instrument is not necessary for the purpose and can be made by an oral agreement. (*Sathe, A.M*) HARI GOPAL *v.* AYUB ALI. **1941 O.A. (Supp.) 963 (2) = 1941 A.W.R. (Rev.) 1215 (2).**

——**S. 80 and U.P. Tenancy Act (1939), S. 181**—*Execution of order under—Notice—Necessity.*

The law does not require notice to be given by the Court before the execution of an order under S. 80, Agra Tenancy Act or S. 181 of the U. P. Tenancy Act. But notice would be necessary under O. 21, R. 22 if the order is executed more than a year after its date. (*Shirreff, S.M. and Sathe, J.M.*) MAHADEO *v.* SHEO PRASAD. **1942 O.A. (Supp.) 440 = 1942 A.W.R. (Rev.) 414 = 1942 O.W.N. (B.R.) 657.**

——**S. 80**—*Review of order under—Ground of absence of notice to one of the co-tenants—Availability——Service on others—Presumption.*

An application for review by one of a number of co-tenants should usually be refused, even if there is some doubt about the due service of notice on the tenant seeking review, when one or more of the co-tenants has on receipt of due notice had an opportunity of showing cause why he and his co-tenants should not be ejected. (*Shirreff, S. M. and Sathe. J. M.*) JOHRI MUL *v.* CHHIDDA. **1942 O.W.N. (B.R.) 182 (2) = 1942 R.D. 248 (2) 1942 A.W.R. (Rev.) 169 (2) = 1942 O.A. (Supp.) 189 (2).**

——**S. 81**—Application under—Claim for prior arrears not included—Fresh suit for—Bar of O. 2, R. 2. *See* C. P. CODE, O. 2, R. 2 AND AGRA TENANCY ACT, S. 81. **1942 O.W.N. 140.**

AGRA TENANCY ACT (1926), S. 99.

——**Ss. 81 and 93**—Notice under—Failure of tenant to appear—Application for possession after new Act—Proper procedure. *See* **U.P. TENANCY ACT, S. 296 AND AGRA TENANCY ACT, SS. 81 AND 93. 1942 A.W.R. (Rev.) 59.**

——**S. 82**—*Compromise of suit under—Ejectment on failure to pay costs before a date fixed—Execution of decree, on default of payment—If barred.*

Where a suit under S. 82 of the Agra Tenancy Act is compromised and a provision is made that on failure to pay the costs before a particular date the defendants would be ejected, the decree embodying the compromise could be executed on default in payment of costs. The executing Court cannot go behind the decree, and the compromise is neither unlawful nor does it contain any provision in the nature of penalty. (*Shirreff, S.M. and Sathe, J.M*) BANWARI LAL *v.* PUTTU LAL. **1942 O.W.N. (B.R.) 31 = 1942 R.D. 47 = 1942 A.W.R. (Rev.) 101 (1) = 1942 O.A. (Supp.) 116.**

——**Ss. 82 and 83 and U.P. Tenancy Act, Ss. 296 and 171**—*Suit under S. 82 of Agra Tenancy Act disposed of under S. 171 of U. P. Tenancy Act—Tenant if entitled to benefit of S. 83 of the Agra Tenancy Act.*

The benefit of S. 83 of the Agra Tenancy Act would not be available to a tenant in the case of a suit filed under S. 82 of that Act but disposed of under S. 171 of the U. P. Tenancy Act. (*Shirreff, S M. and Sathe, J. M.*) ABDUL RAHMAN *v.* HARISH CHANDRA. **1942 R.D. 441 = 1942 A.W.R. (Rev.) 201 (2) = 1942 O.A. (Supp.) 227 (2) = 1942 O.W.N. (B.R.) 352.**

——**S. 99**—Applicability—Conditions. *See* AGRA TENANCY ACT, SS. 44 AND 99. **1942 A.W.R. (Rev.) 52.**

——**S. 99**—*Applicability— Mere plea of holding under zamindar if enough.*

Any litigious allegation that the defendant is holding land through the zamindar is not enough to bring a case within the mischief of S. 99 of the Agra Tenancy Act. Before that section can apply it must be shown that the plea is a *bona fide* and real one and that the defendant does not possess a derivative title from the landholder. (*Shirreff, J.M. and Sathe, A.M.*) KALLAN *v.* JHANDOO. **1941 O.A. (Supp.) 955 (2) = 1941 A.W.R. (Rev.) 1207.**

——**S. 99**—*Competency to sue under—Person declared to be not in possession in proceedings under S. 145, Cr.P. Code—Plaintiff asserting to be still in possession.*

A suit under S. 99, Agra Tenancy Act by a person who has been declared to be not in possession in proceedings under S. 145, Cr. P. Code, is competent even though he might still assert that he has been and is in possession all along. (*Harper, S M.*) TARA CHAND *v.* NARAIN SINGH. **1942 A.W.R. (Rev.) 86 (1) = 1942 O.A. (Supp.) 122.**

——**S. 99**—*Ejectment set aside on review—Land settled with sub-tenant in the interval—Remedy of former tenant.*

Where after a tenant is ejected, the ejectment is set aside on review but in the meanwhile the land is settled by the Zamindar with the former sub-tenant, the only remedy which the old occupancy tenant has for obtaining back the land from the new tenant who was his former sub-tenant is to sue under S. 99 of the Agra Tenancy Act within six months of his being restored to possession after the setting aside of the ejectment order. If he fails to do that the possession of the new tenant cannot be thereafter disturbed. (*Sathe, J. M.*) ABDUL FARAH *v.* PALAT BIND. **1942 R.D. 389 = 1942 O.A. (Supp.) 175 = 1942 O.W.N. (B.R.) 300 = 1942 A.W.R. (Rev.) 155.**

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——**S. 99**—*Suit under—Awarding of damages not claimed—Legality.*

Where in a suit under S. 99 of the Agra Tenancy Act damages are claimed only for the period up to the filing of the suit, the Court is not justified in awarding damages for any subsequent period. (*Shirreff, S.M. and Sathe, J.M.*) MAITHILI SHARAN GUPTA *v.* RAM DAYAL. **1942 O.A. (Supp.) 71 = 1942 O.W.N. (B.R.) 112 = 1942 A.W.R. (Rev.) 65 = 1942 R.D. 144.**

——**S. 99**—*Suit under—Onus of proving it to be within time.*

The duty of proving that his suit under S. 99, Agra Tenancy Act, is not barred by limitation lies on the plaintiff. (*Harper, S.M.*) TARA CHAND *v.* NARAIN SINGH. **1942 O A. (Supp.) 122 = 1942 A.W.R. (Rev.) 86 (1).**

——**S. 99, and United Provinces Tenancy Act (1939), S. 183**—Suit under S. 99 of the Agra Tenancy Act filed on 30th June, 1939—Limitation—Law governing. *See* 1941 Dig., Col. 31. RAM KISHORE SINGH *v.* MEWA LAL. **1942 O.W.N. (B.R.) 130 = 1942 R.D. 196.**

——**S. 103 and United Provinces Tenancy Act S 82**—*Surrender—Limits to the rule requiring delivery of actual possession—Representation of minor.*

The dictum that no surrender is valid unless actual possession is delivered applies only to those cases where the tenants surrendering the holding are in physical possession themselves. A constructive possession cannot impair the validity of a surrender and this possession ceases from the date on which the oral or written surrender takes place. Where all the tenants of an occupancy holding surrender, a step-brother can represent his minor brother unless their interests are adverse. (*Shirreff. S.M. and Sathe, J.M.*) SATYADEO CHAUBE *v.* KESHO CHAUBE. **1942 R.D. 716 = 1942 A.W.R. (Rev.) 397 = 1942 O.W.N. (B.R.) 588 = 1942 O.A. (Supp.) 423.**

——**S. 103**—*Surrender—Validity— Surrender not in favour of all co-sharers—Actual surrender taking place—Effect.*

Per *Shirreff, J.M.*—Where there is an actual surrender the fact that the deed is in favour of some only of the landholders cannot affect the fact that the holding was relinquished in accordance with the deed and as such tenant's rights are extinguished by such surrender.

Per *Sathe, A.M.*—If the surrender is not in favour of all the co-sharers, the tenancy right must be held to be subsisting and not extinguished. (*Shirreff, J.M. and Sathe, A.M.*) CHAMPU *v.* RAGHUBIR SINGH. **1941 O A. (Supp.) 958 = 1941 A W.R. (Rev.) 1210.**

——**S. 107**—*Tenant leaving village and trying cultivation elsewhere—Another taking fields and paying arrears according to arrangement—Return of tenant and permitting of arrangement to continue—Creation of sub-tenancy or abandonment.*

Where owing to difficulties as regards rent a tenant leaves the village and seeks cultivation in another village and a third person takes his fields and agrees to pay the arrears and continues to do so for three years when the former tenant returns and he allows the arrangement to continue further, the arrangement is more of the nature of a sub-tenancy and there cannot be said to have been an abandonment by the tenant. (*Shirreff, S.M. and Sathe, J.M.*) MATHWARI *v.* NARAIN. **1942 O.A (Supp.) 67 = 1942 A.W.R. (Rev.) 61 = 1942 O W N. (B.R.) 213 = 1942 R.D. 279.**

——**S 107 (1)**—*Written notice—Necessity—Landholder aware of arrangement.*

AGRA TENANCY ACT (1926), S. 121.

If the landholder is aware of the arrangement, the written notice under S. 107 (1) of the Agra Tenancy Act is not indispensable. (*Shirreff, S.M.*) LILAWATI *v.* CHAOLI. **1942 A W R. (Rev) 120 = 1942 R D. 265 = 1942 O.W N. (B.R.) 199 = 1942 O.A. (Supp.) 137.**

——**S. 107 (4)**—*Order in proceedings under—If can establish abandonment by itself.*

The order of a tahsildar in proceedings for the publication of a notice under S. 107 (4) of the Agra Tenancy Act cannot have the effect of establishing abandonment if abandonment has not actually taken place. (*Shirreff, J.M.*) LILAWATI *v.* CHAOLI. **1942 A.W.R. (Rev.) 120 = 1942 R.D. 265 = 1942 O.W.N. (B.R.) 199 = 1942 O.A. (Supp.) 137.**

——**S. 121**—Relief under—Plaintiff not even in constructive possession. *See* 1941 Dig., Col. 35. MULLU *v.* CHHANGA. **1942 O.W.N. (B.R.) 75 = 1942 R.D. 107.**

——**Ss. 121 and 99**—*Suit for declaration—Real object—Possession—Maintainability—Dispossessed tenant barred from suing under S. 99, if can sue for declaration.*

Where a tenant dispossessed by persons claiming through the landlord remains out of possession for more than the period of limitation for a suit under S. 99, Agra Tenancy Act, cannot sue for a declaration when his real object is to obtain possession. (*Shirreff, S.M.*) REWA RAM *v.* TATA RAM. **1942 O W.N. (B.R.) 205 (1) = 1942 R.D. 271 (1) = 1942 A.W.R. (Rev.) 245 (1) = 1942 O.A. (Supp.) 271 (1).**

——**S. 121**—*Suit under by new tenant—Review of ejectment order—Declaration when could be obtained.*

A new tenant who takes land from the Zamindar after the ejectment of the former tenant takes it subject to any order which may be passed in favour of the former tenant in appeal, revision, or review. He can claim to retain possession and can obtain a declaration only if he can show that the subsequent order obtained by the old tenant was based on collusion or fraud. (*Shirreff S.M. and Sathe, J.M.*) LALTA PRASAD *v.* DULAR. **1942 O.A. (Supp.) 36 = 1942 A.W.R. (Rev.) 36 = 1942 O.W N. (B.R.) 69 = 1942 R.D. 101 = 1942 A.L.J. (Supp.) 20.**

——**S. 121**—*Suit under—Condition precedent to success of plaintiff's suit—Proof of tenancy.*

In order to succeed in a suit under S. 121 of the Agra Tenancy Act, the plaintiff must prove that he was admitted as a tenant to the land by all the co-sharers. He must establish his title by independent evidence irrespective of the strength or weakness of the defendant's case. (*Shirreff, S.M. and Sathe, J.M.*) JURI NONIA *v.* PATI SINGH. **1942 R.D. 284 = 1942 O.W. N. (B.R) 218 = 1942 A.W.R. (Rev.) 257 (2) = 1942 O.A. (Supp) 283 (2).**

——**S. 121 and U. P. Tenancy Act, S. 59**—*Suit under for declaration of joint tenancy in several holdings—Original common ancestor for all the land—If can lead to inference, if still belongs to his descendants—Effect of division between the branches under family arrangement.*

The mere fact that the land comprised in several holdings forming the subject-matter of a suit for declaration of joint tenancy thereof, belonged to a common ancestor is not enough to enable a Court to hold that it still belongs to all the descendants of the common ancestor. One essential thing which is necessary for this is that the identity of the holding must have continued unbroken. But where all the land belonging to the parties was divided between the branches by a family arrangement, it was *held* that it would be in-

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equitable to pick out some of the plots of the resultant holdings and to say that they belonged to both branches as they belonged to one common ancestor originally. (*Shirreff, S.M. and Sathe, J. M.*) MAHOMED YASIN *v.* MAHOMED SHAFI. **1942 A.W.R. (Rev.) 193=1942 O.W.N. (B.R.) 312=1942 O.A. (Supp.) 213=1942 R.D. 401.**

——**S. 121 and U. P. Tenancy Act (1939), S. 59**—*Suit under for declaration of joint tenancy in several holdings—Pooling of holdings and declaration of plaintiff as sole tenant of one holding by Court—Validity.*

In a suit under S. 121 of the Agra Tenancy Act for a declaration of joint tenancy in several holdings, it is not open to the Court to pool all the holdings together and to divide them between the branches on an equitable basis and to declare the plaintiff as sole tenant of one holding. (*Shirref. S. M. and Sathe, J. M.*) MAHOMED YASIN *v.* MOHAMMAD SHAFI. **1942 A.W.R. (Rev.) 193=1942 O.W.N. (B.R.) 312=1942 O.A. (Supp.) 213=1942 R.D. 401.**

——**S. 121 and Specific Relief Act, S. 42, proviso**—*Suit under S. 121 on the basis of subsisting possession—Trial Court finding him to be not in possession—Suit if barred as being merely for declaration.*

Where a plaintiff in a suit under S. 121 of the Agra Tenancy Act has always asserted that he was and is still in possession and he has also led evidence to that effect, the fact that the trial Court finds him to be out of possession cannot be urged as a ground for the dismissal of his suit as being one for mere declaration. (*Shirreff, S.M. and Sathe, J.M.*) JURI NONIA *v.* PATI SINGH. **1942 R.D. 284=1942 O.W.N. (B.R.) 218=1942 A.W.R. (Rev.) 257 (2)=1942 O.A. (Supp.) 283 (2).**

——**S. 123**—*Declaratory decree as to rate of rent—Competency of Tahsildar to make in rent suit.*

It is not in the competence of a Tahsildar to pass a declaratory decree as to the rate of rent payable in a suit for arrears of rent. (*Shirreff, J. M.*) RAM PRASAD *v.* KALI PRASAD. **1942 O.W.N. (B.R.) 42 (1)=1942 A.W.R. (B.R.) 70=1942 O.A. (Supp.) 76=1942 R.D. 58 (1).**

——**S. 123 (c)**—*Suit for declaration—Claim to rent at rate higher than that entered in khatauni—Non-production of either patta or kabuliyat—Oral evidence and entry in zamindar's papers in years of high prices—If can override entries in khatauni.*

When a Zamindar claims in a suit for declaration of rent, a rate of rent higher than that entered in the khatauni on the ground of an ejectment and re-admission and is not able to produce either patta or kabuliyat but only produces oral evidence and entries in his own papers as to realisation at higher rate only in years of high prices, his claim cannot succeed in the face of the entry in the khatauni. (*Shirreff, S. M. and Sathe, J. M.*) HAR MANGAL *v.* HANUMAN PRASAD NARAIN SINGH. **1942 O.W.N. (B.R.) 49=1942 R.D. 81=1942 A.W.R. (Rev.) 167=1942 O.A. (Supp.) 187.**

——**S. 127 and Registration Act (XVI of 1908), S. 17**—*Compromise in ejectment suit relating to rent—Registration—Necessity—Conditions.*

Agreements relating to rent when reduced to writing and filed in Court are inadmissible in evidence unless they are stamped and registered according to the law in force on the date of their execution except in so far as they relate to the subject-matter of the suit in which they were filed and have been embodied in any decree or order of Court. Where an alleged compromise in an ejectment suit is not confined only to the subject-matter in suit, but relates to the conferment of tenancy rights in future and it is not embodied in the decree, it cannot be taken into evidence, as regards the rent agreed to, if it is not registered. (*Shirreff, J.M. and Sathe, A.M.*) NIADER *v.* RAGHUNANDAN. **1941 R.D. 1112=1941 O.A. (Supp.) 950=1941 A.W.R. (Rev.) 1199.**

AGRA TENANCY ACT (1926), S. 197 (c).

——**S. 127 and Evidence Act, S. 68**—*Written lease attested by Quanango—Proof of—Sufficiency—Evidence of Patwari.*

In the case of a written lease attested by a Quanango under S. 127 of the Agra Tenancy Act read with S. 68 of the Evidence Act it is sufficiently proved by the evidence of the patwari as an attesting witness. (*Shirreff, S.M. and Sathe, J.M.*) GAYAN SINGH *v.* MIR SINGH. **1942 O A. (Supp.) 148 (2)= 1942 O.W.N. (B.R.) 255=1942 R.D. 344= 1942 A.W.R. (Rev.) 128 (2).**

——**Ss. 132 and 227**—*Theka of mortgaged property given to mortgagors on compromise of mortgagee's suit for profits—Subsequent suit by mortgagee against all co-sharers for arrears of profit—Maintainability—Proper remedy.*

Where as a result of a compromise of a mortgagee's suit for profits a theka of the mortgaged property was given to the mortgagors and subsequently a suit for profits was brought by the mortgagee against all co-sharers it was held Per *Sathe, J.M.*, affirming the decision of the lower Court—that the mortgagees were only entitled to claim the amount from the mortgagors and could have no claim against the remaining co-sharers of the khewat and that a suit against the former for arrears of rent could lie only under S. 132 of the Agra Tenancy Act and any amount which might be due from them could not be decreed in a suit for arrears of profits filed against all the co-sharers of the khewat and that the suit was therefore entirely misconceived.

Held, Per *Shirreff, S.M., dissenting*, that the claim for profits was a recurring one and that there was no reason why the fact that a previous suit was settled on certain terms should preclude a suit for subsequent arrears and that the suit as brought was maintainable. (*Shirreff, S.M. and Sathe, J.M.*) SHITAL PRASAD *v.* ASA RAM. **1942 A.W.R. (Rev.) 372=1942 O.W.N. (B.R.) 509=1942 O.A. (Supp.) 399.**

——**S. 187**—*Tenant from rent free grantee not liable to have rent fixed—Status of—If affected by absence of declaration of proprietary rights.*

Under the Agra Tenacy Act a person holding land from a rent free grantee is a sub-tenant unless the grantee was not liable to have rent fixed on his holding under S. 187. Where the grantee is not so liabte to have rent fixed the tenant is a statutory tenant under the Agra Tenancy Act and becomes a hereditary tenant on the coming into force of the United Provinces Tenancy Act. It cannot be said that his position is that of a sub-tenant merely because the rent-free grantee had not obtained a declaration that the land was held in proprietary right. (*Shirreff, S. M. and Sathe, J. M.*) GANGA SINGH *v.* JAMUNA PRASAD. **1942 R.D. 560 (2)=1942 A.W.R. (Rev.) 319=1942 O.A. (Supp.) 345=1942 O.W.N. (B.R.) 443 (2)=1942 A.L.J. (Supp.) 51.**

——**S. 192**—*Scope and object of.*

S. 192 of the Agra Tenancy Act deals merely with the case of a man who pays no rent and the question in issue is whether he is a rent-free holder or a trespasser. It appears to have been intended to meet the alternative claims which might arise in suits under Ch. XI of the Act which deals with rent-free grants only. (*Harper, S.M. and Shirreff, J.M.*) PATRU LOMIA *v.* PIRTHI PAL MISRA. **1941 O.A. (Supp.) 959=1941 A.W.R. (Rev.) 1211.**

——**S. 197 (c)**—*Grove-land—Law governing succession.*

AGRA TENANCY ACT (1926), S. 227.

The law of succession applicable to the case of 'groveland' as different from occupancy plots is the personal law of the parties. (*Shirreff, S. M.*) UDAI BHAN *v.* RUKMANIA. **1942 O.W.N. (B.R.) 304=1942 R.D. 393=1942 A.W.R. (Rev.) 259=1942 O.A. (Supp.) 285.**

——**Ss. 227 and 230**—*Collection of rent by co-sharer of land in other* Khatas *of same mahal—Suit for profits, if lies—Civil suit if barred.*

Where a co-sharer in a different *Khata* of the same mahal collects the rent of land situated in other *Khatas* of the same mahal, then under S. 227 of the Agra Tenancy Act he can be sued for profits. The language of S. 227 is wide enough to include a suit of this kind. Provided the land is situated in the same mahal, a profit suit will lie under S. 227 and a civil suit will be barred by S. 230 of the Act. (*Sathe, A.M.*) BENI PRASAD *v.* NAND KISHORE. **1942 O.W.N. (B.R.) 10=1942 O.A. (Supp.) 16=1942 A.W.R. (Rev.) 16=1942 R.D. 10.**

——**Ss. 242 and 248**—*Dismissal of application under O.* 21, *R.* 99, *C. P. Code, regarding sale in execution of Revenue Court decree for arrears of rent—Appeal—Forum.*

An appeal lies to the District Judge against the dismissal by the Assistant Collector, 1st class, invested with powers of Collector of an application under O. 21, R. 99, C. P. Code regarding a sale in execution of a Revenue Court decree for arrears of rent. (*Verma and York, JJ.*) HAKIM ALI *v.* SHANKER LAL. **I.L.R. (1942) A. 237=203 I.C. 93=1942 A.L.W. 409=1942 A.L.J. 416=1942 A.W.R. (H.C.) 155=A.I.R. 1942 All. 257.**

——**S. 249 and C. P. Code, (1908), S. 105**—*Order of remand—Remedy against—Scope of S.* 249—*If inconsistent with latter part of S.* 105, *C. P. Code.*

The Agra Tenancy Act does not provide for an appeal to High Court from an order of remand passed by a District Judge. But in a second appeal that might be preferred from the ultimate decree of the District Judge, the propriety or otherwise of the order of remand could be agitated. S. 249 of the Agra Tenancy Act is not inconsistent with that portion of S. 105, C. P. Code, which permits such a procedure. (*Iqbal Ahmad, C.J and Dar, J.*) RAO RANI *v.* GULAB RANI. **1942 A.W.R. (H.C.) 221=1942 A.L.W. 475=1942 A.L.J. 446=1942 O.A. (Supp.) 530(2)=A.I.R. 1942 A. 351.**

——**S. 251**—*Review of ejectment order—Good grounds for.*

The facts that the person ejected is in actual possession and that he had paid the decretal amount in the case in which ejectment took place, are not good grounds for reviewing an order of ejectment. (*Shirreff, S.M. and Sathe, J.M.*) RAMKRISHAN *v.* SHANKAR LAL. **1942 A.W.R. (Rev.) 127=1942 R.D. 263=1942 O.W.N. (B.R.) 197=1942 O.A. Supp. 144.**

——**S. 265**—*Right of lambardar to sue for rent—Absence of share in patti—Undivided mahal—Meaning—Proof of distraint for two years—If proves title or establishes custom to distrain.*

A lambardar cannot sue for rents in a patti in which he has no share—Ordinarily the term 'undivided mahal' in S. 265 of the Agra Tenancy Act would mean a mahal in which there had not been imperfect partition. But where the division in a particular case is even more complete and effective and the revenue free holders are not co-sharers in the mahal and where the co-sharers with the lambardar as their representative have no proprietary interest in a particular plot and no responsibility for revenue with regard to it, the lambardar cannot sue for rent in respect of it. The fact that the lambardar had twice successfully distrained in two years cannot prove his title to do so or even to establish a custom. (*Shirreff, S.M. and Sathe, J.M.*) KHAZUR *v.* HAR PRASAD. **1942 A.W.R. (Rev.) 121=1942 O.A. (Supp.) 138=1942 O.W.N. (B.R.) 225=1942 R.D. 291.**

AGRIC. LOANS ACT (1884), S. 5.

——**S. 266**—*Joint mortgagees—Right of one alone to sue for profits.*

Per *Sathe, J.M.*—A Suit by one only of two joint mortgagees for arrears of profits is bad under S. 266 of the Agra Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) SHITAL PRASAD *v.* ASA RAM. **1942 A.W.R. (Rev.) 372=1942 O.W.N. (B.R.) 509=1942 O.A. (Supp.) 399.**

——**S. 266 (1)**—*Right to file a suit under—Co-sharer permitted to hold himself out as sole landholder of khalsa land.*

Even in Khalsa land if the co-sharers permit one of the co-sharers to hold himself out as the sole landholder of any particular holding or holdings, he must be treated as an agent on behalf of all the others in respect of that holding or holdings and in that capacity would be entitled to file suits by himself under S. 266 (1) of the Agra Tenancy Act. (*Sathe, J.M.*) RAM LAKHAN PANDEY *v.* JAGDEO AHIR. **1942 O.W.N. (B.R.) 285=1942 O.A. (Supp.) 198 (1)=1942 R.D. 374=1942 A.W.R. (Rev.) 178 (1).**

——**S. 270**—*Intervener—Right of appeal.*

Per *Shirreff, J.M.*—An intervener who has been added in an arrears of rent suit as a defendant at his own request has no right of appeal.

Per *Sathe, J.M.*—Though ordinarily an intervener has no right of appeal, if the decree actually passed directly affects him, he should have a right of appeal. (*Shirreff, J.M. and Sathe, J.M.*) SAKHAWAT ALI *v.* MAHBOOB ALI. **1942 O.W.N. (B.R.) 79=1942 O.A. (Supp.) 46=1942 A.W.R. (Rev.) 46=1942 R.D. 111.**

——**S. 270**—*Payment to third party—Good faith—Test.*

The payment to a third party pleaded in a suit for arrears of rent, cannot be in good faith if the tenants had not been making the alleged payments to such third party up to the date of filing of suit. (*Shirreff, S.M. and Sathe, J.M.*) CHIMMAN LAL *v.* SUKHA. **1942 O.W.N. (B.R.) 141=1942 O.A. (Supp.) 129=1942 R.D. 207=1942 A.W.R. (Rev.) 112.**

——**S. 270 and U. P. Tenancy Act, S. 247**—*Plea of payment to third party in defence to suit for arrears of rent—Impleading of such third party—Necessity—Mandatory character of S.* 270.

Where in a suit for arrears of rent the tenant pleads in decree payment to a third party from whom he took the land then it is imperative that such party should be added as a party to the suit and the suit decided thereafter. The provisions of S. 270 of Agra Tenancy Act which require the addition are mandatory. (*Shirreff, S.M. and Sathe, J.M.*) BINDESHWARI PRASAD *v.* ALLAH DIYA. **1942 R.D. 203=1942 O.W.N. (B.R.) 137=1942 A.W.R. (Rev.) 162 (2)=1942 O.A. (Supp.) 182 (2).**

——**Sch. IV, Gr. F Serial 5**—Revival of prior execution application—Test. *See* LIMITATION ACT, ART. 182 AND AGRA TENANCY ACT, SCH. IV, GR. F. SERI. 5. **1942 R.D. 699=1942 O.W.N. (B.R.) 571.**

AGRICULTURISTS' LOANS ACT (1884), S. 5 and Land Improvement Loans Act (1883), S. 7 (1) (c)—*Recovery under—Difference between—Provision of Berar Land Revenue Code applicable to recovery under former Act.*

AJMER MUN. REGN. (1925), S. 93.

The amount recoverable under the Agriculturists' Loans Act, S. 5 in contradistinction to a sum recoverable under the Land Improvement Loans Act, S. 7 (1) (*c*) is a sum recoverable not as a land revenue but as an arrear of land revenue. Such a sum recoverable under the Act as applied to Berar is recoverable under S. 141 (*d*) and not under S. 141 (*c*) of the Berar Land Revenue Code. In the case of a sale for such a recovery what is transferred is not the holding free of all encumbrances but nothing more than the right, title and interest of the defaulter. Hence in a suit under S. 45 of the Berar Alienated Villages Tenancy Law against the tenant and such a purchaser, for the recovery of arrears of rent and cesses, the latter is liable to pay it, for he stands only in the position of the defaulter (*Grille, J.*) MAHADEO AMBADAS *v.* TRIMBAK KASHINATH. I.L.R. (1942) Nag 88=199 I.C. 51 =14 R N.268=1942 N.L.J. 56=A I.R. 1942 Nag. 50.

AJMER MUNICIPAL REGULATION (1925), Ss. 93, 94, Proviso and 234—*Recovery of amount sought under S. 234—Forum of appeal against order —Appeal beyond time—Permissibility.*

An amount sought to be recovered under S. 234 of the Ajmer Municipal Regulation is originally recoverable under S. 222 as a tax. Against an order of taxation an appeal lies to the Commissioner. Where an appeal in such a case is preferred to the Commissioner after the period of limitation owing to a mistaken choice of a different forum, the proviso to S. 94 would permit such an appeal if the appellate officer is satisfied that there was sufficient cause for the delay. (*Davies.*) MUNICIPAL COMMITTEE, AJMER *v.* EMPEROR. 1942 A. M.L.J. 16.

——**S. 233**—Failure to give notice under—Effect—Setting aside order of dismissal on appeal—Further appeal, if lies. *See* C. P. CODE, O. 43 R. 1 (U) AND O. 7, R. 11 (D) AND AJMER MUNICIPAL REGULATION, S. 233. 1942 A.M.L.J. 13.

AJMER TALUKDAR'S LOAN REGULATION (1911)—*Attached funds paid into Court prior to notification—Disposal—Procedure.*

There is no provision in the Talukdar's Loan Regulation as to what should be done with sums of money which reach the hands of Civil Courts by way of attachment and payments after the date of the notification. Return of the money to the person to whom a loan is to be made through the Commissioner is the only course open. (*Davies.*) GOKAL PRASHAD *v.* ALI RASUL 1941 A.M.L.J. 101.

ALLAHABAD HIGH COURT RULES GENERAL (CRIMINAL) CHAP. II, R. 1—Fresh vakalatnama in appeal—If necessary. *See* 1941 Dig., Col. 43. EMPEROR *v.* CHHAJJU. I.L.R. 1941 All. 633= 197 I.C 497=43 Cr.L.J. 173=14 R.A. 206.

ALLUVION—*Accretion found in one season—If "gradual".*

Where an accretion has been formed in one season and one season only, the process of accretion cannot be discribed as gradual. (*King, J.*) SUBRAMANIA AIYAR *v* PROVINCE OF MADRAS. 203 I.C. 271=1942 M. W.N. 633=A.I.R. 1942 Mad. 660=(1942) 2 M.L.J. 223.

ALLUVION AND DILUVION—*Dhardhura—Custom applying irrespective of change of course of river being either gradual or sudden—Reasonableness—Enforceability.*

A custom of dhardhura which applies irrespective of the change of the course of the river being either gradual or sudden, is not unreasonable and hence could be recognized and enforced by Courts. (*Allsop and Verma, JJ.*) RADHEY SHYAM *v.* RAM DHAN LAL. 1942 A.L.J. 661=1942 A.L.W. 629.

——*Entry after alluvion—Requisites to be proved.*

Per *Sathe, A.M.*—Before any land can be entered after its alluvion as the property of its former owners its identity on the other side of the river must be established. Such identity can be satisfactorily established only by juxtaposition and superimposition of maps of villages on both sides of the river. (*Shirreff, J.M. and Sathe, A.M.*) AVADHISHI PRATAP SINGH *v.* PASHUPAT PRATAP SINGH. 1941 O.A. (Supp.) 951=1941 A.W.R. (Rev.) 1200.

APPEAL. *See* PRACTICE—APPEAL.

ARBITRATION.

See also (1) C. P. CODE. SCH. II (NOW REPEALED).
(2) ARBITRATION ACT.

——*Arbitrator — Misconduct —Arbitrator having personal knowledge of some of the facts of the case—Effect of—Award—If invalid.*

No doubt cases might arise in which the use by an arbitrator of his personal knowledge as a ground for rejecting the evidence put before him might amount to misconduct; but much must depend upon the nature of the arbitration and the relations between the arbitrator and the parties. Where the arbitrator is from the family circle of the parties, he must necessarily make the inquiry in the light of his personal knowledge of the family, and so long as he bases his inquiry on the materials placed before him read in the light of his knowledge of the family, he cannot be held to be guilty of misconduct on that account.

Quaere: Whether as a matter of law an award can be invalidated merely because the arbitrator is personally acquainted with some of the facts upon which a decision is required. (*Wadsworth and Patanjali Sastri JJ.*) RAMANUJACHARIAR *v.* VATAPATHRA SAYEE THATHACHARIAR. 1942 M.W.N. 811=55 L.W. 814 =(1942) 2 M.L.J. 698.

——Arbitrator—"Misconduct" — Architect arbitrator —Latter expressing opinion or having money claim against one party—If ground of disqualification. *See* 1941 Dig., Col. 43. SAKHI MAHOMED HYDER *v.* THAROOMAL B. KIRPALANI. I.L.R. (1941) Kar. 505=197 I.C. 523=14 R.S. 109.

——*Award—Validity—Adjudication upon matters beyond limits of submission—Effect of.*

While it is correct that since the recent Arbitration Act there need be no form of submission, and the authority and jurisdiction of the arbitrator is to be ascertained from the agreement for arbitration, nevertheless when the parties set out specifically what disputes have arisen and what relief is sought in consequence of the alleged default by one party, those are the only matters upon which the arbitrators are required to inquire and to adjudicate. If they go beyond what was required for their consideration and decide questions beyond which they were required to adjudicate, their award is void *in toto*. (*Gentle, J.*) BENGAL JUTE MILLS *v.* JEWRAJ HEERALAL. 46 C.W.N. 957=A.I. R. 1943 Cal. 13.

——Award—Validity—Appeal from original board—Commencement of hearing by tribunal of members constituted under rules—Subsequent withdrawal of one member—Hearing of appeal concluded and award made by rest of the members—Effect—Award—If nullity—Board making appellate award consisting of more than the requisite quorum—If regularises proceedings. *See* ARBITRATION ACT, S. 16. 44 Bom.L.R. 485.

——*Award — Validity — Reference to arbitration under Arbitration Act—Subject-matter partly same as*

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subject-matter in pending suit—Reference to arbitration through Court also — Award by arbitrators under Arbitration Act — Validity — Jurisdiction to make award.

If there is a reference under the Arbitration Act, relating to the subject-matter of a pending suit in which also there is a reference to arbitration through Court under Sch. II, C.P. Code, the reference and the award under the Arbitration Act are bad, for there cannot be two conflicting jurisdictions relating to one and the same matter, the jurisdiction of the Court in the suit, and the jurisdiction of the arbitrators under the Arbitration Act, even though the subject-matter of the two proceedings is, in part only the same. In such a case, it is impossible to separate the award made on the reference to arbitration under the Arbitration Act into parts so as to separate the part relating to the subject-matter of the arbitration through Court, and the award must fall in its entirety. The validity of the award under the Arbitration Act cannot be upheld as arbitrators must be held to have acted without jurisdiction. (*Davis, C.J. and Weston J.*) GOHRAM SHAMBAY *v.* JUMO. **I.L.R. (1941) Kar. 570=199 I.C. 291=14 R.S. 175=A.I.R. 1942 Sind 41.**

——*Reference—Construction — Reference empowering arbitrator to decide dispute in such manner as he thought just and equitable—Power to charge property.*

The reference to arbitration related to a dispute over the estate left by deceased *M*. In the suit by *M's* widow *A* against *B* and *C*, the parties referred their dispute to an arbitrator who was given power under the reference to decide the dispute between the parties in such manner as appeared to him just and equitable. *B* raised an objection to the award that the arbitrator had no power to charge property belonging to him for *A's* maintenance which did not come to him under the award, but was already in his possession. This property was mentioned in the schedule to the plaint and a charge was placed on the whole of some survey number instead of being spread further upon parts of others, in the interest of *B* himself and all concerned.

Held, that the power given to the arbitrator under the reference was wide enough to cover the arrangement as to the charge of the widow's maintenance upon *B's* land. (*Davis, C.J. and Weston, J.*) JETHANAND PITAMBERDAS *v.* MIRABAI. **I.L.R. (1942) Kar. 36=202 I.C. 152=15 R.S. 24=A.I.R. 1942 Sind 79.**

——*Stay of suit—Discretion—Contract with arbitration clause—Subsequent contract creating new rights and imposing new liabilities—Suit on both —Stay of suit—If to be granted.*

Where a second agreement between the parties materially affects, alters and modifies the rights of parties under a prior agreement and confers rights and imposes liabilities which are not at all to be found in the original agreement an arbitration clause contained in the first agreement but not found in the second has no applicability to the new rights and liabilities so imposed and conferred. The Court will not in such a case stay a suit based on both the agreements. (*Blackwell, J.*) RAMDAS DWARKADAS *v.* THE ORIENT PICTURES. **203 I.C. 569=44 Bom.L.R. 739=A.I.R. 1942 Bom. 332.**

ARBITRATION ACT (IX OF 1899)—Reference under in respect of matter in dispute in pending civil suit—Award—Validity.. *See* ARBITRATION—AWARD. **I.L.R. (1941) Kar. 570.**

——**S. 2**—Agreement executed at Amritsar—Applicability of Act—Punjab Amendment Act (I of 1911), S. 2—Punjab Government Notification, 1915. *See* 1941 Dig., Col. 44. BOMBAY CO., LTD. *v.* RADHAKISAN. **I.L.R. (1942) Lah. 386=198 I.C. 744=14 R.L. 357.**

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——**S. 15**—Construction—"As if it were a decree of the Court"—Award filed in High Court—Execution—Limitation—Limitation Act, Art. 183—Applicability. *See* 1941 Dig., Col. 45. NADIRSHAW H. CONTRACTOR *v.* GAJRAJ SHEOKARANDAS. **I.L.R. (1942) Bom. 124=198 I.C. 505=14 R.B. 311=A.I.R. 1942 Bom. 34.**

——**S. 19**—Application made under Act of 1899—At time of hearing new Act of 1940 in operation—Application is governed by Act of 1899. *See* 1941 Dig., Col. 45. RUP CHAND *v.* PANNALAL. **200 I.C. 145=14 R.C. 678.**

——**S. 19**—Contract—Arbitration clause—Question as to interpolation in terms of contract—If falls within. *See* 1941 Dig., Col. 45. RUP CHAND *v.* PANNALAL. **200 I.C. 145=14 R.C. 678.**

——**S. 19**—Contract containing arbitration clause—One party alleging breach by other and claiming rescission of contract—Suit by other against him—Latter, if entitled to order staying suit. *See* 1941 Dig., Col. 46. KRISHNA *v.* HARIPADA. **199 I.C. 418=14 R.C. 546=A.I.R. 1942 Cal. 83.**

——**S. 19**—*Discretion of Court—Stay—If to be refused when difficult question of law is raised.*

S. 19 of the Arbitration Act confers a discretion upon the Judge. It is a judicial discretion, but there is nothing in the section which would justify the Court in holding that the discretion should not be exercised on the ground that a difficult question of law is raised. It cannot be laid down as a principle that merely because a difficult point of law is raised a Judge must necessarily exercise his discretion in a particular manner, and that he must refuse to stay the suit. (*Davis, C.J. and Weston, J.*) AYARAM ATAMPARKASH *v.* SUKHDEN & CO. **I.L.R. (1941) Kar. 587=199 I.C. 707=14 R.S. 197=A.I.R. 1942 Sind 57.**

——**S. 19**—*Dispute arising out of agreement—Contract terminated under its provisions—Stay of suit.*

Where a contract contains an arbitration clause and one party to it alleges breach by the other of provisions as to payment and claims to have terminated the contract on that ground under the provisions of the contract, the dispute is one arising out of the agreement and is referable to arbitration, and a suit in respect thereof should, therefore, be stayed. (*Lort Williams, J.*) KRISHNA KUMAR MUKHERJI *v.* HARIPADA BHATTACHARJYA. **I.L.R. (1941) 2 Cal. 534.**

——**S. 19**—*Stay of suit—Grant of—Allegations of fraud—Contract—Arbitration clause—Suit impeaching clause in contract as forged and alleging fraud—When to be stayed.*

Questions of fact and law upon which the jurisdiction of the arbitrator depends are for the Courts. It is not for an arbitrator to decide whether a contract, as put forward by one of the parties, contains forged clauses or interpolations or contains clauses which have been inserted as the result of fraud or mistake or the like. Such disputes go to the factum and existence of the contract and should be decided and must be decided by the civil Courts. A suit involving such questions should not be stayed and the issue as to whether an added or interpolated clause is binding on the party impeaching it should first be decided by the civil Court. Where there are serious allegations, which if established, would amount to a case of fraud, there is a *prima facie* case of fraud, and the civil suit should not be stayed. If the person opposing an application to stay a civil suit is charged with fraud, the Court will invariably refuse to stay; a charge of fraud is a very serious matter and any person charged with it has a right to have such a

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charge investigated by the Court. On the other hand if the party resisting an application to stay a civil suit is the party making a charge of fraud, different considerations will arise as the person charged does not desire trial by the civil Court. In such a case the Court will stay the suit unless a *prima facie* case of fraud, is made out. A suit in which a *prima facie* case of fraud has been established should not be stayed until it has been decided whether or not the added clause in respect of which fraud is alleged, is binding on the party alleging it. If the decision upon that question is in favour of the party impeaching the clause, further proceedings in the suit will be stayed and all other questions must be referred to arbitration as provided in the contract. (*Harries, C. J. and Manohar Lall, J.*) NARSINGH PRASAD BOOBNA *v.* DHANRAJ MILLS. **21 Pat. 544.**

——— **(X OF 1940).**—Applicability—Application under Act of 1899—Act of 1940 coming into force at time of hearing—Whether new or old Act applicable. *See* 1941 Dig., Col. 46. RUP CHAND *v.* PANNALAL. **200 I.C. 145=14 R.C. 678.**

——— **S. 14 (2)**—*Scope—Award—Application to set aside before filing of award—Competency.*

Under the Arbitration Act of 1940, it is not competent to a party to file an application for setting aside an award till the award has been filed in Court. (*Chagla, J.*) RATANJI VIRPAL & CO. *v.* DHIRAJLAL MANILAL. **I.L.R. (1942) Bom. 452=200 I.C. 32=14 R.B. 389=44 Bom.L.R. 175=A.I.R. 1942 Bom. 101.**

——— **S. 16**—*Powers of Court—Award by arbitrators—Appeal—Constitution of board under rules governing proceedings—Subsequent withdrawal of one member of board after part hearing—Award on appeal by rest of the members—If nullity—Procedure for Court.*

Where once a board of appeal has been constituted to hear an appeal from an award made by arbitrators on a reference, when that board has taken cognizance of the appeal, and has commenced to hear it, then that board constitutes the appellate tribunal, and it is not open to any member of that board to withdraw and for the remaining members to continue to hear the appeal, unless, of course, the parties agree to that course being adopted. In the absence of consent, the true rule is that the tribunal, which has commenced the appeal, must continue; and if any member is obliged to withdraw, and the parties are not willing to go on before the remaining members, then a fresh board must be constituted. The fact that under the rules governing the arbitration proceedings the board originally constituted consisted of more members than were necessary to hear the appeal and that even after the withdrawal of a member, the appellate tribunal would consist of more than the quorum requisite under the rules, would make no difference. When once a tribunal is constituted, it cannot be altered and the mere fact that more than the required number of members have been present at every hearing would make the proceedings regular. The parties are entitled to the united judgment of the appellate board, and it is no answer to the objection to the withdrawal of one member that his presence would probably have made no difference. The appellate board after the withdrawal of a member, is not properly constituted; and it cannot give a decision after such withdrawal in the absence of the consent of the parties. If it does so without such consent, the award made by the appellate tribunal is illegal and has to be set aside. It is really a nullity. In such a case the Court under S. 16 of the Arbitration Act can set aside the award of the appellate tribunal, but it will not set aside the award originally made by the arbitrators in the absence of misconduct of those arbitrators. The proper course is to set aside the purported award of the appellate tribunal and to refer the appeal back to the board to be dealt with according to law. (*Beaumont, C. J. and Somjee, J.*) PATEL BROS. *v.* SHREE MEENAKSHI MILLS, LTD. **I.L.R. (1942) Bom. 558=202 I.C. 188=15. R.B. 140=44 Bom.L.R. 485=A.I.R. 1942 Bom. 239.**

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——— **S. 17**—Limitation for application to set aside award expiring on Sunday—Such application made on following day—Judgment pronounced on award earlier on same day—Effect of. *See* LIMITATION ACT, S. 4. **I.L.R. (1942) 2 Cal. 160.**

——— **S. 34**—*A* appointed medical referee of insurance company under written agreement—Agreement containing arbitration clause—Company terminating *A's* services on ground of gross negligence—Suit by *A* for damages—Company, if entitled to have suit stayed. *See* 1941 Dig., Col. 46. HAPPY INDIA INSURANCE CO., LTD. *v.* KUMUD BANDHU CHKRAVARTY. **199 I.C. 768=14 R.C. 657.**

——— **S. 34**—*Stay of suit—Charge of fraud or misconduct made against a party—Latter desiring public investigation.*

If the claim made in the suit and the claim referred to arbitration under an arbitration clause are the same, the suit should *prima facie* be stayed. But the principle has often been acted on that if a dispute involves a charge, such as one of fraud, it ought not, if the party charged desires otherwise, to be decided by an arbitrator in privacy. If the facts alleged to constitute the fraud or misconduct would have mere evidentiary value in the investigation of the dispute they would not in themselves be a ground for refusing the stay of the suit on the application of either party. If on the other hand they are matters which would be directly in issue, then if the party against whom these charges are made wants the matter to be investigated in public, he ought to be allowed this, and the stay of the suit should be refused. (*Blagden, J.*) EASTERN STEAM NAVIGATION CO., LTD. *v.* INDIAN COASTAL NAVIGATION CO., LTD. **46 C.W.N. 933.**

ARMS ACT (XI OF 1878), Ss. 4 and 19 (f)—"Arms"—Spears electroplated and used for religious purpose. *See* 1941 Dig., Col. 47 EMPEROR v. SOBHA SINGH. **I.L.R. (1941) Lah. 789=43 Cr.L.J. 76=44 P.L.R. 56.**

——— **Ss. 14 and 19 (f)**—*Possession after expiry of license and before renewal— If offence.*

The possession of a gun by a person after the expiry of his license and before its renewal is in contravention of S. 14 and is an offence punishable under S. 19 (*f*) of the Arms Act. Note 11 appended to the conditions printed on the license granted in Form XVI, which prescribes the fees payable if the license is renewed within one month of the date on which it expired and those payable after one month from that date, merely provides a period of grace during which the application for renewal may be made and the fees payable thereon deposited. It does not lay down that the the *quondam* license-holder is entitled, as of right, to have the license renewed on payment of the fee mentioned. (*Tek Chand and Din Mahomed, JJ.*) EMPEROR *v.* BAKHSHI RAM. **203 I.C. 452=44 P.L.R. 486=A.I.R. 1942 Lah. 300.**

——— **S. 19 (f)**—Discovery of arms in house occupied by joint family—Presumption—Nature of—Weight to be attached to. *See* 1941 Dig., Col. 47. HARBANS SINGH v. EMPEROR. **I.L.R. (1942) Nag. 523=43 Cr.L.J. 62.**

——— **S. 19 (f)**—*Interpretation—'Control', meaning—Presumption of joint control—Circumstances,*

ARMS ACT (1878), S. 20.

In a case under S. 19 (*f*) of the Arms Act it is the primary duty of the prosecution to prove the possession of the accused, but there may be cases in which the circumstances are such that possession of the accused can safely be presumed, otherwise it will be impossible for the prosecution to secure a conviction. Hence the words 'and control' in the section must be taken in a wider sense and to mean something more than actual possession. Where it was found that the room from which the illicit arms were recovered was in the joint exclusive possession of the two accused and that other male members of the house lived in another portion of the house, it was held that the accused must be held to have the joint control of the room and that where there was no one willing to take the responsibility the only possible presumption the Court could make was that they were in joint control. (*Thomas, C.J.*) LALU SINGH *v.* EMPEROR. **201 I.C. 409=15 R.O. 95=1942 O.A. 271=1942 C.W.N. 379=1942 A.W.R. (C.C.) 250=1942 A. Cr.C. 109=43 Cr.L.J. 666=A.I.R. 1942 Oudh 448.**

——**S. 20**—*Applicability — Test— Indication of intention of concealment.*

For a conviction to fall under S. 20, Arms Act there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a Railway Official. Hence if a man carries an unlicensed weapon in his haversack when sitting in the platform of a Railway station, it must be conceived that it is his intention that his possession of unlicensed weapon may not be known to any public servant or Railway official and the case would fall under S. 20 of the Arms Act. (*Yorke, J.*) MAN SINGH *v.* EMPEROR. **202 I.C. 562=15 R.A. 179=1942 A.L.J. 383=1942 A.W.R. (H.C.) 261=1942 A.L.W. 503=1942 A.Cr.C. 159=43. Cr.L.J. 854=A.I.R. 1942 A. 349.**

ASSAM AGRICULTURAL INCOME-TAX ACT (1939), S. 7 (c)—"*Accrued due in the previous agricultural year*"—*If includes arrears.*

The phrase " rent which accrued due in the previous agricultural year" in S 7 (*c*) of the Assam Agricultural Income-Tax Act refers only to the current demand of rent for that year and does not include arrears. (*Derbyshire, C.J. and Panckridge, J.*) BABU BROJENDRA KISHORE ROY CHOUDHURY, *In the matter of.* **202 I.C. 66=15 R.C. 285=1942 I.T.R. 419=46 C.W.N. 492=A.I.R. 1942 Cal. 467 (2).**

ASSAM BIJNI SUCCESSION ACT (II OF 1931), —*Scope—If* ultra vires—*Government of India Act (1935), S. 45-A—Rules, Schedule I, Part II, Item* 51.

The Bijni Succession Act is not *ultra vires* the Assam Legislature. The fact that the subject-matter of the Act was not made a provincial subject by declaration of the Governor-General in Council under item 51 of Part II of Schedule I of the Rules under S. 45-A of the Government of India Act would not render the Assam Legislature incompetent to deal with it as a central subject when the sanction of the Governor-General in Council has been duly obtained. The Act being one regulating a central subject comes within the competence of the Assam provincial legislature when the necessary sanction is given. (*Sir George Rankin.*) JOGENDRA NARAYAN DEB *v.* DEBENDRA NARAYAN ROY. **201 I.C. 394=15 R.P.C. 15=5 F.L.J. (P.C.) 1=46 C.W.N. 897=8 B.R. 824=23 Pat.L.T. 419=A.I.R. 1942 P.C. 44 (P.C.).**

——**S. 2 (1)**—*Scope— Lands outside Assam—If affected.*

The words "together with all additions and accretions to the property comprised thereto" in S. 2 (1) of the

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Bijni Succession Act are not intended to apply to lands in other provinces outside Assam. (*Sir George Rankin.*) JOGENDRA NARAYAN DEB *v.* DEBENDRA NARAYAN ROY. **201 I.C. 394=15 R.P.C. 15=5 F.L.J. (P.C.) 1=46 C.W.N. 897=8 B.R. 824=23 Pat.L.T. 419=A.I.R. 1942 P.C. 44 (P.C.).**

ASSAM LAND AND REVENUE REGULATION (I OF 1886), S. 3 (b)—'*Estate*'—*If includes separate account.*

Obiter.—The definition of 'estate' in S. 3 (*b*) of the Assam Regulation is not wide enough to include a separate account for the purposes of S. 70 of the Regulation. (*Akram and Pal, JJ.*) SURENDRA NATH DAS *v.* ABDUL JALIL. **201 I.C, 130=15 R.C. 138=75 C.L.J. 109=46 C.W.N. 306=A.I.R. 1942 Cal. 354.**

——**Ss. 8 and 9**—*Fishery settled in Sylhet—Pattadar, if can acquire land-holder's status.*

The settlement of fishery included in the *jamabandi* of mauzas situated in the District of Sylhet under the rules framed under the Assam Land and Revenue Regulation, was on the basis of the fishery being treated as land. The pattadar can, therefore, acquire the status of a landholder in respect thereof under Ss. 8 and 9 of the Regulation. (*Biswas, J.*) MAHARAM ALI *v.* MOBARAK ALI. **46 C.W.N. 551.**

——**S. 71**—*Effect of—Right of purchaser at revenue sale.*

S. 71 of the Assam Regulation (I of 1886) only says that the auction-purchaser at a revenue sale takes the property sold free from all incumbrances. It does not say that the purchaser takes the property free from all other titles and interests existing in the property. (*Akram and Pal, JJ.*) SURENDRA NATH DAS *v* ABDUL JALIL. **201 I.C. 130=15 R.C. 138=75 C.L.J. 109=46 C.W.N. 306=A.I.R. 1942 Cal. 354.**

ASSAM MUNICIPAL ACT (I OF 1923), Ss. 141 and 144—Rent for land let out under S. 40—Remedy of Board for its recovery. *See* 1941 Dig., Col. 48. GOLAGHAT MUNICIPAL BOARD *v.* SONARAM GOHAIN. **197 I.C. 660=14 R.C. 371.**

——**S. 320**—Act of Board irregular—Notice if necessary. *See* 1941 Dig., Col. 49. GOLAGHAT MUNICIPAL BOARD *v.* SONARAM GOHAIN. **197 I.C. 660=14 R.C, 371.**

——**S. 320**—Validity of notice—Onus of proof. *See* 1941 Dig., Col. 49. GOLAGHAT MUNICIPAL BOARD *v.* SONARAM GOHAIN. **197 I.C. 660=14 R.C. 371.**

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See (1) PRATICE—ATTACHMENT,
(2) C. P. CODE, O. 38.

ATTORNEY. *See* LEGAL PRACTITIONER.

AUCTIONEER—Position and liabilities of—Sale not completed after initial deposit—Demand for return of deposit—Applicability of S. 230, Contract Act—Auctioneer's right to commission, law as to. *See* 1941 Dig., Col. 50. KALKA PRASAD *v.* SARJU PRASAD. **199 I.C. 302=14 R.A. 361=1941 A.L.J. 756=A.I.R. 1942 All. 90 (2).**

BANKER AND CUSTOMER—*Bank appointed Receiver—Moneys realised as receiver put into its current account under Court's order—If become assets of Bank—Companies Act, S.* 153.

Where pending the hearing of a suit relating to an estate a Bank is appointed Receiver of that estate, the moneys realised by it as Receiver and deposited in its own current account under the direction of Court remain the moneys of the owners of the estate and do not become the assets of the Bank. The Receiver and the Bank in such a case are the same person; and the Bank

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as a receiver cannot become in law its own creditor by going through the formality of opening a current account with itself. The fact that it does so under an order of Court can not possibly alter the legal position. If therefore, the Bank embarks upon a scheme of composition with its creditors under S. 153 of the Companies Act, it should frame a scheme on the footing that the moneys held by it as receiver do not form part of its assets, and the Bank can be directed to deposit such moneys into Court. (*Mukherjea and Sen JJ.*) BHOWANIPORE BANKING CORPORATION, LTD. *v.* BEJOY KUMAR. **46 C.W.N. 910=A.I.R. 1942 Cal. 556.**

——*Contract between—Law applicable—Bank having their only office in Travancore—Fixed deposit by customer residing in Bombay—Amount paid by him to Bank's agents in Bombay—Receipt issued in Travancore—Law governing transaction.*

A Bank incorporated in Travancore and having their only office in that State wrote to the plaintiff residing in Bombay, on enquiry made by him, informing him of their rates of interest on fixed deposits and enclosing the necessary opening forms for fixed deposit account. They also informed him that remittance made to their account with a certain Bank in Bombay would be accepted by them at par. The plaintiff remitted a certain amount to the Bank in Bombay and wrote to the Bank at Travancore enclosing the executed opening form, and also the specimen signature card and requesting the issue of a fixed deposit receipt for two years in his name and the Bank did so. Some time later, creditor's petitions were presented to the Travancore Court for winding up the Bank, and the Bank thereupon obtained the sanction of the Court to a scheme of arrangement approved by the majority of creditors. A question arose as to whether the plaintiff was bound by this arrangement and as to the law governing the contract of deposit,

Held, (*i*) that the law which governed a contract depended upon the intention of the parties, express or implied, and if no intention was expressed in documents as in this case, the Courts were left to infer the intention by reference to considerations where the contract was made and how and where it was to be performed, (*ii*) that the contract in this case was made by the offer by the plaintiff in the opening form accepted by the Bank by the issue of the deposit receipt and therefore, the contract of deposit was made at Travancore, (*iii*) that the terms of the deposit receipt which formed part of the contractual documents providing that the receipt must be sent in for payment to Travancore pointed strongly to payment at Travancore, that therefore, the place where the contract was to be performed was Travancore and that consequently the law of that state which made the scheme of arrangement binding upon the plaintiff governed the transaction, (*iv*) and that the fact that the interest payments were made by a cheque on Bombay had very little bearing on the legal position. (*Lord Atkin.*) STATE AIDED BANK OF TRAVANCORE *v.* DHRIT RAM. **69 I. A. 1=I L. R. (1942) Kar. (P.C.) 7=I.L.R. (1942) Bom 318=14 R.P.C. 115= 1942 M.W.N. 310= 55 L.W. 289=198 I.C. 753=8 B.R. 490=1942 Comp. C. 80=46 C.W N. 826=44 Bom.L.R. 557=1942 AW.R. (P.C.) 46=A.I.R. 1942 P.C. 6=(1942) 2 M.L.J. 256 (P.C.).**

——Deposit in names of husband and wife of salary of husband—Loan by husband alone—Set-off of one against another—Right to claim—Presumption as to money standing in account of husband and wife. *See* COMPANY—WINDING UP—SET-OFF. **(1942) 1 M. L.J 161.**

BANKER'S BOOKS EVID. ACT (1891), S. 2.

——*Loss of cheque intimated and payment countermanded—Payment under that cheque—Liability of Banker—Negligence.*

Where a customer intimates to the Bank the loss of a particular blank cheque and the number of it is given and payment under it is countermanded but the money is nevertheless paid under such a cheque, the customer cannot be debited with the amount. The Banker is no doubt under an obligation to honour his customer's cheques, but he is equally under an obligation not to cash them if he receives in good time express instructions of the customer countermanding payment though there is no express provision in the Indian law corresponding to S. 75 of the English Bills of Exchange Act which invalidates payment after a countermand by the customer, the Indian law recognizes a payment to be valid only when it is 'payment in due course' as defined in S. 10, Negotiable Instrument Act, (*i.e.*) in good faith and without negligence. (*Niyogi, J.*) BANSILAL ABIRCHAND *v.* SADASHEO. **1942 N.L.J. 139=1942 Comp.C. 116.**

——Payee of cheque—If has cause of action against drawee banker. *See* 1941 Dig., Col. 50. PUNJAB NATIONAL BANK LTD., *v.* BANK OF BARODA, LTD. **199 I. C. 802=14 R.C. 639.**

——Post dated cheques—Certification—Power of Manager of Bank. *See* 1941 Dig., Col. 50. PUNJAB NATIONAL BANK, LTD. *v.* BANK OF BARODA, LTD. **199 I.C. 802=14 R.C. 639.**

——*Trust—Customer having current account at one branch making over to that branch cheques drawn on another branch for realisation and credit—Bank suspending payment before receipt of intimation by customer of realisation—Right to preferential payment.*

A customer of the Bombay branch of the T. N. & Q. Bank, Ltd., having a current account in that branch, delivered on 16—6—1938, for realisation and credit in his current account, a cheque of that date for Rs. 1,500, drawn in his favour on the Anderson branch of the Bank at Madras and another cheque for a sum of Rs. 433 2-0 drawn in his favour on the same branch. According to the course of dealings with the bank he could draw on the said bank only after the said amounts were realised and intimation thereof had been given to him. But before he received such intimation, the bank suspended payment. The amount of Rs. 1500 was realised on 18—6—1938, and the other amount on 20—6—1938, by the Anderson branch at Madras. The customer claimed the amounts as held in trust for him.

Held, (1) that the proceeds of the cheques must be deemed to have been realised by the Bombay branch on the respective dates on which they were realised by the Anderson branch ; (2) that in regard to the amount of Rs. 1500, there was, on the facts, "ascertainment" that the proceeds had been realised by the bank, to make the amount available for drawing, the amount having been realised on 18—6—1938, and it being open to the customer to have easily ascertained that the amount was realised by the bank, but that in regard to the other amount of Rs. 433-2-0, it could not be held that there had been such "ascertainment". The customer was therefore entitled to rank as an ordinary creditor in respect of the sum of Rs. 1,500 and as a preferential creditor in respect of the sum of Rs. 433-2-0. (*Venkataramana Rao, J.*) MODERN AUTOMOBILES *v.* T. N. & Q. BANK, LTD. **1942 M.W.N. 342=A.I.R. 1942 Mad. 377=(1942) 1 M.L.J. 241.**

BANKER'S BOOKS EVIDENCE ACT (XVIII OF 1891), S. 2 (8)—Requirements not carried out—Effect. *See* 1941 Dig., Col. 51. FATIMA BEE BEE *v.* OFFICIAL TRUSTEE. **198 I.C. 564=14 R.B. 207.**

BAR COUNCILS ACT (XXXVIII OF 1926), S. 8 —*Madras Bar Council Rules, Rr.* 1 (*i*), 16 *and* 22—*Advocate enrolled in Rangoon High Court before separation of Burma—Application to Madras High Court after separation for enrolment there—Exemption from compliance with Madras Bar Council Rules—Power to grant—Enrolment fee under Art*, 30, *Stamp Act—If to be paid afresh.*

The petitioner, an advocate of the Rangoon High Court, who had obtained the law degree of the Rangoon University, was enrolled as an advocate of the Rangoon High Court long before the province of Burma was separated from British India under the Government of India Act of 1935. As a result of the invasion of Burma by the Japanese, the petitioner came over to Madras where he was born, and applied to the High Court at Madras for enrolment as an advocate of that High Court. The Bar Council of Madras passed a resolution under the proviso to R. 16 of the Madras Bar Council Rules, recommending exemption from strict compliance with the rules requiring study for one year as a pupil in the chambers of an advocate practising in Madras and the passing of the prescribed examination etc. The petitioner who had already paid the stamp fee under Art. 30 of the Indian Stamp Act to the Rangoon HighCourt for his enrolment there also applied for exemption from paying the stamp fee over again for his enrolment in the High Court at Madras.

Held, (1) that the case was a fit one for granting an exemption from strict compliance with the Madras Bar Council Rules relating to enrolment; (2) that the petitioner, having once paid the stamp fee, as required by Art. 30 of the Stamp Act to the Rangoon High Court, which had the status of an "Indian High Court" at that time, came within the exemption contained in that Article, and was not therefore bound to pay fresh stamp fee on his enrolment in the High Court of Madras. (*Leach, C.J., Krishnaswami Ayyangar and Somayya, JJ.*) KRISHNASWAMI, *In re*. **I.L.R. (1942) Mad. 663=202 I.C. 306=15 R.M. 481=55 L.W. 327=1942 M.W.N. 763=A.I.R. 1942 Mad. 455 =(1942) 1 M.L.J. 599 (F.B.).**

——**S. 10**—*Misconduct—Benami purchase of speculative interest in prospective litigation.*

The purchase of a speculative interest in a contemplated litigation by an Advocate benami in the name of his mother, by concealing his identity as the real purchaser, denial of the fact of the benami purchase and assertion that the mother was the real purchaser and production of false evidence in support thereof amount to misconduct which upon a strict view of professional ethics renders him unfit to be a member of the legal profession. (*Thomas, C.J. and Ghulam Hasan, J.*) PUBLIC PROSECUTOR *v.* KANHAIYA LAL SHUKLA. **1942 O.W.N. 756=1942 O.A. 614.**

——**Rules under R. 7**—*Scope—Mandatory or directory—Death of member of tribunal before signing report—Effect.*

The direction in R. 7 of the rules of procedure under the Bar Councils Act that all members of the tribunal shall sign their findings is mandatory. If a member of the tribunal dies before the report has been completed, that is, drawn up and signed, the tribunal ceases to be properly constituted. In such circumstances the report of the surviving members of the tribunal cannot be taken into consideration by the Court, and a new tribunal must be constituted and the investigation proceeded with *de novo*. (*Leach, C. J. Mockett and Kuppuswami Ayyar, JJ.*) AN ADVOCATE, *In the matter of*. **I.L.R. (1942) Mad. 428=199 I.C. 149=14 R.M. 554=55 L.W. 42=1942 M.W.N. 124 (1)=A.I.R. 1942 Mad. 267=(1942) 1 M.L.J. 160 (F.B.).**

BENGAL ACTS.

BENAMI—*Decree for costs against benamidar—If can be executed against beneficial owner.*

The executing Court is to execute the decree as it stands and cannot be asked to enter into a discussion of, or to decide the question as to who is beneficially entitled under the decree or against whom the decree is to be executed. Consequently, a decree for costs against a benamidar is not executable against the beneficial owner. The question of the liability of the beneficial owner must be raised in the suit in which the decree was passed. It cannot be raised in the execution proceedings, much less by a separate suit. (*Iqbal Ahmad, C.J., Ganga Nath and Dar, JJ.*) CHANDRA SHEKHAR *v.* MANOHAR LAL. **201 I.C. 695=15 R. A. 79=1942 A.L.J. 367=1942 A.W.R. (H.C.) 241= 1942 A.L.W. 478=A.I.R. 1942 All. 233 (F.B.).**

——*Nature and incidents of benami transactions—Purchase by father in name of son—Onus—Effect of S.* 82, *Trusts Act.*

In the case of benami transactions, in the sense of a real transaction, the benamidar becomes a trustee holding on a resulting trust. Hence in the case of a real as opposed to a purely fictitious purchase by a father in the name of his son in which the father admittedly provided the purchase money, a resulting trust in all cases arises in the father's favour, unless there is positive evidence of an advancement or gift. And, if a gift is alleged by the son in whose name the transaction stands, it is for him to prove it. S. 82 of the Trusts Act does not in any way alter the law. It says no more than that the Court has to be satisfied of two things before a resulting trust can be declared; first that some one other than the actual transferee provided the purchase money and secondly, that the person did not intend the money to be a gift. It does not say how the Court is to be satisfied of this latter fact and still less upon whom the onus of proving it is to lie. (*Yorke and Braund, JJ.*) SIDDIGA BEGAM *v.* ABDUL JABBAR KHAN. **I.L.R. (1942) All. 478=1942 A.L.W. 512= 1942 A.L.J. 534=1942 A.W.R. (H.C.) 197=A.I.R. 1942 All. 308.**

——*Bogus sale to defraud creditors—Transfer by benamidar—Suit for possession by transferee against owner—Plea of fraudulent nature of benami sale in defence—Availability.*

Where the real owner of a property transferred to a benamidar his property to defraud creditors and died and the benamidar transferred it to a person who was aware of the fraudulent nature of the transaction; in a suit by such transferee against the brother of the original owner for possession the defendant could set up the fraudulent nature of the original benami sale as a defence and the maxim *in pari delicto potior est conditio possidentis* and the maxim *ex turpi causa non oritur actio* would prevail against the principle *nemo suam turpitudinem est audiendus*. (*Digby, J.*) BISHWANATH *v.* SURAT SINGH. **1942 N.L.J. 586.**

——Presumption — Purchase by Indian Christian husband in name of wife—Effect—Doctrine of advancement—Application of. *See* TRUSTS ACT, S. 82. **(1942) 1 M.L.J. 528.**

BENGAL ACTS, ETC.

Agra and Assam Civil Courts Act (XII of 1887).
Agricultural Debtors Act (VII of 1936).
Alluvion and Diluvion Regulation (XI of 1825).
Cess Act (IX of 1880).
Court of Wards Act (IX of 1879).
Food Adulteration Act (VI of 1919).
Land Registration Act (VII of 1876).

BENGAL ACTS.

Land Revenue Assessment (Presumed Lands) Regulation (II of 1819).
Land Revenue Sales Act (XI of 1859).
Local Self-Government Act (III of 1885).
Money Lenders Act (X of 1940).
Municipal Act (XV of 1932).
Non-Agricultural Tenancy (Temporary Provisions) Act (IX of 1940).
Patni Regulation (VIII of 1819).
Permanent Settlement Regulation (I of 1793).
Public Demands Recovery Act (III of 1913).
Public Gambling Act (II of 1867).
Rent Act (X of 1859).
Rent Recovery Under Tenures Act (VIII of 1865).
Sanitary Drainage Act (VIII of 1895).
Tenancy Act (VIII of 1885).
Wakf Act (XIII of 1934).

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887), S. 8 (2)—Additional District Judge—Jurisdiction to deal with application for registration of wakf estate when transferred to him by District Judge. *See* MUSSALMAN WAKF ACT, S. 2. **1942 P. W.N. 94.**

——**S. 13 (2)**—*Order of re-distribution of business—Effect of—If effects transfer of jurisdiction.*

An order of a District Judge under S. 13 (2) of the Civil Courts Act does not effect a transfer of jurisdiction. It merely distributes, as a matter of convenience and with reference to certain local areas, the civil business amongst two or more Courts, each of which has jurisdiction over the whole area. In such cases neither of the Courts would lose the jurisdiction which it acquired under S. 13 (1) of the Act. (*Mukherjea and Biswas, JJ.*) MASRAB KHAN *v.* DEBNATH MALI. **I.L.R. (1942) 1 Cal. 289=201 I.C. 234=15 R.C. 144 =46 C.W.N. 141=76 C.L.J. 255= =A. I. R. 1942 Cal. 321.**

——**S. 21**—*Suit for partition—Trial Court's decision as to value of subject-matter—If determines right of appeal.*

In a suit for partition the decision of the trial Court as to valuation of the subject-matter of the suit for purposes of jurisdiction must be taken as final and conclusive during all the stages of the suit irrespective of what the parties might agree later on to be the actual market value of the suit properties and must determine the right of appeal under S. 21. (*Mukherjea and Roxburgh, JJ.*) PRIYA NATH ROY *v.* SRIDHAR CHANDRA ROY. **201 I.C. 456=15 R.C. 200=A.I.R. 1942 Cal. 60.**

BENGAL AGRICULTURAL DEBTORS ACT (VII OF 1936), S. 2 (6a)—*Munsif's Court exercising Small Cause Court jurisdiction—If Civil Court.*

The Court of a Munsif exercising the jurisdiction of a Court of small causes is a Civil Court within the definition given in S. 2 (6a) of the Bengal Agricultural Debtors Act. (*Roxburgh, J.*) FAZAL AHMED *v.* ETIM ALI. **200 I.C. 341=15 R.C. 58=46 C.W.N. 391=A.I.R. 1942 Cal, 337.**

——**S. 2 (6a)**—*Small Causes Court—If Civil Court.*

A Court of small causes constituted under the Provincial Small Cause Courts Act is not a "Civil Court" within the meaning of the Bengal Agricultural Debtors' Act. (*Edgley and Biswas, JJ.*) LILABATI DEBI *v.* AYSHA KHATUN. **202 I.C. 13=15 R.C. 296=75 C. L.J. 107=46 C.W.N. 390=A.I.R. 1942 Cal. 466.**

——**S. 2 (8)**—'Debt'—What constitutes. *See* 1941 Dig., Col. 53. JABED SHEIKH *v.* TAHER MALLICK. **197 I.C. 606=14 R.C. 368.**

BENG. AGRI. DEBTORS ACT (1936), S. 34.

——**S. 3 (2)**—Order that debt is nil—Legality. *See* 1941 Dig., Col. 54. BIRAJA MOHAN *v.* ABANINATH. **200 I.C. 105=14 R.C. 668=75. C.L.J. 87=A.I.R. 1942 Cal. 227.**

——**Ss. 13 (2) and 34**—Order under S. 13 (2)—If terminates proceedings before Board—Effect of, on notice under S. 34, *See* 1941 Dig., Col. 54. BIRAJA MOHAN *v.* ABANINATH. **200 I.C. 105=14 R.C. 668 =75 C.L J. 87=A.I.R. 1942 Cal. 227.**

——**S. 20 (as amended)**—*Applicability—Pending suit.*

S. 20 of the Bengal Agricultural Debtors Act, as amended by Act VIII of 1940, applies to a suit pending at the time when the Amending Act came into force, as that Act has not touched the substantive rights of the parties but has merely altered the procedural law by changing the forum in which a dispute as to whether a particular liability is or is not a debt is to be determined. (*Nasim Ali and Blank, JJ.*) BIRESWAR MORAL *v.* INDU BHUSAN KUNDU, **46 C.W.N. 1020.**

——**S. 20 (as amended)**—Retrospective effect. *See* 1941 Dig., Col. 54. JABED SHEIKH *v.* TAHER MALLICK. **197 I.C. 606=14 R.C. 368.**

——**S. 33**—Creditor failing to avail himself of certificate procedure to realise award amount—Suit to recover such amount—Maintainability. *See* 1941 Dig., Col. 54. NALINI KANTA MAITY *v.* BROJO MOHAN PATRA. **199 I.C. 450=14 R.C. 557.**

——**S. 34** — *Applicability — Mortgage sale set aside under O. 21, R. 90, C. P. Code, by executing Court —Order of remand by High Court — Subsequent notice for stay—Balance of purchase-money deposited by auction-purchasers before notice—Executing Court, if bound to stay proceedings.*

A sale held in execution of a mortgage decree was set aside by the executing Court on an application filed by the judgment-debtors under O. 21, R. 90, C. P. Code, and an appeal therefrom was also dismissed. But the High Court in revision remanded the case for a hearing on the merits. The executing Court received a notice under S. 34 of the Bengal Agricultural Debtors' Act before it proceeded to hear the application for setting aside the sale pursuant to the order of remand. The auction-purchasers deposited the balance of the purchase-money before the notice and by that deposit the entire decretal dues were satisfied.

Held, that the order of the High Court had the effect of wiping off the debt retrospectively and that as the debt was satisfied by the sale, S. 34 of the Bengal Agricultural Debtors Act had no application and that consequently the executing Court was not obliged to stay the proceedings, (*Edgley and Akram, JJ.*) BIJOY GOBINDA BASU *v.* NOAKHALI LOAN OFFICE, LTD. **46 C.W.N. 725=75 C.L.J. 499.**

——**S. 34**—"Barga" suit—Civil Court, if bound to stay. *See* 1941 Dig., Col. 55. SITARAM BHATTACHARJEE *v.* PANCHA MUCHI. **201 I.C. 399=15 R.C. 193=A.I.R. 1942 Cal. 229.**

——**S. 34**—Decree for ejectment under S. 66 (2) of the Bengal Tenancy Act—Application by tenant to Board within time specified in decree for paying arrears of rent—Notice to executing Court—Court, if can stay execution in respect of rent and proceed with ejectment. *See* 1941 Dig., Col. 55. KASHI NATH *v.* SONAULLA. **I.L.R. (1941) 2 Cal. 547=199 I.C. 795=14 R.C. 677 =A.I.R. 1942 Cal. 232.**

——**S. 34**—*Decree of Court in Native State—Transfer for execution to British Indian Court—Latter Court, if bound to stay on notice from Board.*

A claim under a decree obtained in a Court in a Native State is not a debt within the meaning of the

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Bengal Agricultural Debtors Act. Consequently, a British Indian Court to which the decree is transferred for execution is not bound to stay the proceedings on receipt of a notice from a Board under S. 34 of the Act. (*Henderson, J.*) AMANATULLA PRODHAN *v.* SUSHIL CHANDRA. **46 C.W.N. 610.**

——**S. 34**—*Insolvency Court receiving notice—If bound to stay proceedings.*

A District Judge exercising insolvency jurisdiction is bound to stay the proceedings before him on receipt of a notice under S. 34 of the Bengal Agricultural Debtors Act. The jurisdiction which he exercises under the Insolvency Act is one exercised by him as the principal Civil Court of the District and not as *persona designata* and the insolvency proceeding is one relating to a debt within the meaning of the Bengal Agricultural Debtors Act. (*Mukherjea and Blank, JJ.*) RAMKUMAR RAMDHAN *v.* SAMANTA KUMAR. **46 C.W.N. 667.**

——**S. 34**—Joint decree against several judgment-debtors—Some alone applying to the Board—Entire proceedings, if must be stayed, *See* 1941 Dig., Col. 55. UPENDRA NARAYAN *v.* SHIB CHANDRA. **199 I.C. 834=14 R.C. 654.**

——**Ss. 34, 20 and 2 (8)**—Liability incurred before and after 1st January, 1940, included in application to Board—Suit in respect of same liability—Partial stay—Permissibility. *See* 1941 Dig., Col, 56. SITARAM BHATTACHARJEE *v.* PANCHA MUCHI. **201 I.C. 399 =15 R.C. 193=A.I.R. 1942 Cal. 229.**

——**Ss. 34 and 20**—*Notice for stay—Duty of Court—Power to decide if debt is debt within Act.*

A Civil Court receiving a notice under S. 34 of the Bengal Agricultural Debtors Act is precluded by S. 20 of that Act from deciding whether a particular debt is a debt within the meaning of the Act or not. By that section the Board is to decide that matter. Under S. 34, the Civil Court must proceed on the footing that there is a debt within the meaning of the Act and on that footing must stay the proceedings until the Board decides that matter. (*Nasim Ali and Pal, JJ.*) DERASTULLA MULLIK & CO. *v.* RADHA KRISHNA DUTTA & SONS. **46 C.W.N. 455 (2).**

——**S. 34**—*Notice under—if operative outside Bengal.*

The Bengal Agricultural Debtors Act is operative only in the province of Bengal and no notice under S. 34 of the Act issued by a Debt Settlement Board in Bengal can be binding on any Civil Court functioning outside the province. Therefore, a Munsif in Assam is at liberty to ignore a notice issued by a Debt Settlement Board of Bengal under that section. (*Mukherjea and Biswas, JJ.*) M. NURUL HAQUE *v.* MOHINI MOHAN. **46 C.W.N. 455 (1).**

——**S. 34**—Order staying execution—Appeal—Revision. *See* 1941 Dig., Col. 56. GEO. MILLER & CO., LTD. *v.* PABNA MOTOR SERVICE. **I.L.R. (1941) 2 Cal. 543=198 I.C. 735=14 R.C. 488.**

——**S. 34**—'Proceeding for ascertainment of mesne profits' under O. 20, R. 12, C.P. Code—If one in respect of 'debt'—Such proceeding if must be stayed on receipt of notice. *See* 1941 Dig., Col. 57. JABED SHEIKH *v.* TAHER MALLICK. **197 I.C. 606=14 R.C. 368.**

——**(as amended by Act VIII of 1940), Ss. 34, 20, 8 and 2 (8)**—Rent suit for arrears both anterior and subsequent to 1st January, 1940—Application by tenant to Board mentioning entire claim as one item of debt—Notice by Board—Partial stay of suit—Permissibility. *See* 1941 Dig., Col. 57. MANAGER, NATOR RAJ WARD'S ESTATE *v.* GEDA BEWA. **200 I.C. 39=14 R.C. 656=75 C.L.J. 400.**

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——**Ss. 34 and 2 (8)**—*Rent suit for period prior and subsequent to 1st January, 1940—Problem of stay of suit—Best solution.*

Where a claim in a rent suit pending in a Court covers arrears prior to 1st January, 1940, as well as for a period subsequent to the said date, and that Court receives a notice from a Board under S. 34 of the Bengal Agricultural Debtors Act, the best way of solving the problem of what is to be done as regards the stay of the suit is to permit the plaintiff to withdraw the claim for the period subsequent to the 1st of January, 1940, with permission to bring a fresh suit on the same cause of action. (*Henderson, J.*) JOGINDRA NATH ROY *v.* GAFUR SHEIK. **46 C.W.N. 655.**

——**S. 34**—*Stay of proceedings—Property transferred by judgment-debtor pending execution—Transferee applying to Board—Court, if should stay execution proceedings on receipt of notice—Transfer alleged to be benami—Question, if to be decided by Court or Board.*

Where a judgment-debtor transferred a share in his putni while proceedings in execution of the decree against him was pending, and the transferee made an application under S. 8 of the Bengal Agricultural Debtors Act and the Board sent a notice under S. 34 of the Act to the executing Court.

Held, (i) that although the transferee was not personally liable for the decretal amount, he was bound to pay it if he wished to save the putni, that he was entitled to make a case that that liability was a debt within the meaning of S. 2 (8) of the Act and under S. 20 of the Act it was for the Board to decide whether that liability was a debt or not, and that the appropriate order for the Court to make on receipt of the notice would be that execution should go on against the judgment-debtor but that the tenure should not be brought to sale even to the extent of the interest of the judgment-debtor until the disposal of the application by the Board; (ii) that if the case of the decree-holder was that the transfer of the property was a mere *benami* transaction, that question must be decided by the Executing Court and not by the Board being outside the scope of S. 20 of the Act, and that if it was found to be benami the Court must proceed with the execution. (*Henderson, J.*) MAHAMAYA DEBI *v.* INDRA NARAYAN DAS. **202 I.C. 758=75 C.L.J. 344=46 C.W.N. 880=A.I.R. 1942 Cal. 532.**

——**S. 34**—*Stay of suit ordered wrongly—Suit, if abates on award made by Board.*

A suit wrongly stayed under S. 34 of the Bengal Agricultural Debtors Act by a Small Cause Court which is not a Court within the definition of 'Civil Court' in the Act, does not abate by reason of an award being made by a Debt Settlement Board. (*Henderson, J.*) SANKAR NARAIN GHOSAL *v.* AMAR NATH MAZUMDAR. **46 C.W.N. 845.**

——**Ss. 34 and 33**—*Suit for declaration of title and possession on basis of sale—Defence that transaction was mortgage—Notice from Board on application by defendant for settlement of mortgage debt—Jurisdiction of civil Court—If barred.*

A notice issued by a Debt Settlement Board under S. 34 of the B. A. D. Act can not prevent a civil Court from trying a suit which is one for a declaration of the plaintiff's title to a certain property based upon an alleged sale by the defendant and for recovery of possession thereof, although the main defence of the defendant is that the transaction was really a mortgage and that he has applied to the Board for settlement of the mortgage debt. Nor is there anything in S. 33 of the Act which bars the Court from proceeding to try the suit. (*Henderson, J.*) SACHIRANI BISWAS *v.*

BENG. AGRI. DEBTORS ACT (1936), S. 52.

NAGENDRA NATH. 203 I.C. 420=46 C.W.N. 951= A.I.R. 1942 Cal. 552.

——S. 52—*Interpretation — Period between dismissal of application by Board and review application—Period between dismissal of review application and filing of appeal therefrom—If may be excluded.*

S 52 of the Bengal Agricultural Debtors Act should be strictly construed. The words "the time during which such proceedings continued" in that section mean any period during which something in connection with the proceedings was going on. It does not include a period during which nothing was pending on the file at all. Therefore, the period between the dismissal of the application by the Board and the filing of an application for review, and the period between the dismissal of the review application and the filing of an appeal therefrom, cannot be excluded under the section. (*Henderson, J.*) PROBODH CHANDRA HALDAR *v.* BANI CHARAN KUNDU. 200 I.C. 797=15 R.C. 106=74 C.L.J. 545=46 C.W.N. 211=A.I.R. 1942 Cal. 289.

——(as amended by Act VIII of 1940), Ss. 34, 35—Applicability—Presidency Small Cause Court's decree—Notice from Board—If can operate to stay execution proceedings. *See* 1941 Dig., Col. 58. GEO MILLER & CO. LTD. *v.* PABNA MOTOR SERVICE. I.L.R. (1941) 2 Cal. 543=198 I.C. 735=14 R.C. 488.

BENGAL ALLUVION AND DILUVION REGULATION (XI OF 1825), S. 4 (1) and (3), para. 2—*Right to island chars—If can be claimed by subordinate tenant—Bengal Alluvion Land Settlement Act, S. 2.*

The words "tenure" and "estate" in S. 4 (1) have been used not merely as connoting different modes of holding property but as referring to the land or the property itself which is held by a proprietor or the different classes of tenants. In fact, the words "estate" "tenure" and "land" have been used as synonymous expressions. The word "estate" in S. 4 (1) and S. 4 (3), para. 2 is intended to bear the same meaning. Consequently the words "whose estate or estates may be most contiguous" in S. 4 (3), para. 2 indicate that the right to island chars with fordable channels can be claimed not only by the zemindar or the actual proprietor of an estate but also by any species of subordinate tenant who holds lands under such zemindar. The right of the subordinate tenant under S. 4 (3), para. 2 to claim title to the island chars is not taken away merely because S. 2, Bengal Alluvion Land Settlement Act (XXXI of 1858), does not mention that his right is protected inasmnch as a mere omission in later Act cannot take away a right created by an earlier statute. Moreover S. 1 of Act XXXI of 1858 contemplates only alluvial accessions which are dealt with under Cl. (1) of S. 4 of Regulation XI of 1825 and it does not speak of any island char formed on the bed of a river. (*Mukherjea and Sen, JJ.*) MONOHAR KAIBARTA *v.* JAGADISH CHANDRA. 202 I.C. 398=15 R.C. 330=46. C.W.N. 298=A.I.R. 1942 Cal. 357.

——S. 4 (3)—*Fordability of channel—Elements necessary.*

Under S. 4 (3) it is enough if the channel is fordable at any season of the year and the word "year" refers to the year in which the formation of the island took place. Where the channel could be crossed on foot during the dry season of the very year in which the char was formed and there is nothing to suggest that the men who crossed the channel were not men of average height or that the channel was crossed only in a zigzag manner the channel must be regarded as fordable. (*Mukherjea and Sen, JJ.*) MONOHAR KAIBARTA *v.* JAGADISH CHANDRA. 202 I.C. 398=15 R.C. 330=46. C.W.N. 298=A.I.R. 1942 Cal. 357.

BENG. CESS ACT (1880), S. 49.

——S. 4 (3)—*Title to island chars thrown up in navigable river—English and Indian Law.*

Under the English law an island rising up in a tidal and navigable river *prima facie* belongs to the Crown. A subject may acquire title to the island arising in tidal waters where the bed and the soil of the tidal river were in the subject before the island arose. Thus under the Law of England the title to such an island is regarded as an incident of the ownership of the bed. The Indian law [S. 4 (3)] follows the same principle subject to the doctrine of fordable channel which is peculiar to it. (*Mukherjea and Sen, JJ.*) MONOHAR KAIBARTA *v.* JAGADISH CHANDRA. 202 I.C. 398=15 R.C. 330=46 C.W.N. 298=A.I.R. 1942 Cal. 357.

——S. 4 (3)—*Tow path between holding and channel—Holding, if contiguous to island char.*

The path between the fordable channel and the plaintiff's land was not a regular or public pathway but a tow path forming part of the plaintiff's raiyati land used by boatmen during rainy season for the purpose of towing boats:,

Held, that the plaintiff's holding must be regarded as contiguous to the island char within S. 4 (3) in spite of the tow path. (*Mukherjea and Sen, JJ.*) MONOHAR KAIBARTA *v.* JAGADISH CHANDRA. 202 I.C. 398=15 R.C. 330=46 C.W.N. 298=A.I.R. 1942 Cal. 357.

——S. 6—Churs formed out of river bed since decennial settlement — Liability to assessment, *See* 1941 Dig., Col. 58. SECRETARY OF STATE *v.* MIDNAPORE ZAMINDARY CO., LTD. 46 C.W.N. 218.

BENGAL CESS ACT (IX OF 1880), S. 20—Construction and scope—Bar under—If applies to period before filing of cess return. *See* 1941 Dig., Col. 59. SAMANTA RADHA PRASANNA DAS *v.* BARENDRA KRISHNA DAS. 198 I.C. 122=14 R.P. 383=8 B.R. 331.

——S. 41—*Rent payable—Decree for rent and cess at specified rate—Subsequent reduction of rent in rent reduction proceedings—Effect on cess decreed—Decree for cess—If affected.*

There is nothing in Bihar Act IX of 1938 to suggest that after a decree has been passed, the decree-holder cannot recover the entire amount of the cess which has been decreed. Where a landlord has already obtained a decree for arrears of rent and for cess at a specified rate, and rent is subsequently reduced in rent reduction proceedings under S. 15 of Bihar Act IX of 1938, the decree for cess is not affected by the rent reduction proceedings, the cess being recoverable over and above the rent. The decree-holder is therefore entitled to recover the entire amount of cess decreed and there is no warrant for holding that cess must be charged under S. 41 of the Bengal Cess Act only on the amount of rent as reduced under S. 15 of Act IX of 1938. (*Harries, C.J. and Fazl Ali, J.*) INDERDEO SAHAI *v.* RAM RANBIJOY PRASAD SINGH. 21 Pat. 628=203 I.C. 418=9 B.R. 80=15 R.P. 172=A.I.R. 1942 Pat. 470.

——S. 49—*Certificate officer—Powers of—Power to add or implicate parties exempted by Cess Deputy Collector.*

Proceedings under S. 49 of the Bengal Cess Act are taken by the Collector or Cess Deputy Collector and may be said to originate the certificate proceedings. It is not open to the certificate officer to amend the certificate so as to implicate or add parties against whom the Collector or Cess Deputy Collector did not issue a requisition. The certificate officer's power to amend a certificate does not extend to including as certificate debtors persons whom the requiring officer (Collector or Cess Deputy Collector) has once

BENG. CESS ACT (1880), S. 58.

exempted under S. 49. (*Middleton.*) GUNESHWAR JHA *v.* JAIMOHAN. **8 B.R. 777.**

——**S. 58**—*Sum recoverable under—If "sum due"—Double the cess on holding payable on default—If liquidated debt and sum due.*

Sums recoverable under S. 58 of the Bengal Cess Act are sums due to the landlord. If a person is liable to pay a sum, such a sum is due from him. When the holder of an estate can recover double the cess from a tenure-holder who is in default, then when such a default occurs the tenure-holder is liable to pay double the cess, and that is a sum due from him to the landlord. Double the cess on a holding is certainly a liquidated debt and is a sum due. (*Harries, C. J., Fazl Ali and Dhavle, JJ.*) KAMESHWAR SINGH BAHADUR *v.* MAHADEOJEE DEOLA ASTHAN TEMPLE. **21 Pat. 634=201 I C. 582=15 R.P. 59=8 B.R. 802=23 P.L. T. 582=A.I.R. 1942 Pat. 329 (F.B.).**

——**S. 64-A**—*Applicability.*

S. 64-A of the Bengal Cess Act applies to proceedings before a decree and not to proceedings afterwards. (*Harries, C. J., Fazl Ali and Dhavle, JJ.*) KAMESHWAR SINGH BAHADUR *v.* SRI MAHADEOJEE DEOLA ASTHAN TEMPLE. **21 Pat. 634=201 I.C. 582=15 R.P. 59=8 B.R. 802=23 P.L.T. 582= A.I.R. 1942 Pat. 329 (F.B.).**

——**S. 64-A**—*Applicability—Double the amount of cess with interest under S. 58—Suit to recover—Limitation.*

Ch. IV of the Bengal Cess Act is a self-contained Chapter dealing with the rights and obligations of the parties in respect of a rent-free tenure or holding. The Legislature intended that all sums recoverable in respect of such holdings should be recoverable under S. 64-A of the Act and that the 4 years' period of limitation would apply. Any sum which is recoverable is a sum due from the person from whom it is sought to be recovered. S. 64-A would therefore apply to a sum to recover double the amount of cess with interest under S. 58. The fact that the holder of the estate has an option in the matter does not affect that question. (*Harries, C.J., Fazl Ali and Dhavle, JJ.*) KAMESHWAR SINGH BAHADUR *v.* SRI MAHADEOJEE DEOLA ASTHAN TEMPLE. **21 Pat. 634=201 I.C 582=15 R.P. 59=8 B.R. 802=23 P.L.T. 582=A.I.R. 1942 Pat. 329 (F.B.).**

——**S. 64-A**—*Scope and effect of.*

The effect of the introduction of S. 64-A into the Bengal Cess Act is that all claims under Ch. IV of the Act now fall under S. 64-A and not under S. 47 which originally covered claims to all sums payable under the Act. (*Harries, C. J., Fazl Ali and Dhavle, JJ.*) KAMESHWAR SINGH BAHADUR *v.* SRI MAHADEOJEE DEOLA ASTHAN TEMPLE. **21 Pat. 634=201 I.C. 582 =15 R.P. 59=8 B.R. 802=23 P.L.T. 582=A I.R. 1942 Pat. 329 (F.B.)**

——**Ss. 100 and 108 (b)**—"Officers of Crown"—Meaning of—Collector acting under S. 100. *See* 1941 Dig., Col. 79. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689 (S.B.).**

BENGAL COURT OF WARDS ACT (IX OF 1879), S. 10 (c)—*Words "for seven years thereafter"—Interpretation.*

In S. 10 (*c*) of the Court of Wards Act, the words "for seven years thereafter" are not attracted to decrees which do not carry any interest. Apparently, the Legislature thought that in cases of decrees carrying interest, if interest be paid regularly, no injustice will be done to the decree-holder if the levy of the execution be postponed for seven years more. (*Nasim Ali and Pal, JJ.*) MANAGER, KASIMBAZAR RAJ WARDS ESTATE *v.* RAKHAL DAS. **I.L.R. (1942) 2 Cal. 241= 46 C.W.N. 454.**

BENG. LAND REGIS. ACT (1876).

——**S. 10-C**—*Words "for seven years thereafter"—Interpretation.*

The words 'for seven years thereafter" in S. 10-C of the Court of Wards Act, mean for seven years after the expiry of four years from the date on which the Court of Wards assumed charge of the property. (*Sen, J.*) H. V. LOW & CO., LTD *v.* PRAMATHA NATH. **I.L.R. (1942) 2 Cal. 295=46 C.W.N. 662.**

BENGAL ESTATES PARTITION ACT (V OF 1897)—*Existence of separate* khewat—*If proof of formal partition barring partition under Act.*

The existence of a separate *khewat* is not always sufficient proof of a formal partition or that the present proprietors are in possession in severalty of lands representing their respective interests so as to bar a partition under the Bengal Estates Partition Act. (*Middleton.*) UDIT NARAIN MAHTON *v.* BIBI RASOOL BANDI. **9 B.R. 33.**

——**S. 34**—*Applicability—Order allowing application under S. 29—Appeal under S. 112 (1) (b)—Resort to S. 34—Necessity.*

In an appeal under S. 112 (1) (*b*) of the Bengal Estates Partition Act from an order under S. 29 that an application be admitted, it is not necessary for the Commissioner to invoke S. 34 of the Act at all. (*Middleton.*) UDIT NARAIN MAHTON *v.* BIBI RASOOL BANDI. **9 B.R. 33.**

BENGAL FOOD ADULTERATION ACT (VI OF 1919), S. 6—Ghee consigned to firm seized at railway station and found adulterated—Conviction of consignee—Sustainability. *See* 1941 Dig., Col. 61. CHAIRMAN, DISTRICT BOARD *v.* SREENIBASH. **14 R. C. 359=43 Cr.L.J. 107.**

BENGAL LAND REGISTRATION ACT (VII OF 1876), "*Possession*"—*Purchaser of interest of coparcener in Hindu joint family—Delivery of possession under O. 21, R. 95, C.P. Code—Mutation—Right of purchaser to be recorded along with other members of the family.

A recent delivery of possession under O. 21, R. 95, C. P. Code, cannot be disregarded in mutation proceedings unless there is very strong evidence to the contrary. Where the interest of a Hindu coparcener in a Hindu Mitakshara joint family is sold in execution of a money decree against him, the purchaser of such interest who obtains delivery of possession under O. 21, R. 95, C. P Code, can be registered in the place of the coparcener along with the other members of the family. (*Middleton.*) RANJIT SINGH *v.* JHAMELI SINGH. **8 B.R. 515.**

——*Scope—Property sold for cess under certificate sale—Purchaser obtaining registration of his name as proprietor—Subsequent sale of interest of original recorded proprietor by Civil Court—Purchaser at latter sale getting delivery and applying for registration—Right as against purchaser at certificate sale.*

The respondent purchased a property in 1933 at a certificate sale for arrears of cess, and he got his name recorded under the Land Registration Act in 1935. Subsequently in execution by a Civil Court, the interest of the original recorded proprietor was sold in June, 1938 and purchased by the petitioner, and this sale was confirmed in July, 1938 and delivery of possession was given in August, 1938, but the respondent was not a party to these proceedings. The petitioner having applied for registration of his name as purchaser at the Civil Court sale,

Held, there having been no delivery of possession to the petitioner as against the respondent, the Revenue Court could not deprive the respondent who had been recorded proprietor of his registration, which had been

BENG. LAND REGIS. ACT (1876), S. 78.

long completed and become final, and that succession in the case was not from the recorded proprietor. (*Middleton.*) CHANDRADIP NARAIN SINGH *v.* KULDIP SAHAI. 8 B.R. 408.

——S. 78—*Registration effected after dismissal of rent suit by trial Court—Decree, if can be passed by appellate Court.*

A landlord who effects registration of his name under S. 78 of the Bengal Land Registration Act after his suit for rent is dismissed by the trial Court and while it is pending in appeal, can get a decree passed by the appellate Court for the rent due to him. (*Edgley and Akram, JJ.*) GANGA PRASANNA *v.* KUMAR BRAHMA NIRANJAN. 46 C.W.N. 702.

BENGAL LAND REVENUE ASSESSMENT (RESUMED LANDS) REGULATION (II OF 1819), S. 31—"Lands"—Meaning of. *See* 1941 Dig., Col. 63. SECRETARY OF STATE *v.* MIDNAPORE ZAMINDARY CO., LTD. 46 C.W.N. 218.

BENGAL LAND REVENUE SALES ACT (XI OF 1859)—*Construction—Jurisdiction of Collector to sell—Omission to issue notification—If renders sale void—Latest date—Discretion of Collector.*

S. 5 of the Bengal Land Revenue Sales Act cannot be construed as meaning that the Collector is required to fix a date on or before which any arrears of revenue must be paid and that when no notification is issued and in consequence no such date is fixed, the Collector has no jurisdiction to sell the estate. The Legislature could not have intended to give the Collector a discretion in the matter. The intention of the Legislature in enacting S. 5 was to ensure that persons who had attached estates in execution of decrees and in certain cases the owners of estates themselves should be warned that there were arrears of revenue to be paid and that in default of their being paid before a certain date the estates were liable to be sold. The notification under S. 5 is to specify the latest date on which payment of arrears would be received. Such latest date to be inserted in the notification is one of the latest dates fixed by the Board of Revenue under S. 3; the discretion of the Collector in selecting the particular date is fettered by the direction that the notification should be published not less than 15 clear days preceding it. It is also well settled that when an estate is in arrears on one of the latest dates for payment fixed under S. 3, the Collector has jurisdiction to sell it, and that the omission to issue a notification under S. 5 in any case in which it is required does not render the sale void but a mere irregularity which may in certain cases render the sale liable to be annulled. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. 21 Pat. 682.

——*Purchase by co-proprietor at revenue sale brought about by him by intentional default—Another co-proprietor, when entitled to re-conveyance.*

In the case of revenue sales brought about by the intentional default of a co-proprietor, who ultimately purchases the estate at the designed revenue sale, another co-proprietor will be entitled to get a re-conveyance only if he was not in default and was not aware of his co-sharer's default in time (*i. e.*) before the kist date fixed under S. 3 of Act XI of 1859. (*Mitter and Khundkar, JJ.*) PRAMATHA NATH BISWAS *v.* PROVABATI GHOSE. 75 C.L.J. 207.

——S. 3—*Latest date of payment—Arrears of revenue shown as due in* Touzi *Register in respect of kist—Last day of* Kist—*If latest day of payment for arrears.*

When arrears of revenue are shown as being due in the *Touzi* Register from any estate in respect of any particular *Kist*, this must be taken as showing, until the contrary is proved, that the last day of the *Kist* is the latest day of payment for the arrears and that, if such arrears are not paid by that day, the estate will *prima facie* be liable to be brought to sale under S. 3 of Act XI of 1859. (*Edgley and Akram, JJ.*) RUKMINI KISHORE DE *v.* JAI CHANDRA DATTA RAY. I.L.R. (1942) 2 Cal. 125.

BENG. LAND REV. SALES ACT (1859), S 6.

——S. 3—Notification fixing three kists for estates whose annual revenue is less than Rs. 100—If applies to separate accounts. *See* 1941 Dig., Col. 64. MANMATHA NATH *v.* ANANGA KUMAR. 198 I. C. 152=14 R.C. 438.

——S. 5—*Applicability—Estate not attached but advertised for sale in execution of mortgage decree—Sale for arrears of revenue—Notification—Necessity.*

S. 5 of the Bengal Land Revenue Sales Act does not apply to sales of estates which have not been attached but have been advertised for sale in execution of mortgage decrees. The words "arrears of estates under attachment by order of any judicial authority" in the 3rd clause of S. 5 must be strictly construed and do not cover such cases of sale in execution of mortgage decrees. A notification under S. 5 is not essential though desirable. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. 21 Pat. 682.

——S. 5—"*Land Revenue*"—Nimaksayer—*If part and parcel of land revenue or "other demand" in clause 4 of S.* 5.

The words "other demands" in the fourth clause of S. 5 of the Bengal Land Revenue Sales Act must be construed on the *ejusdem generis* principle. *Nimaksayer* is clearly a sum annually payable to the Government by the proprietor of an estate in respect of it and hence is part and parcel of revenue for purpose of S. 5 of the Bengal Land Revenue Sales Act and is not one of the "other demands" enumerated in the fourth clause of S. 5. In view of the definition of revenue in Act XI of 1859 and Act VII of 1868, "land revenue" in S. 5 of the Act of 1859, cannot be construed as being the jama fixed at the time of Permanent Settlement. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. 21 Pat. 682.

——S. 5—*Omission to issue notification — Effect on sale.*

In a case where a notification under S. 5 of the Bengal Land Revenue Sales Act was necessary but was not issued, it is incumbent on a person challenging the sale on the ground of the omission to issue the notification to show that it was specifically taken as a ground in the petition of appeal to the Commissioner and that in consequence of this omission substantial injury had been caused to him. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. 21 Pat. 682.

——S. 6—*Mistake in notification as to extent of interest to be sold in individual mauza in residuary estate—If vitiates sale.*

A trivial error or mistake in mentioning the interest to be sold in one of many mauzas comprised in a residuary estate to be sold, in the notification issued under S. 6 of the Bengal Land Revenue Sales Act cannot be said to be a mistake which can in any way contribute to the property being sold for an inadequate price so as to render the sale invalid, when it is found that the notification was carefully drawn up and published and stated that what was to be sold was the ijmal or residuary estate, and it was intimated that if the property to be sold had not been exhaustively described, that is, if some mauza had been omitted or the interest shown against any particular mauza was in fact greater than

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that shown in the notification, the purchaser would obtain a valid title to that mauza or interest. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. **21 Pat. 682.**

——**S. 6**—Notice of sale—Rules and forms prescribed by Board of Revenue—Nature of—Non-compliance with them—Effect of. *See* 1941 Dig., Col. 64. SAKINA KHATOON *v.* KSHIRODE CHANDRA MANNA. **I.L.R. (1942) 1 Cal. 310=200 I.C. 506=15 R.C. 51=A.I.R. 1942 Cal. 173.**

——**S. 6**—*Notice to be served in Court of District Judge served in Court of Munsiff—Lotter acting as Judge's Registrar—Irregularity.*

Where a copy of the notice under S. 6 of the Land Revenue Sales Act required to be served in the Court of the District Judge was, in fact, served in the Court of the Munsiff who was acting as his Registrar, and it was so served owing to carelessness and not owing to any notion that that was the correct procedure, there is irregularity in the publication of the notice, and if this has led to substantial injury the sale is liable to be set aside. (*Roxburgh, J.*) PROVINCE OF BENGAL *v.* RAMLAL OSWAL. **201 I.C. 154=15 R.C. 143=46 C.W.N. 534 =74 C.L.J. 562=A.I.R. 1942 Cal. 308.**

——**S. 6**—*Notification—Sale of residuary estate for arrears due on it—Names of all proprietors—If to be set out in full.*

S. 6 of the Bengal Land Revenue Sales Act does not require that the names of the various proprietors of the estate to be sold should appear in the notification, where the estate belongs to a very large number of persons many of whom have taken the precaution of opening separate accounts and when it is only the residuary estate that is being sold for arrears due upon it. It is clearly unnecessary to set out in the notification the names of all the proprietors, as persons intending to bid at a revenue sale do not at all require such information in order to know what the property advertised for sale is. A statement in the column headed "Name of the proprietor of the property which will be sold" "RR. and others" would be sufficient. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. **21 Pat. 682.**

——**S. 6**—Sufficiency of notice—Test—Non-mention of mouza or Sadr jama—If fatal—One of two defaulting shares in arrear for two kists and the other for only one—One latest date of payment given in both cases—Notice, if sufficient. *See* 1941 Dig., Col. 64. SAKINA KHATOON *v.* KSHIRODE CHANDRA MANNA. **I.L.R. (1942) 1 Cal. 310=200 I.C. 506=15 R.C. 51=A.I.R. 1942 Cal. 173.**

——**S. 10**—Opening of separate account—Effect of—Liability to pay kist for period prior to separation—If remains joint with larger account. *See* 1941 Dig., Col. 65. MANMATHA NATH *v.* ANANGA KUMAR. **198 I.C. 152=14 R.C. 438.**

——**S. 11**—*Opening of separate account—Conditions.*

The jurisdiction of the Collector to open a separate account is absolutely dependent on the existence of the circumstances mentioned in S. 11 of Act XI of 1859. A separate account opened in the absence of those circumstances will be without jurisdiction. (*Akram and Pal, JJ.*) SURENDRA NATH DAS *v.* ABDUL JALIL. **201 I.C. 130=15 R.C. 138=75 C.L.J. 109=46 C.W.N. 306=A.I.R. 1942 Cal. 354.**

——**S. 12**—'*Tenure*'—*If includes interest of* Jotedar *or raiyat.*

The interest of a *Jotedar* or raiyat is not a tenure within the meaning of S. 12 of Act VII of 1868 and is, therefore, not protected. (*Biswas, J.*) ABDUL KARIM *v.* RAJCHENDRA. **199 I.C. 44=14 R.C. 518=46 C.W.N. 493=A.I.R. 9412 Cal 378.**

BENG. LAND REV. SALES ACT (1859), S. 25.

——**Ss. 13 and 14**—Joint sale of separate accounts—Legality. *See* 1941 Dig., Col. 65. SAKINA KHATOON *v.* KSHIRODE CHANDRA MANNA. **I.L.R. (1942) 1 Cal. 310=200 I.C. 506=15 R.C. 51=A.I.R. 1942 Cal. 173.**

——**S. 14**—Declaration for sale of entire estate—When may or may not be made. *See* 1941 Dig., Col. 65. SAKINA KHATOON *v.* KSHIRODE CHANDRA MANNA. **I.L.R. (1942) 1 Cal. 310=200 I.C. 506=15 R.C. 51 =A.I.R. 1942 Cal. 173.**

——**S. 14**—Sale of entire estate—Closing of separate accounts—Blending of arrears for periods prior and subsequent to abortive sale—Legality. *See* 1941 Dig., Col. 65. MANMATHA NATH *v.* ANANGA KUMAR. **198 I.C. 152=14 R.C. 438.**

——**S. 14**—Sale proclamation—Entry of arrears in wrong column—Validity of sale. *See* 1941 Dig., Col. 65. MANMATHA NATH *v.* ANANGA KUMAR. **198 I.C. 152=14 R.C. 438.**

——**S 25**—"*Appeal*" — *Nature—If an "appeal" under Limitation Act.*

There is no warrant for holding that an appeal under S. 25 of the Bengal Revenue Sale Act is not really an appeal as contemplated by the Limitation Act. The word "appeal" in S. 25 of the Act cannot be interpreted in any different sense from that in which it is used in the Limitation Act. (*Middleton.*) MAHOMED YUSUF *v.* ANANDI PRASAD. **8 B.R. 114.**

——**S. 25**—*Jurisdiction of commissioner—Appeal preferred beyond time—Order on after hearing—Revision—Interference by Board.*

A commissioner's order under S. 25 of the Bengal Revenue Sale Law is final and the Board will not ordinarily interfere with his order in revision; but where the commissioner entertains an appeal which is preferred beyond the period of limitation prescribed for it by S. 2 of the Bengal Act VII of 1868, he acts without jurisdiction, and his order on such an appeal is therefore liable to be set aside in revision by the Board of Revenue. (*Middleton.*) MAHOMED YUSUF *v.* ANANDI PRASAD. **8 B.R. 114.**

——**Ss. 25 and 26**—*Reference to Board by Commissioner—Competency—Non-issue of notice under S. 25—When amounts to hardship—Powers of Commissioner and of Board to set aside sale.*

The non-issue of a notice under S. 5 of the Bengal Revenue Sale Act cannot be held to be a hardship if it was not required by law. The mere fact that on a previous occasion a notice under S. 5 was issued when it was legally necessary to do so would not mean that it amounts to a hardship if the notice is not issued when there was no legal necessity to do so. In such a case it is not open to the Commissioner to make a reference to the Board under S. 26 of the Act. He can set aside the sale himself under S. 25, if he thinks the notice was legally necessary, but the Board cannot set aside the sale under S. 25. (*Middleton.*) SUBHKARAN DAS *v.* GOBIND MAHESHWAR PRASAD. **8 B.R. 428.**

——**Ss. 25 and 26**—*Setting aside of sale—Conditions to be imposed—If confined to compensation only.*

The conditions which the Board of Revenue may impose under S. 26 of the Bengal Revenue Sale law, while setting aside a revenue sale, are not limited to the compensation laid down in S. 25. It can direct the arrears and all Government dues and interest at $6\frac{1}{4}\%$ to be deposited as a condition for the setting aside of the sale. (*Middleton.*) AHMAD HUSSAIN *v.* JIWACHH SAHU. **8 B.R. 403.**

BENG. LAND REV. SALES ACT (1859), S. 26.

——**S. 26**—*Applicability—Appeal time barred under S 25—Jurisdiction of Commissioner to make recommendation—Limitation Act, Ss. 2 (10) and 18.*

An appellant under S. 25 of the Bengal Land Revenue Sales Act is not a person having a right to institute a suit or make an application within the meaning of S. 18 of the Limitation Act, an appeal not being a suit under S. 2 (10) of the Limitation Act. The Commissioner has therefore no jurisdiction to entertain under S. 25 of the Land Revenue Sales Act a time-barred appeal. Such an appeal not being a properly constituted appeal, he has no jurisdiction in respect of such an appeal to make a recommendation under S. 26 of the Act. (*Middleton.*) SAHDEO SAHAI SINHA *v.* NATHUNI LAL. **8 B.R. 397.**

——**S. 26**—*Powers of Board—Setting aside in revision on ground of hardship.*

The Board has power to interfere in revision in order to correct a mistake partly caused by the negligence of an officer of the Court of Wards in omitting to mention a separate number specifically and will, in revision, annul a revenue sale on the ground of hardship, under S. 26 of the Bengal Land Revenue Sales Act. (*Middleton.*) AHMAD HUSSAIN *v.* JIWACHH SAHU. **8 B.R 403.**

——**S. 31**—Purchase money of one defaulting share—Appropriation towards discharge of arrears due from another—Permissibility. *See* 1941 Dig., Col. 66. SAKINA KHATOON *v.* KSHIRODE CHANDRA MANNA. **I.L.R. (1942) 1 Cal. 310=200 I.C. 506=15 R.C. 51 =A.I.R. 1942 Cal. 173.**

——**S. 33**—*Fraud—Co-sharer not in default arranging with potential purchasers for reconveyance to him of his interest—Effect of.*

Where an estate has been sold in consequence of a default on the part of some of the co-owners of the estate in paying the arrears of revenue, there is no reason why a co-owner who has not himself been in default should not re-purchase the property or his interest in it if he can. Such conduct is not in any way fraudulent so as to render the sale void or invalid. And it makes no difference if, knowing that a sale is bound to take place, he arranges with potential purchasers to reconvey his interest to him in the event of the property being knocked down to any of them or even sets up an agent to outbid them and buy the property on his own behalf. That does not amount to fraud which will vitiate the sale. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. **21 Pat. 682.**

——**S. 33**—*Fraud—What constitutes—Ground for setting aside sale—Agreement among bidders not to bid against one another—Co-sharers parties to agreement—If vitiates sale.*

In order to justify a revenue sale being interfered with on the ground of fraud it must be shown that the fraud in question took place not during the sale, but prior to it, the sale having been directly brought about or engineered by means of it and that the perpetrator of the fraud were the co-owners of the proprietors who challenge the sale or otherwise stood in a fiduciary relationship to them. An agreement between the bidders at an auction sale not to bid against one another and later to divide the property between them, to which some co sharers are also parties, is not void as against public policy and cannot be held to be fraud vitiating the sale. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. **21 Pat. 682.**

——**S. 33**—*Revenue sale—Setting aside—Fraud—Inadequate price—Inference.*

The mere circumstance that at the revenue sale the property fetched a low price does not at all warrant a conclusion or even by itself raise a suspicion that the sale was brought about by fraud, so as to render it void or liable to be annulled. (*Agarwala and Shearer, JJ.*) RAM RIJHAN SAHI *v.* RAZIA BEGAM. **21 Pat. 682.**

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——**S. 37**—Rights of auction-purchaser. *See* 1941 Dig., Col. 66. APSERUDDIN HOWLADAR *v.* ABDUL KASEM. **200 I.C. 98=14 R.C. 666**

——**S. 37**—Valid sub-division of tenure—If operates as breach of continuity of tenure—Gati tenure existing since before permanent settlement sold at revenue sale—Sub-division of tenure with consent of dafaulting proprietor—Effect of—Position of purchaser—B. T. Act, Ss. 50 and 88. *See* 1941 Dig., Col. 66. AMULYADHAN SINHA *v.* KANAK CHANDRA. **199 I.C. 733=14 R.C. 624.**

——**S. 37, Excep. (1)**—*Burden of proof—Existence of tenure from Permanent Settlement—Presumption from long possession—When arises.*

In a suit for ejectment of an under-tenant under S. 37 of the Land Revenue Sales Act, the burden of proof lies on the defendant to prove that he comes within one or other of the exceptions mentioned in the section. Where the exception on which the defendant relies is that set out in the first clause, which saves an *istimrari* or *mokarari* tenure which has been held at a fixed rent from the time of the Permanent Settlement, the burden will be lightened to a great extent by giving effect to the presumption in his favour arising from proof of long and undisturbed possession. Each case must depend upon its own facts and circumstances as to what should be deemed to be sufficiently long possession for the purpose of justifying such a presumption. Where the tenure is proved to have been in existence in 1830, it is open to the Court to infer as a fact, in the absence of anything to the contrary, that the tenure did exist at the date of the Permanent Settlement. (*Biswas, J.*) ANANDA MOHAN FODDAR *v.* DURGA CHARAN DUTTA. **203 I.C. 258=46 C.W.N. 668=A.I.R. 1942 Cal 527.**

——**S. 37, Secondly**—Settlement—Meaning of. *See* 1941 Dig., Col, 67. APSERUDDIN HOWLADAR *v.* ABDUL KASEM. **200 I.C. 98=14 R.C.666.**

——**(VII OF 1868), S. 2**—*Appeal beyond time—Jurisdiction of Commissioner to entertain—Order on appeal—Liability to be set aside.*

The Commissioner is not competent even to entertain an appeal which is not preferred within the time prescribed by S. 2 of Act VII of 1868; and an order passed by him on an appeal preferred beyond the time so limited is without jurisdiction and must be set aside, although the appellate order is one which set aside an illegal order. (*Middleton.*) ABDUL LATIF *v.* MANZURUL HASSAN. **8 B.R. 290.**

——**S. 2**—Appeal to commissioner beyond time prescribed—Jurisdiction of commissioner to entertain. *See* BENGAL LAND REVENUE SALES ACT (1859), S. 25. **8 B.R. 114.**

——**S. 86-A**—Bridge constructed by District Board dismantled and reconstructed by Road Board—Sanction for levy of toll obtained only for old Bridge—Unrealised balance of sanction amount—If can be realised by levying toll on new bridge—Such balance and price of old materials used—If District Board's contribution to new Bridge. *See* 1941 Dig., Col. 68. PABNA DISTRICT BOARD *v.* RANJIT CHANDRA LAHIRI. **I.L.R. (1942) 1 Cal. 194=198 I.C. 788=75 C.L.J. 386= 14 R.C. 500=A I.R. 1942 Cal. 72.**

——**S. 86-A**—Sanction of Local Government—Omission to specify amounts to be recovered—Validity. *See* 1941 Dig., Col. 68. PABNA DISTRICT BOARD *v.* RANJIT CHANDRA LAHIRI. **I.L.R. (1942) 1 Cal. 194=198 I.C. 788=75 C.L.J. 386=14 R.C. 500=A. I.R. 1942 Cal. 72.**

BENGAL LOCAL SELF-GOVERNMENT ACT (III OF 1885), Ss. 10, 18-B and 19—*Election held under S. 10 (1) declared void under S. 18-B—Appointment by Local Government—Legality.*

If an election held under S. 10 (1) of the Bengal Local Self-Government Act is subsequently declared void under S. 18-B of the Act, the machinery which is provided in S. 19 should be put into operation. It is not within the competence of the Local Government to make an appointment under S. 10 (2), and if an appointment has to be made it should be by the Commissioner under S. 19 if the vacancy is not filled by an election within the time prescribed. (*Derbyshire, C.J. and Gentle, J.*) UPENDRA NATH MALLICK *v.* SASHI SHEKHAR BOSE. **46 C.W.N. 641.**

[Affirming. (*Biswas, J.*) SASHI SEKHAR BASU *v.* PROVINCE OF BENGAL. **I.L.R. (1942) 1 Cal. 555.**]

——**S. 28**—*Order of removal of chairman by Government—Application made by Board to Government for such removal not valid—Jurisdiction of Civil Court.*

The very foundation of the exercise of the power by the Local Self-Government under the last part of S. 28 of the Local Self-Government Act for the removal of the Chairman of a District Board for persistent neglect of duty as chairman is the application of the Board. If there was no valid application by the Board to the Government, the foundation of the order for removal by Government is gone and there is no reason why the Civil Court cannot declare that order as inoperative. There is nothing in the Act which takes away the jurisdiction of the Civil Court to try this matter either expressly or by necessary implication.

Per *Pal, J.*—A Chairman of a District Board as such has a legal character and is *prima facie* entitled to a relief from a Civil Court from any interference with his right in that character. The decision of the Board or of the Government finding that the Chairman persistently neglected his duty will not be conclusive and will remain liable to be questioned in a Court of law. (*Nasim Ali and Pal, JJ.*) LUTFAR RAHMAN *v.* WALIUR RAHAMAN. **75 C.L.J. 491.**

——**Ss. 30 (b) and 28**—*Validity of requisition—Some of requisitionists withdrawing from requisition—Remaining requisitionists less than statutory number—Resolution passed at meeting held thereafter—Order of Government thereon—If* ultra vires.

Where 15 out of 30 members of a District Board sent a requisition under S. 30 (*b*) of the Local Self-Government Act for a special meeting for the removal of the Chairman from his office but before the expiry of the period prescribed for the meeting to be called by the Chairman seven of the requisitionists withdrew from the requisition,

Held, that there was no requisition as required by S. 30 (*b*) of the Local Self-Government Act and that therefore the resolution passed by the Board at a meeting held thereafter for sending an application to the Provincial Government for the removal of the Chairman was not valid and that consequently the action taken by the Government thereon was *ultra vires* and ineffective. (*Nasim Ali and Pal, JJ.*) LUTFAR RAHMAN *v.* WALIUR RAHMAM. **75 C.L.J. 491.**

BENGAL MONEY-LENDERS ACT (X OF 1940), S. 2 (2)—*'Borrower'—Purchaser of part of equity of redemption.*

A purchaser of a part of an equity of redemption is a borrower within the meaning of S. 2 (2) of the Bengal Money-Lenders Act. (*Henderson, J.*) ABDUR RAHIM *v.* ABDUR RAUF. **200 I.C. 734 = 15 R.C. 68 = 46 C.W.N. 179 = A.I.R. 1942 Cal. 342.**

——**S. 2 (2)**—Borrower—Lessee from mortgagor. *See* 1941 Dig., Col. 77. SAILENDRA NATH *v.* AMARENDRA NATH. **198 I.C. 315 = 14 R.C. 448.**

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——**S. 2 (4)**—*"Commercial loan"—Loan taken by doctor to equip his dispensary with drugs.*

A loan taken by a doctor for the purpose of equipping his dispensary with surgical instruments and drugs to be administered to his patients is not a commercial loan. But it will be so, if his dispensary is really a shop. (*Henderson, J.*) HARI NARAYAN *v.* HARI PADA. **46 C.W.N. 844.**

——**S. 2 (4)**—*Commercial loan—Test—Intention of parties or actual user—If material.*

In determining whether a loan was a commercial loan within the meaning of S. 2 (4) of the Bengal Money-Lenders Act, what is material is the intention of the parties at the time when the loan is taken and it must be intended to be used solely for business purposes, but whether it was actually used or not is not material except that it might throw some light on the original intention. (*Mukherjea and Blank, JJ.*) GURUPADA BHOWMIC *v.* UPENDRA NATH. **46 C.W.N. 774.**

——**Ss. 2 (8) and 36**—*Preliminary mortgage decree—Interest due between dates of decree and of payment—If comes within definition—Total interest up to date fixed for payment exceeding maximum allowed by S. 30 but not interest up to date of decree—Decree, if may be repened.*

Where a preliminary mortgage decree directs an account to be taken of what is due for principal and interest on the mortgage at the date of that decree and also of what will be due for interest on the principal from the date of the decree up to a date six months subsequent to the date on which the report is submitted to the Court for counter-signature, and further directs the payment of the amount found due on the report within six months of the date of the counter-signature, the interest awarded to the mortgagee by the preliminary decree on the principal sum found due for the period between the date of that decree and the date fixed therein for payment is interest within the meaning of S. 2 (8) of the Bengal Money-Lenders Act. It follows therefore that although the amount of interest due on the mortgage bond calculated up to the date of the passing of the preliminary decree is not in excess of the maximum allowed by S. 30 of the Act, if the total amount of interest calculated up to the date fixed for payment is in excess of that maximum, the judgment-debtor is entitled to apply under S. 36 of the Act for relief from the payment of this excess of interest and claim that the decree should be reopened and a new instalment decree passed. (*Sen, J.*) MOHINI MOHAN ROY *v.* RAI ASHUTOSH GHOSH. **I.L.R. (1942) 1 Cal. 395 = 201 I.C. 372 = 15 R.C. 187 = 46 C.W.N. 159 = A.I.R. 1942 Cal. 367.**

——**S. 2 (12)**—*Bond given for securing unpaid price—Whether loan—Tests.*

It cannot be laid down that in no circumstances can a bond ostensibly given for securing the unpaid price be regarded as one for a loan. In order to determine the question whether a particular transaction amounts to a loan, the substance and not the form must be looked to, and the facts and circumstances attending it must be taken into consideration. If the conclusion be that it was really an interest-bearing investment, it would be a loan. (*Mitter and Sen, JJ.*) FATEH CHAND *v.* AZIMUDDIN. **47 C.W.N. 52.**

——**S. 2 (12)**—*Commercial loan—Test—Inference from user—If legitimate.*

In order to determine whether a loan is a commercial loan the material question would be what was the intention at the time when the loan was taken. If there is no indication in the instrument on which the loan was

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advanced it would be legitimate to make inferences from the user to which the money was put to immediately or shortly after the loan was advanced and from other facts and circumstances of the case. To be a commercial loan the money must be borrowed with the intent of using the *whole* of it for a commercial venture. (*Mitter and Sen, JJ.*) FATEHCHAND *v.* AZIMUDDIN. **47 C.W.N. 52.**

——**S. 2 (12)**—*Nature of transaction—Sale—Purchase money paid partly in cash and partly by execution of pronote carrying interest—Transaction, if loan.*

Where on the seller insisting upon full payment the purchase money is paid partly in cash and partly by the execution of a hand-note carrying interest at a certain rate, the transaction amounts to a loan within S. 2 (12). (*Henderson, J.*) NIRODE BARANI DEBYA *v.* SISIR KUMAR MUKHERJEE. **203 I.C. 584=A.I.R. 1942 Cal. 616.**

——**Ss. 2 (12) and 36**—Security bond given by vendee for price of goods already supplied and to be supplied in future—Interest made payable only if vendee failed to pay money within certain time—Transaction if a loan. *See* 1941 Dig., Col. 69. KUNJA BEHARI PAL *v.* SATYENDRA NATH. **198 I.C. 303=14 R.C. 446.**

——**Ss. 2 (22) and 36**—*Application under O. 21, R. 90, C. P. Code—If suit to which Act applies—Termination of execution case before 1st January, 1939—Application under O. 21, R. 90 pending on that date—Application for review—If competent.*

An application to set aside an execution sale under O. 21, R. 90, C. P. Code, is not "a suit to which this Act applies" within the meaning of S. 2 (22) of the Bengal Money-Lenders Act, nor does it, if successful, have the effect of turning an execution case which had terminated before 1st January, 1939, into such a suit. It makes no difference that the application is made *bona fide*. Where, therefore, possession of the property which was sold in execution of a decree was delivered before 1st January, 1939, and only an application under O. 21, R. 90, C. P. Code, was pending on that date, there is no suit to which the Act applies, and consequently no application for review under S. 36 (6) of the Act is competent. (*Henderson, J.*) JITENDRA NATH BERA *v.* MAKHAN LAL. **46 C.W.N. 659=I.L.R. (1942) 2 Cal. 148=201 I.C. 512=15 R.C. 268=75 C.L.J. 366=A.I.R. (1942) Cal. 452 (1).**

——**S. 2 (22)**—Decree for money advanced on hundi—Execution proceeding pending—Decree, if one passed in suit to which Act applies. *See* BENGAL MONEY-LENDERS ACT, SS. 36 AND 2 (22). **46 C.W.N. 555.**

——**Ss. 2 (22) and 36**—*Decree passed before 1st January, 1939—Decree remaining unsatisfied on that date but no execution proceeding pending—If one in suit to which Act applies.*

A decree passed in a suit before the 1st January 1939, in respect of which no proceeding in execution was pending on that date is not a decree in a suit to which the Act applies within the meaning of S. 2 (22) of the Bengal Money-Lenders Act although the decree had not been fully satisfied on that date. Such a decree cannot, therefore, be reopened under S. 36 of the Act. (*Mukherjea and Blank, JJ.*) RAM KUMAR DE *v.* ABHOYA PADA BHATTACHARJEE. **202 I.C. 137=15 R.C. 294=75 C.L.J. 182=46 C.W.N. 557=A.I.R. 1942 Cal. 441.**

——**S. 2 (22)**—Purchaser of equity of redemption—If borrower. *See* 1941 Dig., Col. 69. BUDHAN MIA *v.* JOTINDRA MOHUN DUTT. **A.I.R. 1942 Cal. 132.**

——**Ss. 2 (22) and 36**—Suit to which Act applies—Decree passed in suit before 1st January, 1939—No proceeding in execution pending—Procedure for obtaining

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relief. *See* 1941 Dig., Col. 69. NABA KUMAR SINGH *v.* MAHARAJA JOGINDRA NATH ROY. **I.L.R. (1942) 1 Cal. 354=200 I.C. 350=15 R.C. 57=A.I.R. 1942 Cal. 324.**

——**S. 2 (22)**—*Suit for foreclosure—Act, if applies.*

A suit for foreclosure can be deemed to be a suit to which the Act applies within the meaning of S. 2, sub-S. (22). What the plaintiff wants in a foreclosure suit is not recovery of a certain amount of money and the only relief he prays for is to bar the mortgagor's right of redemption with regard to the mortgaged property, but the wording of Cl. (6), S. 2, sub-S. (22) is sufficiently wide to include a foreclosure suit inasmuch as it is certainly a suit for the enforcement of a security taken in respect of a loan. (*Mukherjea and Sen, JJ.*) SAMIRUDDIN MALTEY *v.* NABA KUMAR SAHA. **201 I.C. 476=15 R.C. 206=A.I.R. 1942 Cal. 224.**

——**Ss. 2 (22) and 36**—Suit to which Act applies—Final decree in mortgage suit passed before 1st January, 1939—Such decree not satisfied on that date—Procedure for obtaining relief. *See* 1941 Dig., Col. 69. SURESH CHANDRA MUKHERJEE *v.* LAL MOHUN CHATTERJEE. **199 I.C. 825=14 R.C. 645=A.I.R. 1942 Cal. 121.**

——**S. 30**—*Interest decreed in excess of limits—Difference negligible—Right of judgment-debtor to relief.*

When the interest decreed is in excess of the limits prescribed by S. 30 of the Bengal Money-Lenders Act, the Court is bound to grant relief to the judgment-debtor although the difference is very negligible. (*Mukherjea and Sen, JJ.*) ASRAB ALI SIRKAR *v.* PIONEER BANK, LTD. **200 I.C. 308=15 R.C. 6=46 C.W.N. 424=A.I.R. 1942 Cal 228.**

——**S. 30**—Provision in agreement for compound interest—Legality—Proper decree. *See* 1941 Dig., Col. 77. MAHALAKSHMI RAKHIT *v.* SHAMRANGINI ROY. **197 I.C. 853=14 R.C. 397.**

——**Ss. 30 (1) (a) and 36**—Payment of twice the principal of loan—If releases borrower from further liability under any circumstances—Borrower seeking release from further liability under decree—If can be granted declaration. *See* 1941 Dig., Col. 70. MANMATHA NATH BOSE *v.* RENULA BOSE. **198 I.C. 71=14 R.C. 427.**

——**S. 30 (2)**—Mortgage decree—*Pendente lite* interest calculated at 12 per cent.—Total interest awarded not exceeding statutory limit—Decree, if offends section. *See* 1941 Dig., Col. 71. ROMESH CHANDRA *v.* JNANADA PROSANNA. **198 I.C. 756=14 R.C. 493=A.I.R. 1942 Cal. 39.**

——**S. 31**—Applicability—Decree passed before Act, *See* 1941 Dig., Col. 71. ANNAPURNA RAY *v.* SRISH CHANDRA DUTT. **200 I.C. 123=14 R.C. 669.**

——**S. 31**—Decree allowing interest on decretal amount passed before Act—If can be modified by appellate Court. *See* 1941 Dig., Col. 71. SAILENDRA NATH *v.* AMARENDRA NATH. **198 I.C. 315=14 R.C. 448.**

——**S. 31**—Decree allowing interest on decretal amount passed before Act—Whether can be modified. *See* 1941 Dig., Col. 71. MAHALAKSHMI RAKHIT *v.* SHAMRANGINI ROY. **197 I.C. 853=14 R.C. 397.**

——**S. 33**—If retrospective. *See* 1941 Dig., Col. 72. JUGANNATH ROY *v.* MADAN MOHAN. **I.L.R. (1942) 1 Cal. 186=A.I.R. 1942 Cal. 125.**

——**S. 34**—*Grant of instalments—Power to impose conditions.*

In granting instalments under S. 34 the Court can impose conditions on the judgment-debtor. (*Henderson, J.*) PURNACHANDRA BISWAS. *v.* KSHIRODE SUNDARI DUTT. **A.I.R. 1942 Cal. 610.**

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——**S. 34**—If *ultra vires*, so far as it deals with decrees on promissory notes. *See* 1941 Dig., Col. 72 MOHONI RANJAN *v.* SURENDRA CHANDRA. **200 I. C. 268=14 R.C. 698=A.I.R. 1942 Cal. 149.**

——**Ss. 34 (1) (a) and 31**—*Mortgage suit—Award of interest—Power of Court—Limitations—C. P. Code, O. 34, Rr. 2, 4 and 11.*

The Bengal Money-Lenders Act does not totally abrogate the provisions of O. 34, Rr. 2, 4 or 11, C. P. Code. These provisions are only modified to the extent indicated in S. 34 (1) (*a*) and S. 31 of the Act. The power to award *pendente lite* interest in a mortgage-suit is not thus taken away by the Act. Three limitations only have been imposed by the Act on these provisions of O. 34 in respect of the award of interest, namely, (1) that the *pendente lite* interest and interest allowable under O. 34, R. 11 (*a*) (*i*) up to the period of grace, which must be determined in terms of S. 34 (1) (*a*) (ii) of the Act, would not be according to the contract rate, where there is such a rate, but would be according to the rate scaled down by S. 30 (1) (*c*) of the Act; (2) that the amount of that interest should not exceed the principal of the loan in accordance with the method of calculation to be made in accordance with S. 30 (1) (*a*) and (*b*) of the Act; and (3) O. 34, R. 11 (*b*) is not to apply where the loan was advanced before the Act. (*Mitter and Akram, JJ.*) PROMODE NATH SINHA *v.* RASESHWARI DASSI. **I.L.R. (1942) 1 Cal. 414=75 C.L.J. 174=46 C.W.N. 153=A.I.R. 1942 Cal. 128.**

——**S. 34 (1) (a)**—*Preliminary mortgage decree—Grant of instalments—Power of Court to impose conditions.*

In the case of a loan on a mortgage the Court in passing a preliminary decree has the power in a fit case to require additional security from the judgment-debtor as a condition of giving him instalments. It may also impose other conditions with a view to see that the decree-holder does not lose the full benefit of his security during the period that the instalments may be spread over by reason of any act or default on the part of the judgment-debtor. Where the loan is secured on revenue-paying properties and patni taluks, the Court may impose the condition that the judgment-debtor must pay up all past arrears of revenue, cess and patni rent, and also the revenue, cess and patni rent that may fall due and in default the decree-holder will be entitled to apply for a final decree. This additional right given to the decree-holder to apply for a final decree does not militate against the provisions of S. 34 (*a*) (*ii*) of the Act. (*Mitter and Akram, JJ.*) PROMODE NATH SINHA *v.* RASESHWARI DASSI. **I.L.R. (1942) 1 Cal. 414=75 C.L.J. 174=46 C.W.N. 153=A.I.R. 1942 Cal. 128.**

——**S. 34 (1) (b)**—*Application under—Maintainability—Decree entered as satisfied by sale proceeds in execution.*

The exercise of the power of the Court to order payment of the decretal amount by instalments under S. 34 (1) (*b*) of the Money-Lenders Act pre-supposes the exisience of a subsisting decree. An application under this provision is, therefore, not maintainable after the executing Court has entered up satisfaction of the decree in full by the proceeds of a sale in execution.

Per *Nasim Ali, J.*—It may be that if the sale be set aside later on under O. 21, R. 90 C. P. Code, the order of the executing Court entering up satisfaction of the decree will automatically be vacated and the decree would be revived. On the happening of such a contingency it would be open to the judgment-debtor to make an application for relief under S. 34 (1) (*b*) of the Act. (*Nasim Ali and Blagden, JJ.*) RADHICA LAL GOSSAIN *v.* JITENDRA NATH. **46 C.W.N. 877.**

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——**S. 35**—*Scope—Sale proclamation issued before Act.*

There is nothing in S. 35 of the Bengal Money-Lenders Act restricting it to cases of loans taken after the Act or to decrees passed after the Act. But that section has no application to a sale proclamation validly issued before the Act came into operation. (*Mukherjea and Sen, JJ.*) GIRISH CHANDRA DAS *v.* SIBA PRASAD JANA. **202 I.C. 125=15 R.C. 292=75 C.L.J. 45=46 C.W.N. 275=A.I.R. 1942 Cal. 472.**

——**S. 36**—Applicability—Loan advanced in Bihar but payable either there or at Calcutta—Decree passed by Calcutta High Court—If can be reopened. *See* BENGAL MONEY-LENDERS ACT, PREAMBLE AND S. 36. **I.L.R. (1942) 1 Cal. 505.**

——**Preamble and S. 36**—*Applicability of Act—Loan advanced in Bihar but payable either there or at Calcutta.*

The Bengal Money-Lenders Act is not applicable to a loan advanced in Bihar on a promissory note although it is expressly made payable either in Bihar or at Calcutta, if the intention of the parties was that the contract should be governed by the law of the place at which the loan was effected, namely, the law of Bihar. Consequently a decree passed by the Calcutta High Court on the promissory note cannot be reopened under S. 36 of the Act. The expression "transactions of money-lending in Bengal" occurring in the preamble to the Act can only mean transactions of money-lending which take place in Bengal. (*Edgley, J.*) BRIJ RAJ MARWARI *v.* ANANT PRASAD. **I.L.R. (1942) 1 Cal. 505=202 I.C. 326=15 R.C. 321=A.I.R. 1942 Cal. 509.**

——**S. 36**—*Application under—Nature of—C. P. Code, O. 47.*

An application for relief under the Bengal Money-Lenders Act is an original application under that Act, and not an application for review under O. 47, C. P. Code. (*Derbyshire, C.J. and Panckridge, J.*) LAL MOHAN CHATTERJEE *v* SURESH CHANDRA MUKHERJEE. **I.L.R. (1942) 2 Cal. 116=46 C.W.N. 607.**

——**Ss. 36 and 2 (22)**—Application under O. 21, R. 90, C. P. Code—If suit to which Act applies—Termination of execution case before 1st January, 1939—Application under O. 21, R. 90 pending on that date—Application for review—If competent. *See* BENGAL MONEY-LENDERS ACT, SS. 2 (22) AND 36. **46 C.W.N. 659.**

——**Ss. 36 and 2 (22)**—*Decree for money advanced on hundi—Execution proceeding pending—Decree, if may be re-opened.*

A decree for money advanced on the basis of a hundi in respect of which an execution proceeding is pending is not a decree passed in a suit to which the Bengal Money-Lenders Act applies, as money advanced on a hundi which is a negotiable instrument other than a promissory note is not a loan within the meaning of the Act. Consequently such a decree cannot be reopened under S. 36 of the Act. (*Mukherjea and Blank, JJ.*) BARADA CHARAN NANDI *v.* EASTERN UNION BANK, LTD. **201 I.C. 349=15 R.C. 169=75 C.L.J. 425=46 C.W.N. 555=A.I.R. 1942 Cal 389.**

——**Ss. 36 and 2 (22)**—Decree passed before 1st January, 1939—Decree remaining unsatisfied on that date but no execution proceeding pending—If can be reopened. *See* BENGAL MONEY-LENDERS ACT, SS. 2 (22) AND 36. **46 C.W.N. 557.**

——**S. 36**—Grant of relief—Person other than borrower. *See* 1941 Dig., Col, 72 SARADINDU MUKHER-

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JEE *v.* JAHAR LALL AGARWALA. **I.L.R. (1942) 1 Cal. 326=201 I.C 353=15 R.C. 174=A.I.R. 1942 Cal. 153.**

——**S. 36**—*Grant of relief—Reopening of decree—If necessary.*

If the Court takes a fresh account between the parties on the basis of the rate of interest permitted by the Bengal Money-Lenders Act and arrives at a figure other than that mentioned in the decree, it has of necessity to reopen the transaction between the parties. That being so, the Court ought to consider granting to the applicant the reliefs mentioned in S. 36 (2) of the Act. The Court cannot leave the decree and the sale held thereunder in tact, and merely release the applicant of all liability as regards interest in excess of the limits specified in S. 30 of the Act, although the price realised at the sale is insufficient to satisfy the dues of the decree-holder calculated in accordance with the Act. (*Derbyshire, C.J. and Panckridge, J.*) LAL MOHAN CHATTERJEE *v.* SURESH CHANDRA MUKHERJEE. **I.L.R. (1942) 2 Cal. 116=46 C..W.N. 607.**

——**Ss. 36 and 30**—Grant of relief in respect of liability under decree—Decree, if must be re-opened. *See* 1941 Dig., Col. 72. JUGANNATH ROY *v.* MADAN MOHAN. **I.L.R. (1942) 1 Cal. 186=A.I.R. 1942 Cal. 125.**

——**S. 36**—*Ground for reopening decree—Decree allowing interest in excess of statutory rate.*

If a decree made in a suit to which the Bengal Money-Lenders Act applies, allows interest in excess of what is permitted under S. 30 of the Act, there is sufficient ground for reopening the decree. As to whether it is worthwhile for the judgment-debtor to have a new decree when considerable time has elapsed since the date of the decree, is absolutely immaterial. (*Mukherjea and Blank, JJ.*). HEMENDRA NATH SANYAL *v.* SASHIBHUSAN TALUKDAR. **75 C.L.J. 427.**

——**S. 36**—*Order granting application—Appeal—Court-fees.*

No appeal lies from an order granting an application under S. 36 of the Bengal Money-Lenders Act. But the aggrieved party can file an appeal against the amended decree. If the subject-matter of the appeal can be valued, *ad valorem* court-fees will have to be paid under Sch. I, Art. 1 of the Court-Fees Act on the memorandum of appeal. If the subject-matter of the appeal cannot be valued, the fixed court-fee provided for in Sch. II, Art. 17 (*vi*) will have to be paid. Whether the subject-matter of the appeal can be valued or not depends upon the nature of the grounds taken in the memorandum of appeal. (*Mitter and Sen, JJ.*) PRAN HARI BAIDYA *v.* JOGESH CHANDRA. **46 C.W.N. 681.**

——**S. 36**—*Power of Court to act* suo motu.

Under S. 36 of the Bengal Money-Lenders Act, the Court may *suo motu* grant any relief to which a borrower may be entitled under the Act, and it is not necessary for him to come before it by a separate application. Consequently the Court can grant relief under the section on materials contained in an affidavit filed by him in opposition to an application for final decree in a mortgage suit. (*Sen, J.*) JOGESH CHANDRA *v.* PRAN KRISHNA. **46 C.W.N. 661.**

—— **S. 36**—Preliminary mortgage decree—Total interest up to date fixed for payment exceeding maximum allowed by S. 30 but not interest up to date of decree—Decree, if may be reopened. *See* BENGAL MONEY-LENDERS ACT (1940), SS. 2 (8) AND 36. **46 C.W.N. 159.**

——**S. 36**—*Proceeding under—If interlocutory—Rules as to affidavit—C. P. Code, O. 19, R. 3 (1).*

BENG. MONEY-LENDERS ACT (1940), S. 36.

An application to obtain relief under S. 36 of the Bengal Money-Lenders Act is not an interlocutory application such as is mentioned in O. 19, R 3 (1), C. P. Code. It is really a separate proceeding in the larger proceeding of the suit and the decision of the Judge, (subject of course to appeal) when given, is a final decision upon the rights of the parties under the Act. Therefore, the affidavit the Court must receive and act upon in such a proceeding must be confined to such facts as the deponent is able of his own knowledge to prove. An affidavit stating that the deponent learnt from somebody else that the loan was a commercial loan is not satisfactory evidence, nor indeed evidence upon which the Court could act. (*Derbyshire, C.J. and Nasim Ali, J.*) HAFIZ SHAMSED AHMED *v.* CHATOO LAL DEY. **46 C.W.N. 474.**

——**S. 36**—*Reopening of composite mortgage decree.*

The rule that a final decree in a mortgage suit is fully satisfied when the mortgaged property is brought to sale and that thereafter the judgment-debtor may be entitled to have the personal decree reopened under S. 36 of the Bengal Money-Lenders Act but not the final decree, has no application to a case where the Court, instead of passing a final decree followed by a personal decree, has passed a composite decree. As such a decree cannot be split into two, the judgment-debtor is entitled to have it reopened. (*Henderson, J.*) SITA NATH NANDI *v.* MANGAL CHANDRA. **46 C.W.N. 856.**

——**S. 36**—Reopening of decree—Ground for—Claim for instalments. *See* 1941 Dig., Col. 73. ANATH NATH SARKAR *v.* RAJENDRA NATH. **198 I.C. 810=14 R.C. 508=A.I.R. 1942 Cal. 120.**

——**S. 36**—*Reopening of decree—Interest between dates of that and new decree—Power of Court to allow.*

Section 36 does not abrogate S. 34, C P.Code. There is nothing in S. 36, Bengal Money-Lenders Act, itself to justify an inference that the power of the Court under S. 34, C P. Code, to allow interest for a period subsequent to the decree has been taken away. Consequently, when a new decree in a money suit is passed on an application for review under S. 36 (6) of the Act, the Court has jurisdiction to allow interest for the period between the passing of the original decree and the passing of the new decree. (*Henderson, J.*). PURNACHANDRA BISWAS *v.* KSHIRODE SUNDARI DUTT. **A I,R. 1942 Cal. 610.**

——**S. 36**—*Reopening of decree—Jurisdiction of Small Cause Court—Application pending before Debt Settlement Board.*

A Small Cause Court Judge has jurisdiction to deal with an application under S. 36 of the Bengal Money-Lenders Act for reopening a decree passed by his Court, although another application is pending before the Debt Settlement Board in respect of the same matter. (*Henderson, J.*). TIRTHAPADA DEY *v.* KABIRUDDIN. **75 C.L.J. 505.**

——**S. 36**—*Reopening of decree—New decree allowing full interest up to its date—Profits realised by decree-holder from property purchased by him in execution—Whether can be deducted therefrom.*

If the decree-holder has purchased a property in execution of his decree which is reopened under S. 36 (6) of the Beng. Money Lenders Act, the Court may refuse to give him any additional interest for the period between the passing of the original decree and the passing of the new decree on the ground that he has realised profits from that property. But if the Court by the new decree gives him the full amount of interest allowable under the Act up to the date of that decree, it cannot deduct the value of the profits therefrom, as it would be thereby compelling him to make a refund of such

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profits for which there is no provision in the Act. (*Henderson, J.*) BOGRA BANK, LTD. *v.* RAMANI MOHAN. **46 C.W.N. 1026.**

——**S. 36**—*Re-opening of decree—Order setting aside sale under that decree—If can be made.*

S. 36 of the Bengal Money-Lenders Act makes no provision for an order setting aside a sale under a decree, when that decree is re-opened and a new decree is passed, but is specifically confined to making an order for delivery of possession. (*Henderson, J.*) INDRA SEKHAR CHAKRAVARTI *v.* BIDHUMUKHI DEVI. **46 C.W.N. 915.**

——**S. 36**—Reopening of decree—Proper test—Interest decreed exceeding statutory limit—Decree-holder claiming less in execution—Relief if may be refused. *See* 1941 Dig., Col. 73. PROBODH MOHAN GOSWAMI *v.* LALIT MOHAN DEY. **199 I.C. 53=14 R. C. 517=A.I.R. 1942 Cal. 65.**

——**S. 36**—*Re-opening of decree—Refusal on ground that new decree will be for larger sum—Propriety.*

An application for review under S. 36 of the Bengal Money-Lenders Act can not be refused merely on the ground that the new decree will be for a larger sum than the original decree. (*Henderson, J.*) INDRA SEKHAR CHAKRAVARTI *v.* BIDHUMUKHI DEVI. **46 C.W.N. 915.**

——**S. 36**—*Re-opening of decree—Restoration of property to judgment-debtor—Mesne profits—Power of Court to award.*

The Court, while re-opening a decree under S. 36 of the Bengal Money-Lenders Act and ordering restoration to the judgment-debtor of the property acquired by the decree holder in execution of the same, can not direct investigation of the mesne profits with regard to that property for the period that it was in possession of the decree-holder. There is no provision in the Act for giving such mesne profits to the judgment-debtor. (*Mukerjea and Sen, JJ.*) TAMLUK LOAN OFFICE CO., LTD. *v.* GANGA NARAYAN KAR. **46 C.W.N 919.**

——**S. 36**—*Reopening of mortgage decree—Interest paid in excess of statutory rate—If may be appropriated towards principal.*

In taking fresh accounts on the reopening of a mortgage decree under S. 36 of the Bengal Money Lenders Act, any interest which had been paid by the mortgagor in excess of the rate permitted by the Act should not be appropriated towards principal, but should be credited against interest due. All that the borrower is allowed under S. 36 (1) (*d*), is a refund of the excess paid. If the excess is allocated to principal, it would be a refund in effect of an additional rebate of interest. By allocating the excess payment to a reduction of principal, the interest payable on that reduced principal is similarly reduced and the mortgagor will obtain a greater advantage than seems to have been intended by S. 36. (*Mc Nair, J.*) KUMAR PRAMATHA NATH ROY *v.* KANAKENDRA NATH TAGORE. **46 C.W.N. 873=A.I.R. 1943 Cal. 17.**

——**S. 36**—*Re-opening of mortgage decree—Refusal on ground that applicant would have to pay larger sum as interest—Propriety.*

The Court cannot refuse to re-open a mortgage decree on an application made under S. 36 of the Bengal Money-Lenders Act on the mere ground that if that was done the applicant would have to pay a larger sum by way of interest in order to redeem the property than he had to pay under the original preliminary decree. (*Henderson, J.*) JANAKI DEBYA *v.* HAZI MINNATALI. **46 C.W.N. 559.**

BENG. MONEY-LENDERS ACT (1940), S. 36.

——**S. 36**—*Reopening of transaction—Rate of interest in mortgage bond above permitted rate—Duty of Court.*

Where the rate of interest in a mortgage bond is above the permitted rate, and such interest has been paid for some time, it is the duty of the Court to reopen the transaction between the lender and the borrower and to take an account of what has been paid and also what ought to have been paid according to the Act, and on such reopening and taking of accounts to give the borrower such relief as he is entitled to under the Act. (*Derbyshire, C.J. and Gentle, J.*) ABDUL WAHED HOWLADAR *v.* SUKUMARI DEBI. **203 I.C. 485=75 C.L.J. 299=A.I.R. 1942 Cal. 568.**

——**S. 36**—*Right to relief—Interest ordered under preliminary mortgage decree exceeding statutory rate—Decree holder relinquishing claim to excess interest.*

Once a borrower establishes that the interest which has been claimed and ordered under a preliminary mortgage-decree exceeds the rate permitted by the Bengal Money-Lenders Act, he is entitled to have the transaction re-opened, and if the transaction is re-opened he is entitled to such relief as the Court ought to grant under the provisions of the Act. The decree-holder, cannot, by relinquishing his claim to the excess interest, bar him from such relief. (*Derbyshire, C. J. and Panckridge, J.*) KUMUD BEHARI SEN *v.* SATYA BRATA SEN. **46 C.W.N. 605.**

——**S. 36**—*Right to relief—Purchaser of portion of equity of redemption made party in mortgage suit.*

A purchaser of the equity of redemption in some of the mortgaged properties who was made a party in the mortgage suit along with the mortgagor and who was affected by the preliminary decree passed in the suit, is entitled to apply to the Court for reopening the transaction between the lender and the borrower on the lines laid down in the Bengal Money-Lenders Act. If such reopening gives relief, he will get the benefit of the new decree. (*Durbyshire, C.J., Nasim Ali and Gentle, JJ.*) JITENDRA NATH GHOSE *v.* HRISHIKESH BANERJEE. **46 C.W.N. 692.**

——**S. 36**—*Satisfaction of decree—Compromise decree in foreclosure suit—Entire sum payable in instalments—On default of any instalment mortgagee entitled to recover possession—Decree, if satisfied on default.*

In a suit for foreclosure a compromise decree was passed under which the entire sum was to be paid in certain instalments. On default of any one instalment, the mortgagee was entitled to recover possession by taking out execution of the decree. Default was committed in 1938 and execution proceedings were pending on first January, 1939. It was contended that the decree could be said to have been satisfied as soon as default occurred in the year 1938 and as such S. 36 of the Act did not apply.

Held, that S. 36 speaks of satisfaction of the decree prior to 1st January 1939. The liabilities of the mortgagor might have been at an end as soon as the decree had become final, but the decree itself was not satisfied unless execution proceedings were taken and the mortgagee decree-holder got possession of the mortgaged property. Therefore the Court had jurisdiction to grant relief under S. 36. (*Mukherjea and Sen, JJ.*) SAMIRUDDIN MALTEY *v.* NOBA KUMAR SAHA. **201 I.C. 476=15 R C. 206=A.I.R. 1942 Cal. 224.**

——**S. 36 (1)**—Right of suit—Decree passed on loan at creditor's suit—Subsequent suit by borrower—If maintainable—Forum of suit. *See* 1941 Dig., Col. 73. SATYA NARAYAN BANERJEE *v.* RADHA NATH DAS, **I.L.R. (1942) 1 Cal. 235=198 I.C. 739=75 C.L.J. 229=14 R.C. 489=A.I.R. 1942 Cal. 69.**

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——**S. 36 (1) (a)**—"*Reopening a transaction*"—*Meaning of—Order releasing judgment-debtor of liability in excess of statutory limits and directing fresh accounts to be taken—Effect of.*

On an application filed by a judgment-debtor for relief under the Bengal Money-Lenders Act, the Court released him of all liability in excess of the limits specified in S. 30 (1) and (2) of the Act and ordered an account to be taken and a report made of his liability. The Court however observed in its order that it was not necessary to reopen the decree and did not pass an order for payment by instalments under S. 36 (2) (*d*) of the Act.

Held, that the Court by ordering a fresh account between the parties on the basis of the interest allowed by the Act had in fact reopened the transaction between them, and that being so, it was bound to give effect to S. 36 (2) (*d*) of the Act. (*Derbyshire, C.J. and Nasim Ali, J.*) BHUPENDRA KRISHNA MUKHERJEE *v.* GUNENDRA KRISHNA ROY. **46 C.W.N. 814.**

——**S. 36 (1) (c) and (2)**—Court reducing decretal amount in excess of limits prescribed by S. 30—If reopens decree—Duty to make new decree. *See* 1941 Dig., Col. 74. ANATH NATH SARKAR *v.* RAJENDRA NATH. **198 I.C. 810=14 R.C. 508=A.I.R. 1942 Cal. 120.**

——**S. 36 (1) (c) and (2)**—Mortgage decree—Court relieving judgment-debtor from liability to pay interest in excess of limits specified in S. 30—If bound to reopen decree. *See* 1941 Dig., Coi. 75. MRITUNJOY ROY *v.* NETAI CHANDRA DUTT. **I.L.R. (1942) 1 Cal. 61 =A.I R. 1942 Cal. 123.**

——**S. 36 (1) (c)**—Powers under—Order directing decree as satisfied without reopening it. *See* 1941 Dig., Col. 75. SURESH CHANDRA MUKHERJEE *v.* LAL MOHUN CHATTERJEE. **199 I.C. 825=14 R.C. 645= A.I.R. 1942 Cal. 121.**

——**S. 36 (1) (c)**—*Relief in respect of preliminary mortgage decree—Duty of Court to reopen decree and pass new decree—Power to grant instalments and interest.*

The Court exercising the power contained in S. 36 (1) (*c*) of the Bengal Money-Lenders Act in respect of a preliminary mortgage decree which allows interest in excess of what is allowable under S. 30 (1) (*c*) of the Act, should reopen that decree and pass a new decree in accordance with the provisions of the Act with the supersession of the preliminary decree, the final decree passed on the basis thereof must also go. The new preliminary decree which has to be passed must be in accordance with S. 34 (1) (*a*) (*i*) of the Act and must therefore give instalments to the mortgagor, if there is an application by him. It may impose conditions with a view to see that the decree-holder does not lose the full benefit of his security during the period that the instalments may be spread over by reason of any act or default on the part of the judgment-debtor. The Court has power to grant simple interest at the rate of 8 per cent. per annum on the principal of the loan from the date of the institution of the mortgage suit up to the date of the passing of the new preliminary decree and thereafter at the same rate up to the date of default, should the judgment-debtor fail to pay the instalments, provided the amount of interest directed to be paid together with the amounts already paid does not exceed the principal of the loan. (*Mitter and Akram, JJ.*) PROMODE NATH SINHA *v.* RASESHWARI DASSI. **I.L.R. (1942) 1 Cal. 414=75 C.L.J. 174=46 C.W.N 153=A.I.R. 1942 Cal. 128.**

——**S. 36 (1), proviso (1)**—"*Date of the suit*"—*Interpretation.*

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The suit referred to in proviso (i) to S. 36 (1) of the Bengal Money-Lenders Act must be that type of the three types of suit contemplated by sub-S. (1) in the course of which the relief is being given, and in which therefore the question of the application of the proviso arises. If the question arises in the course of a straightforward suit by the creditor for his dues, the date will be the date of commencement of his suit, if it arises in the course of execution, that is to say in a "suit to which this Act applies", which happens to be an execution proceeding, the date will be the date of the application in execution, and if the question arises in a suit by a borrower for relief, the date will be the date of the borrower's suit. (*Roxburgh and Akram, JJ.*) JAGABANDHU DE *v.* AKSHOY KUMAR SIL. **46 C.W.N. 906=75 C.L.J. 485.**

——**S. 36 (1) proviso (1)**—'*Date of suit*'—*Meaning of.*

The words "the date of the suit" in S. 36 Cl. (1) proviso (i) of the Bengal Money-Lenders Act mean "the date" when the suit contemplated by S. 36, Cl. (1) is brought and not the date of any application by the borrower under that Act. (*Nasim Ali and Pal, JJ.*) NRISINHA CHANDRA PAL *v.* KANAKLATA DASI. **201 I.C. 306=15 R.C. 166=46 C.W.N. 457 (1)=A.I.R. 1942 Cal. 369 (2).**

——**S. 36 (1), Proviso (ii)**—Mortgage executed before 1939 to satisfy decree passed on earlier mortgage—Earlier mortgage carrying interest in excess of maximum allowed under Act—Decree passed in 1940 on later mortgage—If can be reopened so as to affect earlier mortgage decree. *See* 1941 Dig., Col. 74. PROMODE KUMAR ROY *v.* TINCOWRIE DEY. **197 I. C 817=14 R.C. 395=I.L.R. (1942) 1 Cal. 157.**

——**S. 36 (1), proviso (ii)**—*Preliminary and final mortgage decrees—When fully satisfied—Preliminary, final and personal decrees passed before 1st January, 1939—Execution of personal decree pending thereafter—Decrees, if can be reopened.*

A preliminary mortgage decree gives the mortgagee the right to realise the amount declared to be due on the mortgage, and until that amount is realised in full the decree cannot be said to be satisfied. Where, therefore, the proceeds realised by the sale of the mortgaged property in execution of the final decree fall short of the decretal amount and the execution of the personal decree passed for the balance is still pending, the preliminary decree cannot be said to have been satisfied merely by reason of the sale and the passing of the personal decree. But a final decree for sale is fully and completely satisfied if the mortgaged property mentioned in the preliminary decree is sold and the sale proceeds applied in payment of the decretal amount, even if the entire mortgage money is not realised. Where in a case in which the preliminary, final and personal decrees were passed before 1st January, 1939, and the proceeding in execution of the personal decree was pending thereafter, an application for reopening the decrees under S. 36 of the Bengal Money-Lenders Act was made,

Held (1) that the preliminary decree was not fully satisfied before 1st January, 1939, but that the final decree was, and that, therefore, the former decree was not protected from interference by the proviso (ii) of S. 36 (1) of the Act, but that the latter decree was; (*ii*) that the scaling down of the preliminary decree would affect the final decree and the sale held thereunder and consequently it would amount to a disregard of the prohibition contained in the proviso, and that for this reason the preliminary decree could not be reopened; (*iii*) that the only decree that could be re-

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opened was the personal decree, that the Court would have to calculate the amount that could be allowed to the mortgagee if a new preliminary decree was made and deduct from this the amount realised by sale of the mortgaged properties and pass a personal decree for only the balance, and that if the balance was negative, nothing would be recoverable under the personal decree but that the mortgagor could not claim refund of any amount as that would be doing something which affected the final decree. (*Mukherjea and Sen, JJ.*) NARESH CHANDRA GUPTA *v.* LAL MAMUD BHUIYA. **I.L.R. (1942) 2 Cal. 243=202 I.C. 343=15 R.C. 323 =46 C.W.N. 457 (2)=A.I.R. 1942 Cal. 379 followed in** NILMONY *v.* CHANDRA MADHU. **46 C.W.N. 463.**

——**S. 36 (1), Proviso (ii)**—Scope—Mortgage decree passed in 1939—Consideration for mortgage being sums due under prior decrees—Mortgage, if may be re-opened —Such prior decrees if may be affected. *See* 1941 Dig., Col. 74. TARAPADA BANERJEE *v.* AJIMADDIN MALLIK. **197 I.C. 821=14 R.C. 393.**

——**S. 36 (5)**—*Pre-Act assignee—If exempted from S. 30.*

S. 36 (5) of the Bengal Money-Lenders Act applies to an assignee who became such even before the Act. Consequently a decree obtained by him cannot be reopened under that section. Other provisions of the Act do however apply. There is nothing in S. 30 which makes its provisions subject to their being invoked under S. 36. If, therefore, the borrower shows that the sum he has paid is equal to or exceeds twice the amount of the principal of the original loan, his liability is discharged by S. 30 which prevents the pre-Act assignee from recovering from him any further sum. (*Derbyshire, C.J. and Gentle, J.*) HEMANTA KUMAR *v.* BASANTA KUMAR. **46 C.W.N. 677=75 C.L.J. 338 =A.I.R. 1943 Cal. 26.**

——**S. 36 (5)**—*Pre-Act assignee—If protected.*

S. 36 (5) of the Bengal Money-Lenders Act applies to both ante-Act and post-Act assignees. Consequently a *bona fide* assignee for value who took his assignment before the Act is entitled to claim the benefit of this provision. (*Sen, J.*) BHUPENDRA NATH DUTT *v.* DEBENDRA NATH ASH. **201 I.C. 273=15 R.C. 164 =46 C.W.N. 368=A.I.R. 1942 Cal. 370.**

——**S. 36 (5)**—*Pre-Act assignee—If protected.*

A *bona fide* assignee who took his assignment before the Bengal Money-Lenders Act came into force, is not protected by the provisions of S. 36 (5) of the Act. (*Roxburgh, J.*) KRISHNADHON MONDAL *v.* NALINI CHANDRA. **46 C.W.N. 388.**

——**S. 36 (5)**—*Pre-Act assignee—If protected.*

S. 36 (5) of the Bengal Money-Lenders Act should be interpreted in its plain grammatical sense which would bring a pre-Act assignee within the fold of its protection. It would be applicable to cases where the proviso to S. 36 (1) (*d*) applies. (*Mukherjea and Blank, JJ.*) PRAFULLA KUMAR DAS *v.* KAMINI KUMAR CHAKRAVARTHI. **I.L.R. (1942) 2 Cal 389=75 C.L.J 288= 46 C.W.N. 673=A.I.R. 1942 Cal. 476.**

——**S. 36 (6)**—*Execution pending on 1st January, 1939—Jurisdiction to grant relief.*

Where the execution proceedings in connexion with a decree are pending after 1st January, 1939, the suit is one to which the Act applies and consequently the Court which passed the decree has jurisdiction to grant relief under S. 36, Cl. (6). (*Mukherjea and Sen, JJ.*) SAMIRUDDIN MALTEY *v.* NABA KUMAR SAHA. **201 I.C. 476=15 R.C. 206= =A.I.R. 1942 Cal. 224**

——**S. 36 (6)**—*Ground for refusal of relief—Petitioner unscrupulous.*

BENGAL MUNICIPAL ACT (1932), S. 3.

The fact that the judgment-debtor is an unscrupulous man is no ground for rejecting his application under S. 36 (6). (*Henderson, J.*) PURNACHANDRA BISWAS *v.* KSHIRODE SUNDARI DUTT. **A.I.R. 1942 Cal. 610.**

——**S. 36 (6)**—*Re-opening of decree—Interest between dates of that and new decree—Award of—Power of Court—C. P. Code, S. 34.*

When a new decree in a money suit is passed on an application for review under S. 36 (6) of the Bengal Money-Lenders Act, the Court has jurisdiction to allow interest for the period between the passing of the original decree and the passing of the new decree. There is nothing in that section to justify an inference that the power of the Court under S. 34, C. P. Code, to allow interest for a period subsequent to the decree has been taken away. (*Henderson, J.*) INDRA SEKHAR CHAKRAVARTI *v.* BIDHUMUKHI DEVI. **46 C.W.N 915.**

——**S. 36 (6) (a)**—*Applicability—Decree passed after 1st January, 1939.*

S. 36 (6) (*a*) of the Money-Lenders Act applies to a decree passed after 1st of January, 1939, in a suit pending both on and after that date. (*Mukherjee and Blank, JJ.*) SAILABALA DASI *v.* HARISHCHANDRA DE. **46 C.W.N. 875.**

——**S. 36 (6) (a)**—Decree passed before 1st January, 1939—Execution pending on that date—Application concerning that decree—If competent. *See* 1941 Dig., Col. 75. MOHINI RANJAN *v.* SURESH CHANDRA. **200 I.C. 268=14 R.C. 698=A.I.R. 1942 Cal. 149.**

——**S. 36 (6) (a) (i)**—*Application under—Appeal from order—Court-fees.*

A memorandum of appeal filed against an order passed on an application made under S. 36 (6) (*a*) (*i*) of the Bengal Money-Lenders Act for reopening a decree, must bear *ad valorem* Court-fees. (*Mukerjea and Blank, JJ.*) KSHITISH CHANDRA *v.* SATISH CHANDRA. **I.L.R. (1942) 2 Cal. 131=46 C.W.N. 536.**

——**S. 36 (6) (a) (i)**—*Order dismissing application—Appeal—Revision.*

An order dismissing an application under S. 36 (6) (*a*) (*i*) of the Money-Lenders Act is not appealable under any provision of law. The remedy of the judgment-debtor is to come up to the High Court for revision of that order under S. 115, C. P. Code. (*Mukherjea and Blank, JJ.*) SAILABALA DASI *v.* HARISH CHANDRA DE. **46 C.W.N. 875.**

——**S. 36 (6) (b)**—Applicability—Decree passed in suit filed before 1939. *See* 1941 Dig., Col. 76. SARADINDU MUKHERJEE *v.* JAHAR LAL AGARWALA. **I.L.R. (1942) 1 Cal. 326=201 I.C. 353=15 R.C. 174=A.I.R. 1942 Cal. 153**

——**S. 36 (6) (i) and (ii)**—Order refusing to re-open decree—Appeal. *See* 1941 Dig., Col. 75. BUDHAN MIA *v.* JOTINDRA MOHUN DUTT. **A.I.R. 1942 Cal. 132.**

——**S. 36 (6) (ii)**—Relief given by way of review—Court if bound to pass new decree. *See* 1941 Dig., Col. 76. BUDHAN MIA *v.* JOTINDRA MOHUN DUTT. **A.I.R. 1942 Cal. 132.**

BENGAL MUNICIPAL ACT (XV OF 1932), S. 3 (38)—*'Owner'—If includes lessee.*

The definition of "owner" in S. 3 (38) of the Bengal Municipal Act is wide enough to cover both the person in whom the title to the property lies and the lessee of that property. (*Roxburgh and Akram, JJ.*) BHUPENDRA NATH MUKHERJEE *v.* COMMISSIONER OF THE UTTERPARA MUNICIPALITY. **46 C.W.N. 936.**

——**S. 3 (54)**—*Definition of Magistrate—If exhaustive.*

BENGAL MUNICIPAL ACT (1932), S. 92.

The definition of the term "Magistrate" in S. 3 (54) of the Bengal Municipal Act is exhaustive. Consequently, a Magistrate of the first class to whom the District Magistrate has not made over any duties under this Act has no jurisdiction to pass an order of demolition under S. 330 of the Act. (*Lodge and Roxburgh, JJ.*) CHAIRMAN, TOLLYGUNJ MUNICIPALITY *v.* MASIH AHMED. **I.L.R. (1942) 1 Cal. 530=199 I.C. 792=14 R.C. 691=43 Cr L.J. 593=46 C.W.N. 316=74 C. L.J. 499=A.I.R. 1942 Cal. 288.**

——**S. 92 (2)**—*Adjourned meeting transacting business not on agenda of previous meeting — Minutes signed and confirmed—Effect—Model Rules, R.* 31.

If the minutes of an adjourned meeting are duly signed and confirmed, the meeting is to be deemed to be free from all defects and irregularity under the provisions of S. 92 (2) of the Bengal Municipal Act, although the meeting transacted business which was not on the agenda of the previous meeting contrary to R. 31 of the Model Rules framed under the Act. (*Roxburgh, J.*) AKSHOY KUMAR BANERJEE *v.* MUNICIPAL COMMISSIONER, TOLLYGUNGE. **46 C.W.N. 393.**

——**S. 103 (3)**—*Contract between Municipality and private individual not signed and sealed—If binds latter —Party receiving advantage—If liable to compensate.*

A contract between a Municipality and a private individual which is not in writing or signed or sealed as required by S. 103 of the Bengal Municipal Act is binding neither upon the Municipality nor upon that individual. It makes no difference whether the contract is executory or executed. S. 65 of the Contract Act, however, applies to such a case although an imperative provision of an Act has rendered the contract unenforceable and so void. Under this section, the party who has received any advantage under the contract is liable to make compensation to the other party, if the latter has suffered any loss. If their only loss is the loss of the benefit of the contract, no compensation can be recovered. (*Roxburgh, J.*) AKSHOY KUMAR BANERJEE *v.* MUNICIPAL COMMISSIONER, TOLLYGUNGE. **46 C.W.N. 393.**

——**S. 149**—*Compliance with formalities—Onus of proof.*

It is for the plaintiff to show that the formalities required by S. 149 of the Bengal Municipal Act were not duly carried out, if he wishes the Civil Court to interfere with the assessment on that ground. (*Roxburgh, J.*) MUNICIPAL COMMISSIONERS OF THE PABNA MUNICIPALITY *v.* NABA GOVINDA CHOWDHURY. **46 C.W.N. 830.**

——**S. 149**—*Objection to assessment disallowed by commissioners—Absence of notice under Ss.* 138 (2) *and* 147 (2)—*Civil suit—If maintainable.*

An assessee whose objection to the assessment of his holding has been decided against him by the Municipal Commissioners, cannot by means of a civil suit reopen the question of assessment on the ground that the correction in the assessment list was made without giving him notice under S. 138 (2) of the Bengal Municipal Act or on the ground that the assessment was enhanced without giving him notice under S. 147 (2) of the Act. A suit by the assessee for a declaration that the assessment was illegal and *ultra vires* on either of the above grounds is, therefore, not maintainable in a Civil Court. (*Roxburgh, J.*) MUNICIPAL COMMISSIONERS OF THE PABNA MUNICIPALITY *v.* NABA GOVINDA CHOWDHURY. **46 C.W.N. 830.**

——**S. 330**—Order under—Jurisdiction of Magistrate of first class. *See* BENGAL MUNICIPAL ACT, S. 3 (54). **46 C.W.N. 316.**

BENG. NON-AGR. TEN. (TEM. PRO.) ACT (1940), S. 3.

——**S. 535**—*Service of proper notice of suit—Onus of proof.*

In a suit against a Municipality, it is for the plaintiff to prove that proper notice of suit was served on them. (*Roxburgh, J.*) MUNICIPAL COMMISSIONERS OF THE PABNA MUNICIPALITY *v.* NABA GOVINDA CHOWDHURY. **46 C.W.N. 830.**

——**S. 535 (2)**—*Limitation for suits—Exclusion of period of notice—Limitation Act, S.* 15 (2).

S. 15 (2) of the Limitation Act applies to suits for which a special period of limitation is prescribed under S. 535 (2) of the Bengal Municipal Act. The plaintiffs in such suits are, therefore, entitled to deduct the period of the notice which they had to give under S. 535 (1). (*Biswas, J.*) COMMISSIONERS OF THE PABNA MUNICIPALITY *v.* NIRODE SUNDARI DASYA. **202 I.C. 762=46 C.W.N. 943=A.I.R. 1942 Cal. 544.**

——**Ss. 539 and 3 (38)**—*Entry in assessment list as owner—Alteration—Power of civil Court—Proper procedure.*

The civil Court has no power to interfere in the matter of an entry in the assessment list of the Municipality on its own interpretation of the word 'owner' in the Bengal Municipal Act, when the Municipality have not in any way acted *ultra vires* or *mala fide* and their action as a matter of procedure is in all respects proper. The only way in which the list can be altered is by the procedure under S. 148 of the Act, or by moving the Commissioners to take action under S. 138 of the Act. (*Roxburgh and Akram, JJ.*) BHUPENDRA NATH MUKHERJEE *v.* COMMISSIONER OF THE UTTERPARA MUNICIPALITY. **46 C.W.N. 936.**

BENGAL NON-AGRICULTURAL TENANCY (TEMPORARY PROVISIONS) ACT (IX OF 1940), S. 2—*Ferry man—If non-agricultural tenant.*

The ferry man holding a settlement of a ferry is not a non-agricultural tenant within the meaning of S. 2. (*Henderson, J.*) RAM CHARIT BHAKAT *v.* TETARI KUMARI KUAR. **201 I.C. 516=15 R.C. 221=A.I.R. 1942 Cal. 136.**

——**S. 2**—"Non-agricultural tenant"—Person with right to sell fruits from trees and fish from tank. *See* 1941 Dig., Col. 81. BHAGABAT CHANDRA JANA *v.* NAGENDRANATH BANNERJEE. **14 R.C. 350=197 I. C. 180.**

——**S. 2**—*'Tenant'—If includes ex-tenant.*

The word 'tenant' in S. 2 of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act is used not in its strict legal sense, but in its wider popular sense and includes not only the current tenant as set out in that section but the ex-tenant remaining in occupation who formerly held in the manner described in the section as non-agricultural tenant. (*Derbyshire, C.J., Nasim Ali and Mitter, JJ.*) SUKUMARI DEVI *v* RAJDHARI PANDEY. **I.L.R. (1942) 1 Cal. 497=198 I.C. 136=14 R.C. 436=74 C.L.J. 485=5 F.L.J. (H. C.) 1=46 C.W.N. 174=A.I.R. 1942 Cal. 49 (S.B.).**

——**S. 2**—Tenant of land and buildings, who has erected ekchalas—If non-agricultural tenant. *See* 1941 Dig., Col. 82. AJIT KUMAR DAS *v.* ANUKUL CHANDRA. **198 I.C. 176=14 R.C. 443.**

——**Ss. 3 and 6**—Applicability—Appeals—Appeal by tenant against decree for ejectment. *See* 1941 Dig., Col 82. PRAN KRISHNA MUKHERJEE *v.* JNANADHA ROY. **198 I.C. 181=14 R.C. 442=A.I.R. 1942 Cal. 47.**

——**S. 3**—*If* ultra vires.

S. 3 of the Bengal Non-Agricultural Tenancy Act is a valid piece of legislation which is covered by Item No. 2 read with Item No. 21 of the Provincial List and is not

BENG. NON-AGR. TEN. (TEM. PRO.) ACT (1940), S. 3.

repugnant to any existing Indian Law which makes it void under S. 107 of the Government of India Act. (*Mukherjea and Sen, JJ.*) KELIANCE JUTE MILLS CO. LTD. *v.* DUKHI SHAH. **203 I.C. 184=46 C W.N. 889=A.I.R. 1942 Cal. 550.**

——**S. 3**—*If* ultra vires—*Government of India Act, Ss.* 100 *and* 107—*C. P. Code, O.* 21, *R.* 24.

The provisions of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act relating to stay of proceedings for the ejectment of non-agricultural tenants for a period of two years, are not beyond the law-making powers of the Bengal Legislature. That legislature in curtailing the powers of the Court to grant possession has acted under Item 2, taken in conjunction with that part of Item 21 which deals with rights in or over land, of List II (*i.e.* Provincial Legislative List) of Sch. VII of the Government of India Act. The above provisions of the Bengal Act are not void under S. 107 of the Government of India Act as being in conflict with the provisions of O. 21, R. 24, C. P. Code. (*Derbyshire, C.J., Nasim Ali and Mitter, JJ.*) SUKUMARI DEVI *v.* RAJDHARI PANDEY. **I.L.R. (1942) 1 Cal. 497=198 I.C. 136=14 R.C. 436=74 C.L.J. 485 =5 F.L.J. (H.C.) 1=46 C.W.N. 174=A.I.R. 1942 Cal. 49 (S.B.).**

——**S. 3**—*Stay of appeal—Application by party—If necessary.*

The provisions of S. 3 in no way depend upon any application made by the parties and if it applies, the Court is bound to stay the appeal even though both sides are anxious that it should be heard. (*Henderson, J.*) RAM CHARIT BHAKAT *v.* TETARI KUMARI KUAR. **201 I.C. 516=15 R. C. 221=A.I.R. 1942 Cal. 136.**

——**S. 3**—*Suit for ejectment on account of non-payment of rent—Suit against monthly tenant for arrears of rent and ejectment, after notice.*

A suit for the recovery of arrears of rent and for ejectment brought by the landlord against a monthly non-agricultural tenant after serving a notice upon him to pay up the arrears and to quit the land, is one for ejectment because of non-payment of rent, and the landlord is entitled to an order for ejectment subject to the provisions of the proviso to S. 3 of the Bengal Non-Agricultural Tenancy Act. (*Derbyshire, C.J. and Gentle, J.*) RADHIKALAL GOSWAMI *v.* GOPESWAR BASU. **46 C.W.N. 1025.**

——**S. 3**—Suit for ejectment of defendant as tenant —When may be stayed—Suit for ejectment of defendant as trespasser—Procedure to be followed. *See* 1941 Dig., Col. 83. PRABHA BATI DEBI *v.* PRATAP CHANDRA MAJUMDAR. **I.L.R. (1942) 1 Cal. 49=200 I.C. 453 =15 R.C. 3=A.I.R. 1942 Cal. 145.**

——**S. 3**—Suit for ejectment "on account of non-payment of rent"—Interpretation. *See* 1941 Dig., Col. 82. PRABHA BATI DEBI *v.* PRATAPCHANDRA MAJUMDAR **I.L.R. (1942) 1 Cal. 49=200 I.C. 453=15 R.C. 3= A.I.R. 1942 Cal. 145.**

——**S. 3**—"*Suit for ejectment on account of non-payment of rent*"—*Meaning—Suit for ejectment and for rent—If can be stayed—Decree passed in such suit—Proper order for stay.*

In order to attract the operation of S. 3 of Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, what is necessary is that the suit or proceeding must be one for ejectment of a non-agricultural tenant and the ejectment must be sought for on a ground other than non-payment of rent. The words "suit for ejectment on account of non-payment of rent" refer to cases where the lease contains a condition that it will be forfeited if

BENGAL PATNI REGN. (1819) S. 11.

there is default in the payment of rent for a certain period. A suit for ejectment of a tenant on a ground other than non-payment of rent must, therefore, be stayed under the section, although rent is also claimed in such a suit. What the legislature intended is that only the suit for the ejectment should be stayed and that the Court should proceed with the suit so far as it relates to the recovery of rent. If the application for stay is made after such a suit is decreed and the decree is put into execution, the Court should stay the proceeding for the delivery of possession only and allow the decree-holder to proceed with the execution of the decree so far as it relates to recovery of arrears of rents and costs. The proviso to S. 3 of the Act has no application to such a case (*Mukherjea and Sen, JJ.*) RELIANCE JUTE MILLS CO., LTD. *v.* DUKHI SHAH. **203 I.C. 184 =46 C W.N 889=A.I.R. 1942 Cal. 550.**

——**S. 3**—*Suit to eject tenant in arrears—If can be stayed.*

A suit to eject a tenant who is in arrears is a suit on account of non-payment of rent within the meaning of S. 3 and cannot be stayed under S. 3. A.I.R. 1941 Cal. 302, Rel. on. (*Henderson, J.*) RAM CHARIT BHAKAT *v.* TETARI KUMARI KUAR. **201 I. C. 516=15 R. C. 221=A.I.R. 1942 Cal. 136.**

——**S. 3**—*Words "suit" or "proceeding"—If include appeal.*

The words "suit" or a "proceeding" in S. 3 do not include an appeal. (*Henderson, J.*) RAM CHARIT BHAKAT *v.* TETARI KUMARI KUAR. **201 I.C. 516= 15 R.C. 221=A.I.R. 1942 Cal. 136.**

——**S. 4**—*If* ultra vires.

S. 4 of the Bengal Non-Agricultural Tenancy Act is not *ultra vires* of the Provincial Legislature, being a piece of legislation covered by items Nos. 2 and 21 taken together of the Provincial List under the Government of India Act. If there is really any conflict between the provisions of this section and those of S. 51 or O. 21, R. 35, C. P. Code, the conflict is avoided by S. 4, C. P. Code. (*Mukherjea and Blank, JJ.*) RAMESH CHANDRA SARKAR *v.* ANNADA BALA DEVI. **46 C.W.N. 694= 5 F.L.J. (H.C.) 149.**

BENGAL NON-AGRICULTURAL TENANCY ACT, S. 4—*Order under—If a decree—Appeal—C.P. Code, S.* 47.

An order made under S. 4 of the Bengal Non-Agricultural Tenants Act amounts to a decree and comes within S. 47, C. P. Code. An appeal is, therefore, competent from such an order. (*Henderson, J.*) SHAMSUNNESSA KHATUN *v.* ROMJAN SHEIKH. **201 I.C. 640=15 R.C. 262=46 C.W.N. 611=A.I.R. 1942 Cal. 428 (1).**

BENGAL PATNI REGULATION (VIII OF 1819), S. 8—*Applicability—Tenure created under sale deed in* 1878 *and treated as patni—Character not challenged at all—Admission in deed by tenureholder that in case of arrears they may be realised by two six-monthly sales—Effect of.*

Where a tenure has been treated as a *patni* tenure since 1879, and the *patni* character has never been challenged at all, and there is an admission by the patnidar in the *sale* bond evidencing the creation of the tenure in 1879 that if he failed to pay the arrear rents they could be realized by two six-monthly sales as provided under the provisions of the *Patni* Regulation, it must be held that the tenure is *patni* falling under the Regulation and saleable under S. 8 of the Regulation. (*Middleton.*) RAMNI MOHAN ROY *v.* DEB PRASANNA MUKHARJEE. **8 B.R. 399.**

——**S. 11**—Sale of Patni tenure—Liability of purchaser for rent for previous period. *See* 1941 Dig.,

BENGAL PATNI REGN. (1819), S. 11.

Col. 84. GOURI SANKAR *v.* JATINDRA NATH. **199 I. C. 893=14 R.C. 659.**

——**S. 11**—*Sale of portion of putni tenure—Annulment of subordinate howla.*

Per *Pal, J.*:—The Putni Regulation does not contemplate sale of portions of a putni tenure, and consequently if it be possible for the *putnidar* to get his *putni* subdivided into several putni tenures, each having the incidents of an entire *putni*, yet keeping the integrity of the original *putni* unaffected so far as it stood in relation to the subordinate *howla*, then the infirmity of the subordinate *howla* may infinitely be increased by acts to which the howladar is no party. This will be opposed to all principles and such unreasonable departure is not at all necessary to safeguard the interest of the landlords. (*Akram and Pal, JJ.*) LUTFUR RAHMAN *v.* JOGJIBAN GHOSH. **75 C.L.J. 471.**

——**S. 11, Cl. (2)**—*Cancellation of intermediate tenure—Requirements.*

In order that the intermediate tenure may stand cancelled the requirements of S. 11, Cl. (2) of the Putni Regulation are the following:—(1) The *putni taluk* must be sold (*a*) under the rules of the Regulation, (*b*) for its own arrears. (2) The intermediate tenure must originate with the holder of the *putni* that is sold. (3) The *putnidar* who created the intermediate tenure had no special authority to grant such tenure from his superior landlord. The last few lines of the clause which purport to contain the reason for the cancellation of the intermediate tenure make it clear that the tenure which is thus liable to be cancelled must be the one carved out of the interest of the defaulting putnidar and consequently must necessarily be the one created after the *putni* that is sold. (*Akram and Pal, JJ.*) LUTFUR RAHMAN *v.* JOGJIBAN GHOSH. **75 C.L.J. 471.**

——**S. 14 A**—*Locus standi* to apply—Hindu reversioner. *See* 1941 Dig., Col. 85. ABDUL AWAL *v.* UDAY CHANDRA DAS. **200 I. C. 480=15 R.C. 49=A.I.R. 1942 Cal. 167.**

BENGAL PERMANENT SETTLEMENT REGULATION (I OF 1793), Art. 6—Effect of—Bihar Agricultural Income-tax Act—If *ultra vires*. *See* 1941 Dig., Col. 85. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689 (S.B.).**

BENGAL PUBLIC DEMANDS RECOVERY ACT (III OF 1913), Ss. 4 and 6—Certificate against dead man—Effect of—Substitution of heirs—Permissibility. *See* 1941 Dig., Col. 85. NALINI KANTA ROY *v.* SURESH CHANDRA. **197 I.C. 166=14 R.C. 325.**

——**S. 7**—Scope—Proceedings for arrears—Separate accounts opened in respect of some co-sharers after period of arrears and payment of quota by them—Proceedings against all—If bad. *See* 1941 Dig., Col. 85. NISAR MAHOMED KHAN *v.* TANQUIR AHMAD. **23 Pat.L.T. 195.**

——**Ss. 7 and 52**—Scope—Certificate against dead man—No order of substitution and no notice sent to heirs—Effect—Heirs—If bound. *See* 1941 Dig., Col. 86. NISAR MAHOMED KHAN *v.* TANQUIR AHMED. **23 Pat.L.T. 195.**

——**S. 20**—Representation of tenancy—Bengal Tenancy Act, S. 146-A. *See* 1941 Dig., Col. 87. FAZLAR RAHIM *v.* KHORSED ALAM. **199 I.C. 403=14 R.C.542**

——**S. 20**—Sale of property for amount of certificate and also for subsequent arrears—Legality of sale. *See* 1941 Dig., Col. 87. FAZLAR RAHIM *v.* KHORSED ALAM. **199 I.C. 403=14 R.C. 542.**

——**S. 20 (3)**—Title of purchaser—Interest of tenant who is neither certificate debtor nor represented by him

BENGAL RENT ACT (1859), S. 6.

—If passes. *See* 1941 Dig., Col. 87. FAZLAR RAHIM *v.* KHORSED ALAM. **199 I C. 403=14 R.C. 542.**

——**S. 29**—Scope—Suit to declare that sale did not affect interests of plaintiff—Bar of. *See* 1941 Dig., Col. 87. NISAR MAHOMED KHAN *v.* TANQUIR AHMED. **23 Pat.L.T. 195.**

——**S. 36**—*Parties to suit—Secretary of State—If necessary party.*

The Secretary of State, if he is the certificate-holder, is a necessary party to a suit under S. 36 of the Public Demands Recovery Act for setting aside a sale. (*Nasim Ali and Blank, JJ.*) BAIKUNTHA CHANDRA DAS *v.* SURESH CHANDRA DUTTA. **46 C.W.N. 975.**

——**S. 36**—*Parties to suit—Secretary of State—If necessary party—Limitation for suit—Exclusion of period of notice—C. P. Code, S. 80.*

Where the Secretary of State is a certificate-holder he (now the Province of Bengal) is a necessary party to a suit brought under S. 36 of the Public Demands Recovery Act to set aside the certificate sale. It follows, therefore, that the period of the notice served on the Secretary of State under S. 80, C. P. Code, namely two months, can be excluded in computing the period of limitation for the suit. (*Mitter and Khundkar, JJ.*) GAIBANDA LOAN OFFICE *v.* SAIYADUNNESSA KHATUN. **46 C.W.N. 967.**

——**S. 46**—Applicability—Question between auction-purchaser and representatives of certificate debtor. *See* 1941 Dig., Col. 88. NISAR MAHOMED KHAN *v.* TANQUIR AHMED. **23 Pat.L.T. 195.**

——**Sch. I, Cl. (8)**—"Any arrear of rent"—If limited to rent of tenancies governed by Bengal Tenancy Act. *See* 1941 Dig., Col. 88. BALCHAND *v.* BIJOY CHAND MAHTAB. **197 I.C. 252=14 R.C. 327.**

BENGAL PUBLIC GAMBLING ACT (II OF 1867), S. 3—*Conviction under—Proof required.*

A conviction under S. 3 of the Bengal Act (II of 1867) cannot be sustained in the absence of a finding that the premises in question were being used as a common gaming house within the meaning of the definition in S. 1. In order to establish this point, the prosecution would have to prove that the instruments of gaming found in the place were kept or used for the profit of the lessee of the premises. (*Henderson, J.*) ABDUL *v.* EMPEROR. **202 I.C. 677=43 Cr. L.J. 887.**

——**S. 6**—*Instruments of gaming—Evidentiary value.*

S. 6 of the Bengal Act (II of 1867) merely provides that the finding of the instruments of the gaming shall be evidence that the premises used is a common gaming house. It is for the Magistrate to say whether he is prepared to come to such a finding or not. (*Henderson, J.*) ABDUL *v.* EMPEROR. **202 I.C. 677=43 Cr.L.J. 887.**

——**S. 6**—*When can be invoked.*

Before S. 6 of the Bengal Act (II of 1867) can be invoked in aid of the prosecution, it must be established that before the search the Police Officer had reason to believe that the premises in question were used as a common gaming house. Evidence to the effect that he had reason to believe that gambling was going on there is not sufficient. (*Henderson, J.*) ABDUL *v.* EMPEROR. **202 I C. 677=43 Cr. L.J 887.**

BENGAL RENT ACT (X OF 1859), S. 6—*Part of land held by cultivation and part for residential purposes—Raiyat, if can acquire occupancy rights.*

Under S. 6 of the Rent Act, a raiyat holding, by cultivation at least a portion of the land comprised in the tenancy for a period of 12 years can acquire occupancy rights therein. The tenancy being one, the landlord cannot split it up and say that because a portion of

BENGAL RENT ACT (1859), S. 160.

the tenancy land is being used for another purpose, the tenancy ceases to be governed by the Act. (*Akram and Pal, JJ.*) RAJKUMARI BAISHNABI *v.* MIRJA SAMSUDDIN. **200 I.C. 314=14 R.C. 702=75 C.L.J. 29=46 C.W.N. 277=A.I.R. 1942 Cal. 330.**

——**Ss. 160 and 151**—Order of Deputy Collector, in execution proceedings—Appeal and second appeal. *See* 1941 Dig., Col. 89. SAKKAL SARDAR *v.* ISSARDAS THIRANI. **199 I.C. 740=14 R.C. 629=A.I.R. 1941 Cal. 230.**

BENGAL RENT RECOVERY UNDER-TENURES ACT (VIII OF 1865), S. 16—"*Incumbrance which may have accrued thereon by any act of any holder, etc.*"—*Meaning of—Under-raiyat with occupancy right—If affected by sale for arrears of rent under Chota Nagpur Tenancy Act.*

Although an under-raiyati interest is an incumbrance accrued on the holding by an act of the raiyat, the occupancy right which is acquired by the under-raiyat by custom is not a creation of the raiyat. It is a creation of custom, and therefore of law, custom having the force of law. Hence the interest of an under-raiyat who acquires occupancy right by custom cannot be said an "incumbrance which may have accrued thereon by any act of any holder of the said under-tenure" within the meaning of S. 16 of the Bengal Rent Recovery (Under-Tenures) Act of 1865. The section does not therefore entitle the purchaser of an under-tenure to eject an occupancy raiyat in actual possession of the land in a holding which is sold for arrears of rent under S. 208 of Chota Nagpur Tenancy Act. Nor does the section entitle the purchaser of a raiyati holding to eject an under-raiyat having occupancy right in the land. (*Fazl Ali and Chatterji, JJ.*) GHASHI SAHU *v.* SHIB SAHU. **20 Pat. 870=199 I.C. 684=8 B.R. 603=1942 P.W.N. 39=14 R.P. 605=23 Pat.L.T. 540=A.I.R. 1942 Pat. 140.**

BENGAL SANITARY DRAINAGE ACT (VIII OF 1895), S. 23—*Proprietor under compromise with Government paying as drainage cess less sum than fixed by Collector—Rate fixed by Collector not altered—Amount recoverable from tenants.*

Under S. 23 of the Bengal Sanitary Drainage Act the proprietor of an estate is entitled to recover from the subordinate tenants half the amount payable by him as drainage cess on the basis of the rate determined by the Collector under S. 21, although after such determination by the Collector there was a compromise between the Government and the proprietor and the Government accepted a less sum in full satisfaction of its claim, when there was no alteration of the rate determined by the Collector and the tenants who were not parties to the compromise were expressly excluded from it. (*Mukherjea and Blank, JJ.*) KHAGENDRA NATH BANERJEA *v.* RANI HARSHAMUKHI DASSI. **46 C.W.N. 657=75 C.L.J. 381.**

BENGAL TENANCY ACT (VIII OF 1885), Ss. 3 and 26-F—Occupancy holding purchased before 1928—Purchase recognised by one of co-sharer landlords—Purchaser, if tenant—His right to pre-emption. *See* 1941 Dig., Col. 89. ALTAB ALI *v.* ABDUL MAJID. **198 I.C. 105=14 R.C. 435=75 C.L.J. 104.**

——**S. 3 (17) Proviso (as amended by Act IV of 1928)**—Retrospective effect. *See* 1941 Dig., Col. 89. SUDHINDRA CHANDRA SINGHA *v.* JADAV MARAK. **199 I.C. 745=14 R.C. 627.**

——**S. 12**—*Transfer of permanent tenure—Liability of original tenant for subsequent rent.*

As soon as a transfer of a permanent tenure is complete under S. 12 of the B. T. Act, the liability of the transferor, if he is the original tenant, to pay rent for the

BENGAL TENANCY ACT (1885), S. 26-B.

period subsequent to the transfer comes to an end in spite of his personal covenant. The rule of English Law that his liability will only cease by reason of a privity of contract after the transferee is accepted a tenant by the lessor, is not applicable to such a case. The effect of a transfer being completed with all the formalities required by S. 12 of the Act is that there is a statutory obligation on the part of the lessor to recognise the transferee as a tenant. Of course if there is a contract between a landlord and a tenant that the tranfer shall not be valid and binding unless security is given or some other condition is fulfilled, the original tenant might still remain liable for the rent. But when there is no such condition, the lessor has got no other option but to recognise the transferee. (*Mukherjea and Blank, JJ.*) SARADINDU MUKHERJEE *v.* KUNJA KAMINI ROY. **202 I.C. 663=15 R.C. 379=46 C.W.N. 798=A.I.R. 1942 Cal. 514.**

——**S. 18-A**—Document by tenant describing nature of tenancy—Landlord not party to it—Admissibility. *See* EVIDENCE ACT, S. 13. **46 C.W.N. 169.**

——**S. 18-A**—*Transaction in which nature of tenancy is asserted—Admissibility—Landlord not party to transaction—Evidence Act, S. 13.*

It cannot be held that S. 18-A of the B. T. Act necessarily precludes the applicability of S. 13 of the Evidence Act to transactions in which the incidents of any nature of holding are asserted or denied, merely on the ground that the landlord is not a party to the same. (*Biswas, J.*) DWARKADAS MARWARI *v.* PARBATI DASI. **202 I.C. 545=15 R.C. 364=46 C.W.N. 770=A.I.R. 1942 Cal. 486.**

——**S. 20 (1-A)**—*Whether creates new right.*

S. 20 (1-A) of the B. T. Act is not declaratory of the law prior to the date when it came into force but creates a new right. (*Henderson, J.*) ASIRADDIN SARDAR *v.* SANTOSH MOHINI DASI. **47 C.W.N. 80.**

——**S. 22 (before amendment in 1908)**—*Co-sharer landlord purchasing occupancy holding—Liability to pay rent.*

Under S. 22 of the B. T. Act, as it stood before its amendment in 1908, a co-sharer landlord who purchases an occupancy holding becomes liable after his purchase to pay rent as a tenant to the whole body of landlords including himself. His liability is for rent and not for compensation for use and occupation. Consequently a suit for such rent is excepted from the cognizance of a Court of Small Causes. (*Biswas, J.*) SURENDRA CHANDRA ROY *v.* BIMALENDU ROY. **46 C.W.N. 494.**

——**Ss. 23-A to 38**—*Applicability—Tenant having higher rights combined with occupancy rights.*

Ss. 23-A to 38 of the B. T Act are applicable when the tenancies are occupancy holdings, pure and simple, but they have no application when the tenant has higher rights in the land under an express or implied grant from the landlord, though such rights are combined with those of an occupancy raiyat acquired under express provisions of the Act. (*Mukherjea and Blank, JJ.*) HIRENDRA LAL SARKAR *v.* KANAKLATA CHOUDHURANI. **202 I.C. 693=15 R.C. 383=75 C.L.J. 347=46 C.W.N. 849=A.I.R. 1942 Cal. 510.**

——**Ss. 26-B and F**—*Raiyat transferring portion of occupancy holding before 1928 and residue afterwards—Landlord taking possession of residue by pre-emption—If entitled to recover possession of first sold portion.*

If a raiyat transfers a portion of a non-transferable occupancy holding prior to the amendment of the Bengal Tenancy Act in 1928 and the residue of the holding in his possession after 1928, the mere transfer of the residue of the holding will not by itself constitute

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abandonment so as to entitle the landlord to recover possession of the first sold portion. But if the landlord exercises his right of pre-emption under S. 26-F of the B. T. Act, as it stood prior to its repeal by Act VI of 1938, with regard to the residue of the holding and takes possession of the same, or, if the second transferee gets the tenancy sub-divided and the rent apportioned under S. 88 of the B. T. Act, the landlord has the right to recover *khas* possession of the portion sold to the first purchaser. (*Mukherjee and Blank, JJ.*) NRIPENDRA CHAND SAHA *v.* JOWADALI MONDAL. **I.L.R. (1942) 2 Cal. 232=201 I.C. 655=15 R.C. 265=46 C.W.N. 623=A.I.R. 1942 Cal. 423.**

——**S. 26-C**—Applicability—Gift of occupancy holding by Mahomedan. *See* 1941 Dig., Col. 91. SRIMATIJAN *v.* FULJAKHATUN. **199 I.C. 464=14 R. C. 560.**

——**S. 26-F**—*Applicability*—Niskar *holding.*

The provisions of S. 26-F of the B. T. Act are not applicable when the transfer is of a share in a *niskar* or rent-free holding, although the tenant has acquired occupancy rights therein. (*Mukherjea and Blank, JJ.*) HIRENDRA LAL SARKAR *v.* KANAKLATA CHOUDHURANI. **202 I C. 693=15 R.C. 383=75 C.L.J. 347=46 C.W.N. 849=A.I.R. 1942 Cal. 510.**

——**S. 26-F** –Landlords purchasing 8 annas share in tenancy—If co-sharers of tenant vendors—Sale by tenants of remaining 8 annas share—Right of landlords to pre-emption. *See* 1941 Dig., Col. 92. AMJAD TALUKDAR *v.* ROHINI KANTA. **198 I.C. 650=14 R. C. 479=A.I.R. 1942 Cal. 68.**

——**Ss. 26-F and 18 (2)**—Nishkar *occupancy holding—Pre-emption, if can be allowed.*

S. 26-F of B. T. Act is not applicable to a *Nishkar* occupancy holding, and pre-emption cannot, therefore be allowed in respect of such a holding. (*Edgley and Biswas, JJ.*) PANCHANAN DAS *v.* RAMENDRA SUNDAR DAS. **46 C.W.N. 682.**

——**S. 26-F**—*Order for pre-emption—If bars suit by purchaser for declaration that holding is raiyati at fixed rent—C. P. Code, S.* 11, *Expl.* IV.

In a proceeding for pre-emption by the landlord under S. 26-F of the B. T. Act, the purchaser is not entitled to raise the question as to whether the holding is an occupancy holding, or a raiyati holding at fixed rent, because the foundation of the proceedings under S. 26 F is the admission of the purchaser in his deed of purchase that the holding is an occupancy holding. Consequently, an order for pre-emption under that section cannot operate as *res judicata* to a subsequent suit by the purchaser for a declaration that the holding is a raiyati holding at fixed rent and not an occupancy holding, even assuming that the rule of constructive *res judicata* embodied in Expl. IV to S. 11, C. P. Code, can be extended to the general principles of law. (*Nasim Ali and Blank, JJ.*) PROSANNA KUMAR ROY *v.* ADYA SAKTI DASI. **203 I.C. 630=46 C.W. N. 1022=A.I.R. 1942 Cal. 586.**

——**S. 26-F (as amended)**—*Right of pre-emption—Co-sharer tenant by purchase—Purchase made subsequent to transfer of share of which pre-emption claimed.*

A co-sharer tenant by purchase is competent to apply for pre-emption under S. 26-F of the B. T. Act as amended in 1938, although his purchase is subsequent to the transfer of the share of the holding in respect of which pre-emption is claimed. It is enough if he has acquired a share in the holding at any time before the application for pre-emption is presented, provided the application itself is made within time. (*Mukherjea and Blank, JJ.*) HIRENDRA LAL SARKAR *v.* KANAKLATA CHOUDHURANI. **202 I.C. 693=15 R C. 383=75 C. L.J. 347=46 C.W.N. 849=A.I.R. 1942 Cal. 510.**

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——**S. 26-F**—*Right to pre-emption—Co-sharer tenant acquiring landlord's interest.*

A co-sharer tenant of an occupancy holding cannot by his later acquisition of the landlord's interest be divested of his right of pre-emption under S. 26-F of the B. T. Act on the transfer by another co-sharer of his share in the holding, when there has been no division of the holding under S. 88 of the Act. (*Derbyshire, C. J. and Sen, J.*) B. A. BASIL *v.* CHARU CHANDRA CHATTERJEE. **46 C.W.N. 853.**

——**S. 26-F** – Shares of applicants after pre-emption —How determined. *See* 1941 Dig., Col. 93. REAZADDI BEPARI *v.* YAKUB BEPARI. **200 I.C. 37=14 R. C. 655.**

——**S. 26-F (2)**—"Consideration money"—Meaning. *See* 1941 Dig., Col. 93. HAFIZUR RAHMAN *v.* AMJAD ALI TALUQDAR. **200 I.C. 781=15 R.C. 80 =A.I.R. 1942 Cal. 280.**

——**S. 26-F (5) and (6) (as amended by Act VI of 1938)**—Application by co-sharers—Court allotting whole of share to one of applicants and dismissing claim of other applicants—Legality of order. *See* 1941 Dig., Col. 93. NABIRUDDIN SARKAR *v.* OSMAN GANI SARKAR. **197 I.C. 398=14 R.C. 360.**

——**S. 26-G (1) (a) and (5) (after amendment in 1938)**—Validity—If *ultra vires* of Provincial Legislature—Section, if conflicts with Ss. 62 and 68 of T. P. Act—Scope of section—Personal covenant in nature of indemnity clause in usufructuary mortgage—If alters nature of mortgage. *See* 1941 Dig., Col. 94. AKBAR ALI *v.* MAFIJUDDIN. **198 I C. 674=14 R.C. 483=5 F.L.J. (H.C.) 6=A I R. 1942 Cal. 55.**

——**S. 26-G, sub-S. (5) (before amendment)**—*Application for restoration of possession dismissed for default by Revenue officer—Second application before Civil Court—Maintainability—C. P. Code, S.* 141.

Although an application by a mortgagor for restoration of possession of the mortgaged holding under S. 26-G (5) of the B. T. Act (as it stood prior to Bengal Act XVIII of 1940) was previously dismissed for default by a revenue officer, a second application under the same provision before the Civil Court is maintainable in law. The right of the mortgagor to recover possession is a recurring right and continuous, so long as possession is not restored to him. If the right to recover possession is negatived by a competent tribunal, it cannot certainly be reagitated in the same Court or another Court, but, if the application is merely dismissed for default, a subsequent application cannot be barred, as the latter is not based on the same cause of action.

Obiter: It is extremely doubtful whether the revenue officer was a Court exercising civil jurisdiction within the meaning of S. 141, C. P Code. (*Mukherjea and Sen, J.*) SASHI BHUSAN MISRA *v.* MADHU SUDAN MANDAL. **I.L.R. (1942) 2 Cal. 28=202 I.C. 601=15 R.C. 371=A.I.R. 1942 Cal. 522.**

——**S. 26-G, sub-S. (5) (before amendment)**—*If* ultra vires.

S. 26-G (5) of the Bengal Tenancy Act (as it stood prior to Bengal Act XVIII of 1940) is not *ultra vires* the Provincial Legislature. (*Mukherjea and Sen, JJ.*) SASHI BUSAN MISRA *v.* MADHU SUDAN MANDAL. **I.L.R. (1942) 2 Cal. 28=202 I.C. 601=15 R.C. 371 =A.I.R. 1942 Cal. 522.**

——**S. 26 J**—*Decision under—If* res judicata.

A decision in a proceeding under S. 26-J of the B. T. Act does not operate as *res judicata* in respect of the incidents of the tenancy in a subsequent suit. (*Pal, J.*) SRISH CHANDRA NANDY *v.* KALA CHAND ROY. **I.L.**

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R. (1942) 1 Cal. 510=202 I.C. 570=15 R.C. 367=75 C.L.J. 20=46 C.W.N. 169=A.I.R. 1942 Cal. 445.

——S. 26-J—*Finding as to status of tenant*—Res judicata.

The proceedings under S. 26-J of the Bengal Tenancy Act are of a summary character, and a finding arrived at in those proceedings about the status of the tenant will not be *res judicata* in a subsequent suit brought for a declaration of the status of the tenant. (*Mitter and Akram, JJ.*) BISWA NATH JANA *v.* BHUPENDRA NATH GHOSE. **46 C.W.N. 133.**

——S. 29—Applicability—Suit for assessment of fair rent. *See* 1941 Dig., Col. 95. GOPAL CHANDRA CHANDA *v.* DWARIKA NATH BEPARI. **74 C.L.J. 535.**

——Ss. 48-D and 75-A—*Decree for enhancement of rent and decree for ejectment—If mutually exclusive.*

The provisions of S. 48-D of the B. T. Act lead to the conclusion that a decree for enhancement of rent and a decree for ejectment are mutually exclusive. Under S. 48-D (*ii*), the Court has to fix a fair rent. If the defendant agrees to pay, the decree would be one enhancing the rent and within the terms of S. 75-A of the Act. If the defendant does not agree, the only decree which can be passed is one for ejectment which is entirely outside the scope of that section. (*Henderson, J.*) RAJ MOHAN SAHA *v.* JOGENDRA NATH SARKAR. **201 I.C. 323=15 R.C. 167=75 C.L.J. 84=46 C.W.N. 255=A.I.R. 1942 Cal. 353.**

——S. 52—*Applicability—Tenancy composed of undivided share in land.*

S. 52 of the B. T. Act is applicable to a tenancy composed of an undivided share in a plot of land after the amendment in 1928 and 1938 of the definition of a holding in S. 3 (9) of the Act. (*Akram, J.*) BROJENDRA MOHAN MAITRA *v.* SARODA MANDAL. **I.L.R. (1942) 2 Cal. 111=46 C.W.N. 727.**

——S. 52—Excess area found on re-measurement—Settlement of increased rent—Previous measurement not proved to be inaccurate—Deduction from total area—If may be allowed—Rule of practice. *See* 1941 Dig., Col. 96. JANAKINATH GUHA *v.* BAZLER RAHMAN. **198 I.C. 644=14 R.C. 480=A.I.R. 1942 Cal. 85.**

——S. 74-A—*Landlord and agent—Both, if can be fined.*

Under S. 74-A of the B. T. Act both the landlord and his agent can be fined separately for realising an illegal imposition from a tenant, if both were concerned in its realisation. (*Biswas, J.*) MANASHA CHARAN *v.* JALKADAR DEWAN. **I.L.R. (1942) 2 Cal. 440=46 C.W.N. 887.**

——Ss. 75 A and 110—*Enhancement of rent in proceeding for settlement of rent—When takes effect.*

Enhancement of rent in a proceeding for settlement of a fair and equitable rent under Chap. X of the B. T. Act is enhancement of rent within the meaning of S. 75-A of the Act. S. 75-A of the Act, although in the nature of a general provision, controls the special provision contained in S. 110 as regards the date from which a rent settled under Chap. X is to take effect. (*Biswas, J.*) NAGENDRA CHANDRA LAHIRI *v.* PROBHAT CHANDRA DEB. **203 I.C. 625=75 C.L.J. 414=A.I.R. 1942 Cal. 607.**

——S. 75-A—Scope—Decree for enhancement of rent and decree for ejectment. *See* B. T. ACT, Ss. 48-D AND 75 A. **46 C.W.N. 255.**

——S. 75-A (2)—Applicability—Decree for enhancement under S. 105—Decree passed before section coming into force. *See* 1941 Dig., Col. 96. NAGENDRA CHANDRA LAHIRI *v.* MAHOMED ABDUS SOBHAN SAHEB. **I.L.R. (1942) 1 Cal. 58=199 I.C. 800=14 R.C. 676=A.I.R. 1942 Cal. 142 (1).**

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——S. 86—Validity of surrender—Tenant selling tenancy not transferable and subsequently surrendering it to landlord. *See* 1941 Dig., Col. 97. KALA MIA *v.* KSHETRA MOHAN PAL. **199 I.C. 430=14 R.C. 544.**

——S. 88 (6)—*Order refusing application for sub-division on ground that applicant and opposite party are not co-sharers—Appeal, if competent.*

The Civil Court hearing an application for the sub-division of a tenancy is entitled to decide whether or not the applicant and the opposite party are co sharers and a decision on this point is clearly a decision under S. 88 of the B. T. Act, and as such appealable under sub-S. (6) of that section. (*Mukherjea and Sen, JJ.*) JIBANDHAN *v.* ATUL CHANDRA. **46 C.W.N. 401.**

——S. 88 (6)—"*Prescribed fee*"—*Meaning—Fee not prescribed by Local Government—Appeal, if competent without any fee being paid.*

The words "prescribed fee" in S. 88 (6) of the B. T. Act do not mean the "mutation fee" mentioned in sub-S. (4) but mean the fee prescribed by the Local Government. But the fact that the Local Government has not prescribed any fee cannot take away the right of appeal granted by sub-S. (6). The reasonable interpretation of the sub-section would be that until the fee is prescribed, the appeal would lie without any fee being paid. (*Mukherjea and Sen, JJ.*) JIBANDHAN *v.* ATUL CHANDRA. **46 C.W.N. 401.**

——S. 95—Common manager and proprietors—Powers of borrowing. *See* 1941 Dig., Col. 98. SUKUMARI GUPTA *v.* DHIRENDRA NATH ROY. **197 I.C. 869=14 R.C. 401.**

——Ss. 103-B (5), 102 and 101—Tenancy not governed by Act—Entry as to its permanency—Presumption. *See* 1941 Dig., Col. 98. JOGENDRA KRISHNA BANERJI *v.* SUBASINI DASSI. **197 I.C. 376=14 R.C. 351.**

——S. 104—Fresh settlement—Effect of—Rights of tenant. *See* 1941 Dig., Col. 98. SRIKANTA MRIDHA *v.* PRAFULLA CHANDRA GHOSE. **200 I.C. 235=14 R.C. 692=A.I.R. 1942 Cal. 133.**

——Ss. 104-A to 104-F and 104-H—*Entry of rent—Effect of—If includes decision as to liability to payment of rent.*

A perusal of the grounds of appeal specified in S. 104-H affords complete conviction that the entry of rent settled in the settlement rent-roll prepared under Ss. 104-A to 104-F, included a decision as to liability to the payment of rent. The Settlement Officer is not entitled to disregard, or to alter, contractual rights; he is bound to regard them and to give effect to his view of them. (*Lord Thankerton.*) KUMAR CHANDRA SINGH *v.* MIDNAPORE ZEMINDARY CO. **69 I.A. 51=I.L.R. (1942) Cal. 1=8 B.R. 627=14 R.P.C. 128=46 C.W.N. 802=I.L.R. (1942) Kar. (P.C.) 23=199 I.C. 545=A.I.R. 1942 P.C. 8 (P.C.).**

——Ss. 104-H and 111-A—*If provide alternative remedies.*

It cannot be said that S. 111-A provides an alternative remedy, even if the remedy provided by S. 104-H is no longer open. Even if the language of the proviso to S. 111-A were loose enough to permit of it, the specific provisions of Ss. 104-H and 104-J cannot be cut down by any such construction; it would render nugatory the period of limitation of action provided by S. 104-H and the finality provided by S. 104-J. Therefore, where the lessees fail to institute within the prescribed period any suit under S. 104 H, their liability for the rent must be deemed to have been correctly settled by the Settlement Officer, in preparing the settlement rent-roll. (*Lord Thankerton.*) KUMAR CHANDRA SINGH *v.* MIDNAPORE ZEMINDARY CO. **69 I. A. 51=I. L. R. (1942)**

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Cal. 1=8 B.R. 627=14 R.P.C. 128=46 C.W.N. 802 =I.L.R. (1942) Kar. (P.C.) 23=199 I.C. 545=A.I.R. 1942 P.C. 8 (P.C.).

———Ss. 105 and 105-A—Withdrawal of proceeding under S. 105—Determination of special issue under S. 105-A—Jurisdiction of Court. *See* 1941 Dig., Col. 98. SANAT KUMAR MUKHERJEE *v.* DEBENDRA NATH. **199 I. C. 445=14 R.C. 552.**

———S. 106—Scope of suit—Enquiry into title—Power of Revenue Officer. *See* 1941 Dig., Col. 98. CHAIRMAN, DISTRICT BOARD, RANGPUR *v.* JAGATPAT SINGH. **198 I.C. 23=14 R.C. 416.**

———S. 107—*Decree for costs passed by Special Judge—Execution—Jurisdiction of Civil Court.*

A decree for costs passed by a Special Judge in permitting the withdrawal of a suit brought under S. 106 of the B. T. Act with liberty to institute a fresh suit can be executed by a Civil Court to which it is transferred for execution. (*Henderson, J.*) SAHA SAMSUDDIN AHMED *v.* SERAJAL HAQ. **I.L.R. (1942) 2 Cal. 121 =203 I C. 222=75 C.L.J. 503=A.I.R. 1942 Cal. 567 = 46 C.W.N. 696.**

———S. 111-A, proviso—*Applicability.*

The proviso to S. 111-A is satisfied apart from any matter covered by S. 104-H by holding it to be applicable to cases where the challenge is, for instance, as to the right of the Settlement Officer to deal with the subjects under Ss. 104-A to 104-F. (*Lord Thankerton.*) KUMAR CHANDRA SINGH *v.* MIDNAPORE ZEMINDARY CO. **69 I.A. 51=I L.R. (1942) 2 Cal. 1= 8 B. R. 627=14 R.P.C. 128=46 C.W.N. 802=I.L.R. (1942) Kar. (P.C.) 23=199 I.C. 545=A.I.R. 1942 P. C. 8 (P.C.).**

———S. 146-A (3)—*Scope and effect—Representation in rent suits.*

The doctrine of representation in rent suits does not rest solely on the provisions of S. 146-A of the B. T. Act. Sub-S. (3) of that section enacts no more than this that if the defendants in the suit include all the persons mentioned in the various clauses of that sub-section, then the entire body of co-sharer tenants shall be deemed to be represented by them, or in other words, that in that case there will be an irrebuttable presumption that the entire tenancy has been represented in the suit. It does not say that the non-joinder of any such persons or of any other persons having an interest in the tenancy will of itself negative representation. The question of representation is one of fact, and must depend on the particular circumstances of each case. There is no reason why, apart from the provisions of sub-S. (3), it may not be still open to a party interested to show that, in point of fact, the entire tenancy was represented in the suit by the persons who were actually joined as defendants. (*Biswas, J.*) SURATAN BIBI *v.* LUTU GOPAL BHATTACHARJYA. **I.L.R. (1942) 1 Cal. 523.**

———Ss. 148 A and 162 to 166—*Rent decree obtained by some of co-sharer landlords—Application for its execution by them—Amount payable to them stated therein as amount payable under decree and not total amount—Effect of sale.*

Where a rent suit instituted by some of the co-sharer landlords was in compliance with all the relevant provisions of the B. T. Act, particularly of S. 148-A of that Act, and the decree obtained in that suit was a valid decree available against the holding in the manner provided in Chapter XIV of the Act and the execution of the decree complied with all the requirements of Ss. 163 to 166 and S. 148-A (7) and also of S. 162 excepting that in naming the amount recoverable under the decree the total amount so recoverable was not

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stated but only the amount payable to the applicants for execution was given as the amount recoverable, but the application for execution contained all other descriptions of the decree and was for the benefit of the entire body of the decree-holders,

Held, (*i*) that this non-compliance with S. 162, if non-compliance it was, did not in any way affect the execution proceeding and the sale held in it would have the effect of passing the entire holding to the purchaser as contemplated by S. 65 and Chap. XIV of the B. T. Act and that the character and effect of the execution was not in any way affected by the fact that the application by the other co-sharers for joining the execution case as co-applicants was disallowed, (*ii*) and that consequently a purchaser at another rent sale held subsequently to the above sale did not acquire any title to the holding by his subsequent purchase. (*Pal, J.*) SADEN *v.* DILIP KUMAR ROY CHOWDHURY. **46 C. W.N. 505.**

———S. 148-A—*Single suit for rent in respect of two holdings in possession of different persons and for different periods—Decree passed in suit—Validity—If has effect of rent decree—C. P. Code, S. 99.*

Where an original holding had been split up into two holdings and these holdings were in possession of different persons but a single suit had been brought to recover rent for different periods in respect of the two holdings, there can be no doubt that two separate causes of action were improperly joined in the suit for rent. But the decree passed in the suit could not be reversed merely on the ground of misjoinder even in a proceeding by way of appeal if it has not affected the merits of the case, in view of the provisions of S. 99, C. P. Code. If there was no appeal from the decree and no objection was raised by any of the defendants concerned to the frame of the suit, they cannot be heard to say in a subsequent suit that the decree was without jurisdiction. If in passing the decree, the Court moulded the decree in such a manner as to enable the decree to apply distributively to the two holdings in respect of which the suit was brought and the execution proceedings were also moulded on the same lines so that each set of defendants knew what they had to pay, the decree has the effect of a rent decree. (*Harries, C.J. and Fazl Ali, J.*) SUNDAR PANDIT *v.* MAHADEO PRASAD. **197 I.C. 476 =8 B.R. 228=14 R.P. 312=A.I.R. 1942 Pat. 243.**

———S. 155—*Suit for ejectment of occupancy tenant—Allegation of several acts of waste—Right to sue—When accrues—Limitation Act, Art. 32.*

A suit for ejectment of an occupancy tenant and for compensation on the ground that he had used the lands in a manner which rendered the same unfit for the purposes of the tenancy, such as is contemplated in S. 155 of the Bengal Tenancy Act, is governed by Art. 32 of the Limitation Act. It is well settled that if there is a misuse by the tenant even of a portion of the land comprised in the tenancy, the landlord's right to eject may and must be exercised in respect of the whole holding, and he cannot bring a suit for ejectment only from the portion which was actually misused. But this does not mean that where the tenants affect only a portion of the land by any acts of waste, the landlord shall be bound to sue at once and that he may not wait till further acts of waste are committed on the rest of the tenancy. Similarly, it does not follow that because a suit for ejectment may be barred, if it is founded on any particular act of waste or misuse, it may not yet be within time as regards other acts of a similar kind which might equally found a fresh cause of action. Therefore, in order to decide whether a suit is barred or not, it is necessary for the Court to come to an ex-

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press finding as to when the plaintiff first came to know of each of the several acts of misuse or waste alleged. It is also necessary to see when the various acts complained of produced the result which would give the plaintiff the right to sue. The right to sue does not accrue until and unless the land has been rendered unfit for the purposes of the tenancy. The result is not necessarily reached as soon as the act is commenced. Neither can it be said that it is not reached until the act is finally completed. It is a question of fact, which depends on the evidence, as to when and at what stage the land may be regarded as having become unfit by reason of any acts committed by the tenants. (*Biswas, J.*) PROBHATI DEBI *v.* TARAK NATH KUNDU. **46 C.W.N. 786.**

——**S. 155**—*Suit for ejectment of occupancy tenant—Limitation—Exclusion of period of notice—Limitation Act, S.* 15 (2).

In computing the period of limitation for a suit for ejectment of an occupancy tenant on the ground that he had used the land in a manner which rendered the same unfit for the purposes of the tenancy, the landlord is entitled to claim the exclusion of the period of the notice served by him on the tenant under S. 155 of the Bengal Tenancy Act. Such a notice is a notice of a suit within the meaning of S. 15 (2) of the Limitation Act. (*Biswas, J.*) PROBHATI DEBI *v.* TARAK NATH KUNDU. **46 C.W.N. 786.**

——**S. 158-B (2)**—Absence of notice—Legality of sale. *See* 1941 Dig., Col. 100 RAJJAB ALI KHAN *v.* BHUPATISH CHANDRA ROY. **201 I.C. 574=15 R. C. 242=A.I.R. 1942 Cal. 61.**

——**Ss. 159 and 167**—*Several purchasers—Power to annul incumbrance—If must be exercised jointly.*

The power to annul the incumbrances under the B. T. Act is given to "the purchaser" meaning thereby the entire body of purchasers when there are more than one purchaser of the tenure or holding. Such power must, therefore, be exercised by the entire body of the auction-purchasers jointly. (*Akram and Pal, JJ.*) SARALA SUNDARI *v.* PURNA CHANDRA. **I.L.R. (1942) 2 Cal. 52=46 C.W.N. 409.**

——**S. 160 (c)**—"*Dwelling-house*"—*Meaning.*

Dwelling-houses in Cl. (*c*) of S. 160 mean permanent dwelling-houses. (*Biswas, J.*) KHATEKUDDIN *v.* TRIPURASUNDARI DEBI. **201 I.C. 344=15 R.C. 170=A.I.R. 1942 Cal. 375.**

——**S. 160 (c)**—'*Dwelling-houses*'—*Meaning.*

"Dwelling-houses" in S. 160 (*c*) of the B. T. Act mean permanent dwelling-houses. The collocation of the words in this clause goes to show that the object is to protect leases on which permanent structures have been erected. (*Biswas, J.*) LATIM SEKH *v.* TRIPURA SUNDARI. **46 C.W.N. 383.**

——**S. 162**—Rent decree obtained by some of co-sharer landlords—Application for its execution by them—Amount payable to them stated therein as amount payable under decree and not total amount—Effect of sale. *See* B. T. ACT, SS. 148-A AND 162 TO 166. **46 C.W.N. 505.**

——**Ss. 164 to 167**—Sale of tenure at rent sale—Sub-tenant under defaulting tenant—Position of—If becomes tenant under purchaser till annulment and trespasser thereafter. *See* 1941 Dig., Col. 100. PRABHA BATI DEBI *v.* PROTAP CHANDRA MAZUMDAR. **I.L.R. (1942) 1 Cal. 49=200 I.C. 453=15 R.C. 3=A.I.R. 1942 Cal. 145.**

——**Ss. 165 and 163**—*Sale proclamation with power to avoid all encumbrances ordered—Further proceeding stayed by Debt Settlement Board—Stay order vacated beyond one month from date fixed for sale—Nature of*

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fresh proclamation to be issued—C. P. C., O. 21, *Rr.* 67 *and* 69.

Where after a proclamation of sale with power to avoid all encumbrances was ordered under S. 165 (1) of the B.T. Act further proceedings were stayed by a notice issued by a Debt Settlement Board under S. 34 of the Bengal Agricultural Debtors Act and the order of stay was vacated beyond the period of one month from the date fixed for the sale, R. 69 of O. 21, C. P. Code, will operate to require a fresh proclamation to be issued and the proclamation will be one of the kind leading to the part of the sale, which is being adjourned, namely, a proclamation under S. 165 (1) for sale with power to annul encumbrances and not a proclamation under S. 163 of the B. T. Act for sale free from encumbrances. At this stage the words, "under R. 67" in R. 69 of O. 21, C. P. Code, are to be interpreted to mean R. 67 as varied by S. 165 (1) of the B. T. Act read with S. 163 (3). It follows that the proclamation must be for a sale with power to annul encumbrances, and fixed for a date "not less than fifteen or more than thirty days" from "the date of the postponement" which date of postponement must be the date on which fresh proclamation is ordered. (*Biswas and Roxburgh, JJ.*) BIBHUTI BHUSAN DAS *v.* BEJOY CHAND MAHTAB. **I.L.R. (1942) 1 Cal. 359 =202 I.C. 434=15 R.C. 335=75 C.L.J. 186=A.I.R. 1942 Cal. 481.**

——**S. 167**—Application under—Limitation—Starting point—Application to set aside sale disallowed by trial Court, allowed by Appellate Court and ultimately disallowed by High Court—Confirmation of sale by trial Court while disallowing application. *See* B. T. ACT, SS. 174 (3), 174-A (5) AND 167. **46 C.W.N. 706.**

——**S. 167**—*Incumbrance created by registered instrument—Purchaser, if can be taken to have had "notice".*

Under S. 167 (*i*) of the B. T. Act, a purchaser must be taken to have had notice of an incumbrance within a reasonable time of his purchase, when that incumbrance has been affected by a registered instrument. (*Akram and Pal, JJ.*) SARALA SUNDARI *v.* PURNA CHANDRA. **I.L.R. (1942) 2 Cal. 52=46 C.W.N. 409.**

——**S. 167**—*Landlord purchasing holding in execution of rent decree—If entitled to hold it free of encumbrance without annulling same.*

A landlord who purchases a holding in execution of his rent decree is not entitled to hold it free of the mortgage to which it is subject without annulling the same under S. 167 of the B. T. Act. The procedure provided by this section is the only mode of annulling an incumbrance, and the purchaser must have recourse to it within the specified period for the purpose. If that is not done, the landlord purchaser must hold the property subject to the mortgage, and will be entitled to redeem. In this respect the statute recognises no distinction between a landlord purchaser and a stranger purchaser under a rent decree. (*Biswas, J.*) CHUNNU LAL *v.* AMLUK CHANDJI. **46 C.W.N. 700.**

——**S. 167**—Mortgage of non-transferable occupancy holding—If amounts to incumbrance—Landlord-purchaser at rent sale not annulling such mortgage—Mortgagee's right to sue on mortgage—Mortgagee purchasing at mortgage sale—If can sue for possession against landlord—Landlord not made party to mortgage suit—Remedy of mortgagee-purchaser. *See* 1941 Dig., Col. 101. BIDHURANJAN SARKAR *v.* SOLEMAN PRAMANIK. **197 I.C. 334=14 R.C. 338.**

——**Ss. 167, 160 and 159**—*Sale of holding in execution of rent decree—When subject to under-raiyati interest.*

BENGAL TENANCY ACT (1885), S. 168-A.

Section 159 purports to enact an exception to the general rule that the tenure or holding itself shall pass at a rent sale. A sale of a holding in execution of a rent decree can be said to be subject to the under-raiyati interest therein only when the under-raiyati was an "incumbrance" within the meaning of S. 161 but had not been annulled under S. 167 by the purchaser or that it was a "protected interest" as defined in S. 160. An interest will subsist, if it is a protected interest: it will also subsist, if it is an incumbrance and is not annulled; but an interest, which is neither a protected interest nor an incumbrance, must yield to the rights of the purchaser. If an interest is a protected interest, it cannot be an incumbrance, but the converse does not follow that if it is not an incumbrance, it must be a protected interest. An interest is not, therefore, necessarily saved from a sale by merely showing that it is not an incumbrance; it can be saved only where it is not an incumbrance because it is a protected interest. (*Biswas, J.*) KHATERUDDIN *v.* TRIPURASUNDARI DEBI. **201 I.C. 344=15 R.C. 170=A.I.R. 1942 Cal. 375.**

——**S. 168 A**—*Applicability—Pending proceedings.*

Sub-S. (2) of S. 168-A of the B. T. Act shows that pending proceedings are not outside the scope of the section. If the sale of any property other than the defaulting tenure was completed before the section came into force the sale would certainly stand but if the property was attached and not sold, the judgment-debtor is given the right to apply for release of the property on payment of costs. The words of the sub-section are wide enough to include a case where the landlord having put up to sale the defaulting tenure before the section is introduced proceeds against other properties of the judgment-debtor which are attached but not sold when the section comes into force. Such cases would be governed by sub-S. (1), Cl. (*a*) and the expression "shall not be executed" occurring in that clause would impose limitations upon all proceedings in execution commenced or continued after the new section comes into force. (*Mukherjea and Blank, JJ.*) ATUL CHANDRA CHAKRAVARTHI *v.* UPENDRA NARAYAN. **I.L.R. (1942) 2 Cal. 397=202 I.C. 147=15 R.C. 297=75 C.L.J. 267=46 C.W.N. 684=A.I.R. 1942 Cal. 478.**

——**S. 168-A**—*Applicability*—Putni *tenures—Section, if affects Putni Regulation.*

The operation of S. 168-A of the Bengal Tenancy Act is not withdrawn from the *putni* tenures by reason of S. 195 (*e*) of the Act. There is nothing in S. 168-A which can be said to affect the Putni Regulation itself. No doubt it affects the *putni* tenures. But as there is nothing in the Putni Regulation relating to the execution of any decree for arrears of rent due in respect of the *putni* and as S. 168-A only gives certain special provisions relating to such execution, the provisions contained in the Putni Regulation are not affected by S. 168-A of the Bengal Tenancy Act. (*Nasim Ali and Pal, JJ.*) SATISH CHANDRA *v.* SUDHIR KRISHNA GHOSH. **201 I.C. 24=15 R.C. 110=5 F.L.J. (H.C.) 131=75 C.L.J. 190=46 C.W.N. 540=A.I.R. 1942 Cal. 429.**

——**S. 168-A**—*Applicability—Sale confirmed before its enactment.*

S. 168-A which was introduced in the Bengal Tenancy Act by the Amending Act of 1940 prohibiting the attachment and sale of the property of the judgment-debtor other than the defaulting tenure, was not intended to affect sales which were confirmed before the amending Act came into operation. (*Nasim Ali and Pal, JJ.*) PRAFULLA KUMAR ROY *v.* BIBHABATI ROY. **201 I.C. 319=15 R.C. 165=46 C.W.N. 549=A.I.R. 1942 Cal. 369 (1).**

——**S. 168-A**—*'Decree for rent'—Zemindar mortgaging zemindari after granting* ejara *lease—Mortgagee empowered to recover rent from* ijaradars *for appropriation towards interest—Decree obtained by mortgagee for such rent—If hit by section.*

Where a zemindar after granting an *ijara* lease in respect of his zemindari mortgages it to another and assigns to the mortgagee his right to recover rent from the *ijaradars* and empowers him to appropriate so much of it as is necessary to pay the interest due to him, the rent paid to the mortgagee by the *ijaradars* is rent in the proper sense of the word. Consequently a decree obtained against the *ijaradars* by the mortgagee for such rent cannot but be a decree for rent which is hit by S. 168-A of the B. T. Act. (*Mukherjea and Blank, JJ.*) SATISH CHANDRA *v.* BISHNUPADA PAL. **I.L.R. (1942) 2 Cal. 325=202 I.C. 488=15 R.C. 352=5 F.L.J. (H.C.) 144=46 C.W.N. 628=A.I.R. 1942 Cal. 470.**

——**S. 168-A**—*Decree-holder purchasing holding in execution—If liable to deposit rent payable between dates of suit and confirmation of sale.*

A decree-holder purchasing a holding in execution of his rent-decree under S. 168-A of the B. T. Act is not liable to deposit in Court the rent which has become payable between the date of the institution of the suit and the date of the confirmation of the sale. (*Henderson, J.*) JAGADISH CHANDRA SINHA *v.* MUNSUR MOLLA. **46 C.W.N. 920.**

——**S. 168-A**—*If* ultra vires.

S. 168-A of the B. T. Act is a valid piece of legislation which is quite within the competency of the Provincial Legislature. 46 C. W. N. 540, Foll. (*Mukherjea and Blank, JJ.*) SATISH CHANDRA *v.* BISHNUPADA PAL **I.L.R. (1942) 2 Cal. 325=202 I.C. 488=15 R.C. 352=5 F.L.J. (H.C.) 144=46 C.W.N. 628=A.I.R. 1942 Cal. 470.**

——**S. 168-A**—*If void—Repugnancy to Ss.* 51 *and* 60, *C. P. Code, and Ss.* 2 *and* 3 *of Putni Regulation—Government of India Act, S.* 107 (1).

The newly enacted S. 168-A of the B. T. Act inserted by the Amending Act of 1940 is not rendered void to any extent by S. 107 (1) of the Government of India Act, 1935. It cannot be repugnant to the provisions of Ss. 51 and 60, C. P. Code, because of the saving provisions of its S. 4 (1) which withdraws the operation of the relevant provisions of the Code from the field covered by the new provision of the B. T. Act to the extent to which the latter covers that field and thus saves the latter from being repugnant to the former. As regards the Putni Regulation of 1819, its provisions do not fulfil the requirements of S. 107 (1) of the Government of India Act at all. A *putni* tenure is certainly a land tenure and the Regulation in "pith and substance" is one with respect to such land tenures. This is not one of the matters enumerated in the concurrent legislative list at all and consequently any repugnancy to its provisions is not made by S 107 (1) a vitiating cause affecting the provision of a Provincial Law. (*Nasim Ali and Pal, JJ.*) SATISH CHANDRA *v.* SUDHIR KRISHNA GHOSH. **201 I.C. 24=15 R.C. 110=5 F.L.J. (H.C.) 131=75 C.L.J. 190=46 C.W.N. 540=A.I.R. 1942 Cal. 429.**

——**S. 168-A**—*Retrospective effect.*

S. 168-A of the B. T. Act has no retrospective effect except as provided for in sub-S. (2). (*Henderson, J.*) KALIDAS SAHA *v.* KIRAN CHANDRA. **202 I.C. 614=15 R.C. 373=46 C.W.N. 864=A.I.R 1942 Cal. 521.**

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——**S. 168-A** — *Validity—Whether repugnant to existing Indian Law—Government of India Act, S.* 107.

S. 168-A of the B. T. Act is a valid piece of legislation and is not void under S. 107 of the Government of India Act as being repugnant to any provision of an existing India Law to the extent that it limits sales in execution of decrees for rent to the property in arrears

Per *Sen, J.*—(1) There is no conflict between S. 168-A of the B. T. Act and S. 51, C. P. Code, because these two diverse provisions occupy different fields. The B. T. Act provides its own special procedure, although most of it has been borrowed from C. P. Code. S. 168-A is merely an item of that special procedure and does not in any way encroach upon the domain in which S. 51, C. P. Code, functions. (2) There can be no conflict or repugnancy between any provision of C. P. Code and S. 168-A which deals with the special form of procedure under the B. T. Act, in view of the provisions of S. 4, C. P. Code, (3) Even if S. 168-A is repugnant to the B. T. Act as it stood at the time of the amendment, it is not void under S. 107 of the Government of India Act, as the B. T. Act is not an existing Indian Law with respect to a matter enumerated in the concurrent list but it is a law with respect to item 21 of the Provincial Legislative List.

Per *Pal, J.*—(1) The Provincial Law in question in the present case is a provision contained in the Bengal Council Act XVIII of 1940, and as this Act in *pith* and *substance* is one with respect to Item No. 21 of the Provincial List and not with respect to any matter in the Concurrent List, it does not come within the mischief of S. 107 (1) of the Government of India Act. (2) If the rival existing Indian Law be taken to be S. 51, C. P. Code, as adapted by S. 143 (2) of the B. T. Act, even the provision of the existing Indian Law will not be with respect to any matter in the Concurrent List as that will, in *pith* and *substance* be a part of the law relating to landlord and tenant, and consequently S. 107 of the Government of India Act will not be applicable. (3) As S. 51, C. P. Code, does not give to the decree-holder a right to execute his decree against all the properties of the judgment-debtor but simply gives the procedure in execution, there is no repugnancy between this section and S. 168-A of the B. T. Act. (4) Even without the help of S. 4, C. P. Code, there will be no repugnancy between S. 51, C. P. Code and S. 168-A of the B. T. Act, as according to the recognised rules of construction the general provision of C. P. Code must give place to the special provision contained in S. 168-A of the B. T. Act. (*Sen and Pal, JJ.*) BIR BIKRAM KISHORE *v.* TOFAZZUL HOSSEIN. **46 C.W.N. 999 = 5 F.L.J. (H.C.) 189 = A.I.R. 1942 Cal. 587.**

——**S. 168-A (1) (a), proviso**—*Applicability—Tenure not for fixed period—Extinction of tenancy by merger.*

The proviso to S. 168-A (1) (*a*) of the B. T. Act is not limited in its application to a tenancy for a particular period only. Merger may be one of the methods by which a tenancy can expire within the meaning of that proviso. (*Mukherjea and Blank, JJ.*) ATUL CHANDRA CHAKRAVARTHI *v.* UPENDRA NARAYAN. **I.L.R. (1942) 2 Cal. 397 = 202 I.C. 147 = 15 R.C. 297 = 75 C.L.J. 267 = 46 C.W.N. 684 = A.I.R. 1942 Cal. 478.**

——**S. 168-A (1) (a), proviso**—*Applicability—Tenure sold in execution of decree.*

The proviso to S. 168-A (1) (*a*) of the B. T. Act contemplates a case where the defaulting tenure did not exist at the initial stage when the decree was first sought to be executed. It does not apply where the tenure was sold in execution of the very decree, for the balance due

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under which the subsequent execution case was started. The words "before an application is made for execution of such a decree" as used in the proviso refer to the first or initial application for execution and not to the subsequent proceeding which is started by the landlord after the defaulting tenure is purchased by him in execution of the same decree. It would make no difference whether the tenure was sold before or after the section came into force. (*Mukherjea and Blank, JJ.*) ATUL CHANDRA CHAKRAVARTHI *v.* UPENDRA NARAYAN. **I.L.R. (1942) 2 Cal. 397 = 202 I.C. 147 = 15 R.C. 297 = 75 C.L.J. 267 = 46 C.W.N. 684 = A.I.R. 1942 Cal. 478.**

——**S. 168-A (1) (a) and proviso**—*Scope and effect—Words "term of the tenancy expires" in proviso—Meaning of—Proviso, if limited to tenancy for fixed period.*

S. 168-A (1) (*a*) of the B. T. Act plainly and clearly prohibits execution by the attachment and sale of any property other than the entire tenure or holding to which the decree relates, and the proviso to cl. (*a*) withdraws this prohibition only when the defaulting tenancy which is the primary source of realisation of the decretal amount is no longer in existence. The words "term of the tenancy expires" in the proviso mean and refer to the extinction or cessation of the tenancy itself and not merely of the interest of the judgment-debtor in the tenancy. The proviso is not limited in its operation only to the cases where the defaulting tenancy is one for a fixed period, but extends to all classes of tenures or holdings. (*Nasim Ali and Pal, JJ.*) SATISH CHANDRA *v.* SUDHIR KRISHNA GHOSH. **201 I.C. 24 = 15 R.C. 110 = 5 F.L.J. (H.C.) 131 = 75 C.L.J. 190 = 46 C.W.N. 540 = A.I.R. 1942 Cal. 429.**

——**S. 171**—*Person making deposit—If necessary party to rent suit—Such person, if personally liable for rent.*

By virtue of S. 171 of the B. T. Act, a person who makes a deposit to avert an intended rent sale becomes a mortgagee of the tenure, but his mortgage is postponed to the first charge of the landlord for rent. That being his position, he in his character as second mortgagee is a necessary party to a suit for rent by the landlord. As there is no privity of estate between such depositor and the landlord, he is not personally liable for the rent. (*Mitter and Khundkar, JJ.*) SAILENDRA NATH *v.* MADAN MOHAN MALLICK. **46 C.W.N. 704.**

——**S. 174**—*Application under—Allegation of fraud—Application* prima facie *time-barred—Points for consideration—Limitation Act, S.* 18.

Where an application presented under S. 174 (3) of the B. T. Act to set aside a sale on the ground of fraud is *prima facie* barred by limitation, the Court ought to, first of all, consider whether the applicant's case of fraud has been established or not. If it is satisfied that the fraud alleged is established, it should then proceed to consider whether the case comes within S. 18 of the Limitation Act, that is to say, whether the auction-purchasers were parties to the fraud; if they were not, the application would be barred by limitation. Thirdly, if the auction-purchasers were parties to the fraud, the effect of that fraud would go on until knowledge of the sale was obtained by the applicant. If the auction-purchasers wished to show that, in fact, the applicant had knowledge of the sale at some earlier date than that alleged in the petition, the burden of proving it lies upon them. (*Henderson, J.*) JAGISWAR DAS *v.* DEBNARAIN ROY. **46 C.W.N. 403.**

——**Ss. 174 (3), 174-A (5) and 167**—*Application to set aside sale disallowed by trial Court, allowed by appellate Court and ultimately disallowed by High*

BENGAL TENANCY ACT (1885), S. 174-A.

Court—Confirmation of sale by trial Court while disallowing application—Effect on—Application under S. 167—Limitation—Starting point.

Where an application under S. 174 (3) of the B. T. Act for setting aside a sale is disallowed by the Munsif who confirmed the sale, is allowed by the District Judge in appeal, but is ultimately disallowed by the High Court in revision, the effect of the High Court decision is to restore the original order of the Munsif confirming the sale with effect from the date on which it is passed. Limitation for an application under S. 167 for annulment of an encumbrance will, therefore, commence to run from that date. (*Biswas, J.*) CHUNNU LAL *v.* AMLUK CHANDJI. **46 C.W.N. 706.**

——**S. 174-A**—*Confirmation of sale—Duty of Court—No application made under S.* 174 (1).

If no application is made under S. 174 (1) of the B.T. Act to set aside the sale, it is not only open to the Court, but its statutory duty, to confirm the sale at the end of 30 days. (*Biswas, J.*) CHUNNU LAL *v.* AMLUK CHANDJI. **46 C.W.N. 706.**

——**S. 178, Proviso (1)**—Scope—Reclamation lease—Stipulation for interest contravening S. 67—Validity. *See* 1941 Dig., Col. 102. SRIKANTA MRIDHA *v.* PRAFULLA CHANDRA GHOSE. **200 I.C. 235=14 R.C. 692=A.I.R. 1942 Cal. 133.**

——**Chap. XIV**—*Execution proceedings—Revision*—Locus standi *of judgment-debtor—C. P. Code, S.* 115.

A judgment-debtor who is a party to the execution proceedings under Chap. XIV of the B. T. Act is entitled to see that they are conducted correctly according to law, and the Court conducting the sale should certainly hear and decide any objections he may make as to the procedure being adopted. It follows that *prima facie* the judgment-debtor may move the High Court in revision to interfere if the procedure is illegal. In view of the discretionary nature of the power given in S. 115, C. P. Code, the Court might well take into consideration the fact that a person not substantially concerned as to the particular point was moving it, and might make that a reason for refusing to interfere. (*Biswas and Roxburgh, JJ.*) BIBHUTI BHUSAN DAS *v.* BEJOY CHAND MAHTAB. **I.L.R. (1942) 1 Cal. 359=202 I C. 434=15 R.C. 335=75 C.L.J. 186=A.I.R. 1942 Cal. 481.**

——**Chap. XIV**—*Rent decree—Decree obtained in rent suit by mortgagee put in possession of tenure under O.* 39, *R.* 9, *C. P. Code—Claim in suit comprising arrears for period of his possession and prior period—Non-joinder in rent suit of purchaser at unconfirmed money sale held before rent decree—If affects character of decree.*

A mortgagee entering into possession of a tenure on the basis of an order made under O. 39, R. 9, C. P. Code, becomes a landlord within the meaning of the B. T. Act, and a decree obtained by him in a rent suit against the tenants is a rent decree, although the claim in that suit comprises of arrears for the period of his possession as well as for the period prior to it. The non-joinder in the rent suit of a purchaser of the tenure at a sale in execution of a money decree held before the rent decree but not confirmed till after the sale in execution of that decree, does not affect the character of the decree passed in the rent suit as a rent decree. The purchaser at the money sale acquires, therefore, no title to the tenure on the basis of his purchase. (*Nasim Ali and Blank, JJ.*) PASHUPATI NATH PAL *v.* DURJODHAN ROY. **46 C.W.N. 893.**

——**Chap. XIV**—*Rent decree—Suit for putni rent—Some of plaintiffs having fractional share in putni impleaded as defendants also—Frame of suit—If bad—Decree, if rent decree.*

Where in a suit to recover arrears of a putni rent, the entire body of landlords are plaintiffs and the entire body of the putnidars are defendants, the frame of the suit is not bad merely because some of the plaintiffs who have a fractional share in the putni are also impleaded as defendants. Consequently, the decree passed in the suit is a rent decree as contemplated by the Bengal Tenancy Act. (*Nasim Ali and Pal, JJ.*) KUMAR RAMENDRA NATH ROY *v.* BIBHABATI ROY. **46 C. W.N. 691.**

BERAR INAM RULES (1859), R. 5.

——**Sch. III, Art. 3**—"*Dispossession*"—*Possession taken through Court—Dispossession of agent in actual occupation—If constitutes dispossession of principal.*

Art. 3, Sch. III of the B. T. Act will apply even if the landlord obtained delivery of possession through Court after having purchased the holding in a certificate proceeding for arrears of rent, and thereby dispossessed the tenant. Where a person is in possession of a holding through the agency of another by realising the usufruct from him, the dispossession of the agent by the landlord will constitute a dispossession of the principal within the meaning of the article. As possession may be acquired through agents, it may equally be lost through them. (*Pal, J.*) SASHI KANTA ACHARJYA *v.* NAYJAN BEWA. **46 C.W.N. 938=A.I.R. 1942 Cal. 611.**

BENGAL WAKF ACT (XIII OF 1934), S. 70—*Scope—Property not admitted to be wakf—Notice, if necessary.*

S. 70 of the Wakf Act is not limited in its application to a suit in respect of property which is admittedly wakf. A notice to the Commissioner of Wakfs under the section is necessary even if the claim that the property is wakf is contested. (*Mukherjea and Sen, JJ.*) BENOY KUMAR ACHARJEE *v.* AHAMMAD ALI. **202 I.C. 76=15 R.C. 284=75 C.L.J. 33=46 C.W.N. 339%A.I.R. 1942 Cal. 467 (1).**

——**S. 73 (2)**—Applicability—Wakf not in direct charge of Commissioner. *See* 1941 Dig., Col. 102. HAJI MAHOMED NABI *v.* PROVINCE OF BENGAL. **201 I.C. 248=15 R.C. 148=A.I R. 1942 Cal. 343.**

BERAR LAWS, CODES, RULES, Etc.

Alienated Villages Tenancy Law.
Inam Rules.
Land Revenue Code.
Patels and Patwaris Law.

BERAR ALIENATED VILLAGES TENANCY LAW, S. 45—Suit under—Transferee under sale for recovery under Agriculturists' Loans Act—Liability of. *See* AGRICULTURISTS' LOANS ACT, S. 5 AND LAND IMPROVEMENT LOANS ACT, S. 7 (1) (*c*).

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BERAR INAM RULES (1859), R. 3—Scope of—Hyderabad Jagir—Nature—Effect of R. 3 upon it. *See* 1941 Dig., Col. 103. RAJE VINAYAKRAO *v.* RAJE SHRINIVASARAO. **197 I.C. 794=14 R.N. 197=I.L. R. (1942) Nag. 526.**

——**R. 5**—Construction—Inam certificate—Construction. *See* 1941 Dig., Col. 103. SITARAM SINGH *v.* CHITTARANJAN. **I.L.R. (1942) Nag. 405=199 I.C. 627=14 R.N. 288=A.I R. 1942 Nag. 14.**

——**R. 5**—*Entry in Col.* 10 *of Form BB—Value to be attached—Dispute as to succession—Procedure.*

The entry in Col. 10 of Form BB is definitely part of the record of rights and is binding on the Revenue Courts. Where it contained the following remarks 'Inam holding of class 3rd of rule 11 upheld under Cl. 2 of R. V of the Berar Inam Rules 1859 to main issue' it

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was held that in case of a claim to succeed to a deceased inam holder the enquiry was really one in pursuance of the record of rights rules—Proceedings for the change of name of inam holders are in fact mutation cases under the Berar Land Revenue Code. (*Binney, F.C.*) DATTATRAYA YADA RAO GOSAWI *v.* TUKARAM SHANKAR MORE AND ANOTHER. **1942 N.L.J. 223.**

BERAR LAND REVENUE CODE (1928), Ss. 32 and 110—*Order certifying entry in mutation register —Appealability.*

There is nothing in the Berar Land Revenue Code to exclude the operation of S. 32 in mutation cases and hence an appeal would lie from an order certifying an entry in the mutation register maintained under S. 111. (*Binney, F.C.*) NARAYAN MADHOJI MARATHA *v.* WASUDEO MADHOJI MARATHA. **1942 N.L.J. 366.**

——**S 59 (4)**—*Tenant for agricultural purpose—Right to eject stranger in possession of structures erected for non-agricultural purposes.*

Where a stranger erects structures for non-agricultural purposes on land granted to an occupant for agricultural purposes, the latter is entitled under S. 59 (4) of the Berar Land Revenue Code to secure the former's summary ejectment. (*Greenfield.*) SHESHRAO *v.* NARAYAN. **1942 N.L.J. 158.**

——**Ss. 72 and 73**—*Ante-alienation Tenancy—Continuity of possession when broken.*

If possession goes into the hands of strangers in the case of an ante-alienation tenant, there is no continuity of possession within the meaning of either S. 73 or S. 72 of the Berar Land Revenue Code. (*Stone, C. J. and Bose, J.*) SHRI RAGHUNATH SWAMI DEOSTHAN *v.* DOMA. **1942 N.L.J. 431.**

——**S. 112 (2)**—*Dismissal of suit for failure to file certified copy of entry in record-of-rights—Propriety.*

It is not proper for a Court to dismiss a suit for failure to file a certified copy of the entry in the record-of-rights. The Court should give the party an opportunity to produce it. A claim should not be defeated by a mere technical flaw. (*Gruer, J.*) BALASAHIB DEOSTHAN *v.* BAJRANG DAS. **1942 N.L.J. 396.**

——**S. 155**—*Right to apply under—Creditor who had agreed with debtor for conciliation of debt and obtained a charge over debtor's property.*

Where a Co-operative Society being a creditor agrees with his debtor before the Debt Conciliation Board by conciliate the debt due to him and obtains a charge over the property of the debtor for the payment of the amount due and the agreement between the parties is duly registered, the Co operative Society is a person having 'an interest in the property (of the debtor) by virtue of a title acquired before the sale' within the meaning of S. 155 of the Berar Land Revenue Code and is hence entitled to apply under the section and make the necessary deposit. (*Binney, F.C.*) DABHADA CO-OPERATIVE SOCIETY NO. 175 *v.* KASHINATH APPAJI KOSHTI. **1942 N.L.J. 216.**

——**Ss. 159 and 155**—*Discretion under S. 159—Limits to exercise of—Deposit beyond time fixed by S. 155—If a ground to refuse confirmation.*

S. 159 of the Berar Land Revenue Code no doubt gives a discretion to refuse confirmation of the sale for good reasons. But this discretion cannot be used to override mandatory provisions of another section of the Code. Hence if the deposit required by S. 155 of the Code to be made within a particular time is not so made, that cannot be a ground for the exercise of the discretion to refuse confirmation of a sale. (*Binney, F.C.*) MOHANLAL *v.* MST. ANASUVABAI. **1942 N.L.J. 80.**

BER. PATELS & PATWARIS LAW (1900), S. 5.

——**S. 183**—*Co-occupants also mortgagor and mortgagee—Sale of a portion of mortgaged property—Claim to pre-empt by co-occupant mortgagee—Amount payable.*

Where two persons were occupants of the same survey number and were also in the relation of mortgagor and mortgagee and the mortgagor sold a portion of the mortgaged property free from encumbrance and the mortgagee co-occupant claimed to pre-empt on payment of a sum representing the balance after deducting from the fair price the sum which could be allocated in respect of the mortgage-debt to the plot sold, it was held that he was not so entitled to calculate amount payable and the interest transferred was only the equity of redemption for which the fair price was fixed and which should be paid. (*Stone, C.J.*) KONDO *v.* SARUBAI. **1942 N.L.J. 370.**

——**S. 183 (2)**—Suit under—Power of Court to increase the figure of value. *See* 1941 Dig., Col. 104. SHEOLAL PANDU *v.* YEDU. **I.L.R. (1942) Nag. 584 = 198 I.C. 402 = 14 R.N. 222.**

——**S. 184**—*Scope—Buildings, if covered by section.*

S. 184 of the Berar Land Revenue Code which speaks of 'survey numbers' and 'land' contemplates only agricultural land and has nothing to do with buildings. (*Gruer, J.*) LAXMAN PANDHARI *v.* MUNNUSINGH. **I.L.R. (1942) Nag. 315 = 200 I.C. 297 = 14 R.N 330 = 1942 N.L.J. 218.**

——**S. 184 (2)**—*'Consolidation'—Interpretation—Mere convenience if a criterion.*

The word 'consolidation' has not been defined in the Berar Land Revenue Code. The word 'consolidate' implies that there are no intervals between these parts of the body; nor is the discontinuity a negligible one. There is no reason for holding that the legislature intended the word 'consolidation' in S. 184 (2) to be used in a loose sense and to do so would lead to difficulties. The general rule is to allow pre-emption in case of exchange and the exception should be strictly applied. Mere convenience of cultivation is neither the criterion nor is it sufficient. The safer rule is to confine 'consolidation' to contiguity. (*Gruer, J.*) LAXMAN PANDHARI *v.* MUNNUSINGH. **I.L.R. (1942) Nag. 315 = 200 I.C. 297 = 14 R.N. 330 = 1942 N.L.J. 218.**

——**S. 184 (3)**—*Exchange—Pre-emption price.*

The fair price as contemplated by S. 184 (3) of the Berar Land Revenue Code would be the market value of the property exchanged. (*Gruer, J.*) LAXMAN PANDHARI *v.* MUNNUSINGH. **I.L.R. (1942) Nag. 315 = 200 I.C. 297 = 14 R.N. 330 = 1942 N.L.J. 218.**

——**Ch. XIV**—Pre-emption—Sale by father manager of Hindu joint family—Minor members—If vendors—If can sue for pre-emption. *See* 1941 Dig., Col. 104. DAMODAR *v.* NARAYAN. **I.L.R. (1942) Nag. 325.**

BERAR PATELS AND PATWARIS LAW (1900)—*Dismissal of patel—Procedure—Appeal—Forum.*

In Berar in matters of dismissal of patels, the practice is to seek sanction of the Commissioner after the enquiries are complete. A hearing is usually given by the Commissioner to the village officer and then when the proceedings are returned the Deputy Commissioner passes the formal order. Hence the order is virtually that of the Commissioner and an appeal against it cannot therefore lie to him, as a Court cannot hear an appeal against an order which has been passed by it after full consideration. The remedy of the village officer is to appeal to the Revenue tribunal. (*Binney, F.C.*) ROGHOJI GANPAT PATIL *v.* DEWAJI SYMBHAJI KUNBI. **1942 N.L.J. 597.**

——**S. 5**—*Effect of postponed adoption on succession to watandar Patel or Patwari.*

BER. PATELS & PATWARIS LAW (1900), S. 5.

The effect of a postponed adoption (*i.e.*) adoption to a Watandar Patel or Patwari which is made after the office held by him has been filled by appointment of another member of the family in the case of a village where there is no rotation is, that on the death of the member so appointed, the watan would go back to the adopted son in preference to the son of the appointee. But where there is rotation, on the death of the watandar in the midst of his turn of office, the next rotatory patel would come into office, if there is no adoption by the widow of the deceased patel before the final order appointing a successor is passed. If there is an adoption made before such final order, then the adopted son would succeed to the unexpired term though he be a minor and would continue to be so for the unexpired period of rotation. Where the next rotatory patel steps in for the unexpired portion of the turn of a deceased patel and completes such turn and also completes his own turn, he would continue to work till the end of his life. He is not supposed to vacate at the end of his turn. A son adopted after the expiry of the term can claim against a person who was not appointed on his own merits, but he cannot claim against a person who was appointed on his own merits as they existed at the time of the appointment. The appointment of a major to complete a term in preference to an existing minor does not settle the question of title between them. The question remains to be settled when the minor attains majority. But the appointment of a major when the minor has not come into existence is a final decision of title and is permanent. (*Greenfield, R.A.*) RADHAKRISHNA *v.* DINKAR. **1942 N.L.J. 168.**

——**S. 5**—*Right of substitute patwari to interfere in disputes between malik, his successor and Government.*

The provisions of the Berar Patels and Patwaris Law no doubt give the substitute or agent very considerable security of tenure, but it would be contrary to first principles to allow a substitute to have any right of interference in a matter which lies solely between malik, his successor, and Government. (*Greenfield, R.A.*) VITHAL SONAJI *v.* BHIKAJI RAJARAM. **1942 N.L.J. 54.**

——**S. 5**—*Government Patwari—Appointment—Discretion—Relationship to prior incumbent—If of any value.*

The appointment of a Government Patwari is a matter of discretion and the Berar Patels and Patwaris Law does not recognise any claim based on relationship to the previous incumbent of the office. Any such recognition is also a matter of discretion. (*Greenfield, R.A.*) HARISH CHANDRA *v.* JAISHIRAM. **1942 N.L.J. 55.**

——**S. 5**—*Scope and applicability.*

S. 5 of the Berar Patels and Patwaris Law makes no distinction between appointments for life or in rotation. There is no warrant for holding that S. 5 does not apply at all to offices held and to be filled in rotation and that at the expiry of one family's period of rotation the person of the other family who held office in its last turn automatically and *ipso facto* steps into that office again so that no appointment is required to be made. (*Burton, F.C.*) NAMDEO BALIRAM *v.* PARASHRAM. **1942 N.L.J. 27.**

——**S. 5 (3) (a)**—*Rules as to appointment of person fittest from the point of view both of Government and village community—When applicable*

The rule as to the selection out of the claimants to the patelki enquiry and appointment of the fittest person from the point of view of both Government and village community is applicable only to cases "where there are several persons having equal rights under the law of inheritance." (*Binney, F.C.*) VINAYAK SURYABHAN

BIHAR [AND ORISSA] ACTS, Etc.

PATEL *v.* YADAO RAO AMRIT RAO. **1942 N.L.J. 286.**

——**S. 5 (3) (c)**—*Substitute not having qualifications appointed—Subsequent appointment as principal—Absence of qualifications if material—Duty of Revenue Officer in regard to appointments.*

According to Cl. (*c*) of sub-S. (3) of S. 5 of the Berar Patels and Patwaris Law the qualifications required of a substitute to the office of patel are exactly the same as those required in regard to principals and where there have been sufficient reasons for appointing an unqualified person as a substitute, the same reasons will apply to his appointment as a malik in the same post in the same village. In such matters a revenue officer unlike a Civil Court is required to base his decision bot on principles of right and equity and on considerations of administrative convenience and not merely on rules. (*Greenfield, R.A.*) CHOUDAJIRAO *v.* UITAMRAO. **1942 N.L.J. 62.**

——**S. 7 (1)**—*Scope and meaning of.*

S. 7 (1) distinguishes between two classes of appointment, one for life and the other for a term of not less than 10 years in the case of rotation. The plain meaning of the whole sub-section is that a person appointed in a turn of rotation to represent the watan family or a subdivision thereof is appointed for the period of that turn and not for life. (*Burton, F.C.*) NAMDEO BALIRAM *v.* PARASHRAM. **1942 N.L.J. 27.**

——**S. 21**—*Rules under—R. X—Basis of rule—Malik's nomination not in accordance with rule—If entitled to consideration.*

R. 10 of the rules framed under S. 21 of the Berar Patels and Patwaris Law is based on the principle that the watan belongs to the family or sub-division and not to the individual. Hence when a malik does not care to conform to the rules with regard to nomination of a substitute there is no reason why the interests of the malik should be taken into consideration at all. (*Binney, F. C.*) LAXMAN *v.* WAMAN. **1942 N.L.J. 161.**

——**S. 21**—*Rules under—R. X—'Sub-division'—Meaning of—Instances when sub-division can be assumed.*

There has been no definition of the term 'sub division' in the Berar Patels and Patwaris law. It is only used in the above and in the rules framed thereunder in connection with separated rights to hereditary offices 'of two or more families or two or more sub-divisions of the same family'. The trend of practice is to consider that a family has been sub-divided where there has been separation of the right of service. Sub-division can be assumed when there has been rotation, joint officiation of the separation of shares recorded in the early papers. It can also be assumed, where (as in many Deshmukh families) the elder branch has waived its rights to the office. In these cases a branch would be considered as sub-divided from the main watan family. (*Binney, F. C.*) LAXMAN *v.* WAMAN. **1942 N.L.J. 161.**

BIHAR [AND ORISSA] ACTS, Etc.

Agricultural Income-tax Act (VII of 1938).
Co-operative Societies Act (VI of 1935).
Excise Act (II of 1915).
Excise (Amendment) Act (VIII of 1940).
Local Fund Audit Act (II of 1925).
Money-Lenders Act (III of 1938).
Money-Lenders (Regulation of Transactions) Act (VII of 1939).
Municipal Act (VII of 1922).
Municipal Election Rules (1937).
Municipal Survey Act (I of 1920).
Private Irrigation Act (V of 1922).

BIH. AGRI. INCOME-TAX ACT (1938).

Public Demands Recovery Act (IV of 1914).
Restoration of Bakasht Lands and Reduction of Arrears of Rent Act (IX of 1938).
Tenancy Act (VIII of 1885).

BIHAR AGRICULTURAL INCOME-TAX ACT (VII OF 1938)—*Validity of Act—Repugnancy to Permanent Settlement Regulation—Latter, if "Act of Parliament"—Power of Provinces to levy tax on agricultural income from permanently settled estates—Government of India Act, S.* 108 (2) (*a*); *List I, Entry* 54 *and List II, Entry* 41.

The Permanent Settlement Regulation (I of 1793) is not an Act of Parliament within the meaning of S. 108 (2) (*a*) of the Government of India Act. It was only an enactment of a subordinate legislative authority which derived its own authority from an Act of Parliament. The Bihar Agricultural Income-tax Act is not therefore invalid on the ground that the previous sanction of the Governor-General was not obtained before its introduction in the Bihar Legislature. Before applying the rule of construction that general words in a later statute should not be held to repeal earlier legislation upon a particular matter, it must be found that both pieces of legislation deal with the same subject-matter. Regulation I of 1793 relates to the subject of *Jama* to be settled in respect of each estate, while the Bihar Agricultural Income-tax Act operates upon the income derived from land used for agricultural purposes. The two enactments do not deal with the same subject-matter. The Bihar Act does not in any way whittle down or derogate from the assurances given to zamindars and landholders by Regulation I of 1793 and there is no ground for confining the operation of the Act to income from estates settled otherwise than under the Permanent Settlement Regulation. Entry No. 54 of the Federal Legislative List with regard to "taxes on income other than agricultural income" and Entry No. 41 of the Provincial Legislative List with regard to "taxes on agricultural income" are complementary to each other and the tax imposed by the Bihar Act is, within the limits of the power vested in the provinces, a general measure of property taxation. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) HULAS NARAIN SINGH *v.* PROVINCE OF BIHAR. **21 Pat. 521=46 C.W.N. (F.R.) 22=8 B.R. 573=I.L.R. (1942) Kar. (F.C.) 1=1942 A.W.R. (F.C.) 15=1942 P.W.N. 109=1942 O.A. 149=1942 I.T.R. 115=199 I.C. 1=1942 M.W.N. 316=23 Pat.L.T. 275=14 R.F.C. 7=75 C.L.J. 123=5 F.L.J. 1=A.I.R. 1942 F.C. 8=(1942) 1 M.L.J. 607 (F.C.).**

——*Validity of Act—Definition of 'Agricultural income' in Act wider than that in Income-tax Act in some respects and narrower in other respects—How far affects its validity—Road cess collected under Bengal Cess Act for District Board—Whether assessed and collected by "officers of the Crown as such"—Government of India Act, S.* 311 (2); *List II, Entry* 41.

The Bihar Agricultural Income-tax Act is not *ultra vires* the Bihar Legislature and was validly enacted. The validity of the entire Act cannot be questioned on the ground that the definition of "agricultural income" adopted by the Act is in some respects wider and in other respects narrower than the definition of that expression in S. 2 (1) of the Indian Income-tax Act. The fact that the definition in the Act is narrower cannot render the Act invalid. Inasmuch as entry No. 41 of List II of the Seventh Schedule to the Government of India Act empowers the Provincial Legislature to make laws with respect to taxes on agricultural income generally, a Provincial Legislature is entitled to impose a tax on some categories of agricultural income and not impose it on others. Local cesses or rates imposed upon lands within municipal limits which are used for agricultural purposes are not assesed and collected in the Province of Bihar by officers of the Crown as such, and income, if any, derived from such of these lands as are revenue-free would fall within the purview of the Bihar Act, VII of 1938, though such income is not agricultural income within the definition of that expression in the Indian Income-tax Act. But, even assuming the existence of such land in the Province of Bihar, the Act would be only inoperative so far as it includes such income. This would not affect the validity of the rest of the Act, if it was otherwise validly enacted. The definition of agricultural income in the Bihar Act should be so read as to confine its operation to income which can be properly classified as "agricultural income" within the meaning of the definition in the Income-tax Act, and in respect of which alone the Provincial Legislature was competent to legislate. Road cess levied upon land outside municipal limits in Bihar under the Bengal Cess Act, 1880, is assessed and collected not by the District Board but by the collector, and the collector in performing these functions acts as an officer of the Crown as such and not as a delegate or functionary of the District Board. The capacity in which the collector assesses and levies the cess is not affected by the destination of the proceeds of the cess when collected. A person who is invested by the Board of Revenue with powers of a collector under S. 100 of the Bengal Cess Act is in the same position as a collector and also acts as an officer of the Crown as such. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) HULAS NARAIN SINGH *v.* PROVINCE OF BIHAR. **21 Pat 521=46 C.W.N. (F.R.) 22=8 B.R. 573=I.L.R. (1942) Kar. (F.C.) 1=1942 A.W.R. (F.C.) 15=1942 P.W.N. 109=1942 O.A. 149=1942 I.T.R. 115=199 I.C. 1=1942 M.W.N. 316=23 Pat.L.T. 275=14 R.F.C. 7=75 C.L.J. 123=5 F.L.J. 1=A.I.R. 1942 F.C. 8=(1942) 1 M.L.J. 607 (F.C.).**

——**S. 2 (a)**—Construction—'Rent or income'—Meaning of. *See* 1941 Dig., Col. 106. JHALAK PRASAD *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689 (F.B.).**

——**S. 2 (a)**—Scope—Provision for a tax on income from revenue-free estates in Municipality—If renders whole Act *ultra vires*. *See* 1941 Dig., Col. 108. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689 (F.B.).**

——**Ss. 6 and 7**—*Scope of—If to be read together—Total agricultural income—Computation and assessment—Mode of.*

Ss. 6 and 7 must be read together. The agricultural income dealt with under those sections is not of two different kinds. The Act does not profess to tax each village or each parcel of land that yields agricultural income but seeks to assess the total agricultural income of the assessee where it exceeds Rs. 5,000. The agricultural income of an assessee must be considered as a whole and proper deductions must be given from each class as provided by Ss. 6 and 7, as the case may be, provided that the deductions are not made twice over. It is incorrect to say that each portion of the land from which agricultural income is derived should be considered and a deduction of only those sums (or portions thereof) actually paid as Government revenue or rent to the landlord in respect of that land should be allowed provided those payments do not exceed the gross sum realised as income therefrom. Consequently, when an assessee is being taxed on his total agricultural income, calculation should be made by adding up his gross receipts from all the villages and by deducting from it the total expenditure which is allowed to him by S. 6,

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the difference being his total agricultural income which will be assessable if it exceeds Rs. 5,000. If the income of the assessee is also derived from land which is in his actual cultivation or which is let out by him on produce rent the income which he gets is still agricultural income. The gross income must be added up and also the proper deductions. S. 6 (*a*) does not warrant the splitting up of the assessee's agricultural estate into groups and limiting the deductions to the actual income from each group, and the assessee therefore is entitled to a deduction under S. 6 (*a*) and (*b*) of the total amount of Government revenue and cess which he pays for all the properties from which his total agricultural income is derived and such deductions cannot be limited to the amount which he actually receives as income. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) PROVINCE OF BIHAR *v.* HARIHAR PRASAD NARAIN SINGH. **21 Pat. 571=200 I.C. 787=15 R.P. 19=8 B.R. 744=23 Pat. L.T. 515=1942 I.T.R. 391=A.I.R. 1942 Pat. 276 (S.B.).**

——**S. 6 (c)**—"*Rent*"—*If includes interest on rent.*

Rent in S. 6 (*c*) of the Bihar Agricultural Income-tax Act means rent only and does not include interest thereon. (*Harries, C.J., Fazl Ali and Manohar Lal, JJ.*) RAM RAN VIJAY PRASAD SINGH *v.* PROVINCE OF BIHAR. **21 Pat. 488=202 I.C. 128=8 B.R. 856=15 R.P. 94=1942 I.T.R. 446=23 Pat.L.T. 652=A.I.R. 1942 Pat. 435 (F.B.).**

——**S. 6 (c)**—*Total amount of the "rent which accrued due in the previous year"—Meaning of.*

"Rent which accrued due in the previous year," in S. 6 (*c*) of the Bihar Agricultural Income-tax Act, can only mean rent which actually fell due and first became payable in that year, and cannot mean all rent which was then payable though part of it had actually fallen due in earlier years. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) KAMESHWAR SINGH BAHADUR *v.* GOVERNMENT OF BIHAR. **21 Pat. 508=A.I.R. 1943 Pat. 1 (F.B.).**

——**S. 8**—*Whether mahant of asthal is exempted from paying tax under S. 8—Relevant facts to be found stated.*

An answer to the question whether the mahant of an asthal is exempted from payment of agricultural income-tax under S. 8, can be given only when all relevant facts which will support a finding whether the land is held in trust for public purposes of a charitable or religious nature and whether the income therefrom or any part thereof is applied to such objects have been found. That is, the board must find the necessary facts as to the nature of the property held by the mahant and the purposes for which it is held. S. 8 only exempts income from a trust created before the commencement of the Act which is for public purposes of a charitable or religious nature. There must be finding on these matters. The board must find further whether the income of the property or any part thereof is applied for religious or charitable purposes and if a part only is so applied what is the precise amount. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) PROVINCE OF BIHAR *v.* HARIBHAJAN DAS. **200 I.C. 857=8 B.R. 742=15 R.P. 17=1942 I.T.R. 399=23 Pat.L.T. 523=A.I.R. 1942 Pat. 267 (S.B.).**

——**S. 8 (1)**—"*Trust*"—*What amounts to—Holder of impartible estate establishing and maintaining religious and charitable institutions—Will expressing wish that successors should maintain them and spend income as he did—If creates trust—Exemption—Right to.*

The assessee was holding an impartible estate and was maintaining certain charitable, religious and educational institutions, which had from time to time been

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established and maintained by his predecessors. A previous holder executed a will which provided, *inter alia*: "My predecessors and I have from time to time established and I at present support various religious and charitable institutions in various parts of the country and it is my wish and I direct my executrix and executor and whoever may be in the enjoyment of my property either as my heir or under the provisions of this my will, do preserve and maintain and support such institutions in the manner I am doing and to avoid all difficulty in the matter, I have annexed hereto a schedule giving the names of the institutions aforesaid and the amount which I spend yearly for their respective support." It was found that the assessee was in fact maintaining the institutions named in the schedule and spending actually on those more than the total sum stated by the testator. The assessee claimed exemption from agricultural income-tax in respect of the sums thus spent by him under S. 8 of the Bihar Agricultural Income-tax Act, alleging that the income was derived from land held by him on trust. No land was, however, set apart for the maintenance and support of the institutions. Nor was the income from any particular property ear-marked for those objects.

Held, that the clause in the will was merely an expression of a pious wish of the testator that those following him should carry on the charitable and religious work which he had been and was actually doing, and did not create a trust for that purpose. The assessee was not therefore a trustee holding under a trust and the income in question was not exempt under S. 8 (1) of the Act. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) RAM RAN VIJAY PRASAD SINGH *v.* PROVINCE OF BIHAR. **21 Pat. 488=202 I.C. 128=8 B.R. 856=15 R.P. 94=1942 I.T.R. 446=23 Pat. L.T. 652=A.I.R. 1942 Pat. 435 (F.B.).**

——**S. 25**—*Reference—Duty of Board—Essentials to be stated.*

S. 25 shows that in a reference thereunder the board must draw up a statement of the case and refer it with its own opinion thereon to the High Court. Not only must the board state the case but it is directed also to give its own opinion thereof. The board must state clearly and fully the material facts admitted or proved in evidence before it, which would enable the High Court to decide the question referred to it and apply the law. The board is not merely required to state the question of law and give its opinion; it is required above all things to state the facts upon which the questions of law must be decided. In stating a case care must also be taken to set out clearly what are the findings of fact and what are the conclusions of law based on such facts. The two should not be confused, for it must always be remembered that the High Court is bound by the findings of fact but not by the conclusions of law which may be based on such facts. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) PROVINCE OF BIHAR *v.* HARIBHAJAN DAS. **200 I.C. 857=15 R.P. 17=8 B.R. 742=23 Pat. L.T. 523=1942 I.T.R. 399=A.I.R. 1942 Pat. 267 (S.B.).**

——**S. 25 (2)**—*Reference under S. 25 (2)—High Court cannot find facts—Findings of fact of authority stating case must be accepted provided there is evidence to support them.*

The High Court, in dealing with references under S. 25 (2) is not a Court which can find facts. It must accept the findings of fact of the authority stating the case always provided there is evidence to support such findings. (*Harries, C.J., Fazl Ali and Manohar Lall, JJ.*) PROVINCE OF BIHAR *v.* HARIBHAJAN DAS. **200 I.C. 857=15 R.P. 17=8 B.R. 742=23 Pat.L.T. 523=1942 I.T.R. 399=A.I.R. 1942 Pat. 267 (S.B.)**

BIHAR (AND ORISSA) CO-OPERATIVE SOCIETIES ACT (VI OF 1935), Ss. 7 (3) and 54—*Order of apportionment—Right to object to—Debtor failing to prove that he has ceased to be member—Debtor shown to have applied to creditor for reduction of liability—Plea that nothing is due—Sustainability.*

An apportionment order under S. 54 of the Bihar and Orissa Co-operative Societies Act is not one of the orders which under S. 7 (3) of the Act cannot be called in question on any ground except on that of want of jurisdiction. Where the debtor against whom an apportionment order is made is unable to prove that he has ceased to be a member of the society, and is shown to have applied to the society for reduction of his liability, he cannot object to the apportionment order and say that nothing was due from him. His liability is created by a by-law having the force of law. (*Middleton.*) RAJ KARAN SINGH *v.* JEHANABAD CENTRAL CO-OPERATIVE BANKING ASSOCIATION. **8 B.R. 642.**

——**S. 23**—*Scope—If refers to debts due by member to Society.*

S. 23 of the Bihar and Orissa Co-operative Societies Act merely deals with a liability of a past member for the debts of a society in winding up, and has no reference whatever to a debt of a member of a Society to the Society. (*Wort, J.*) BARHITOLA D. CO-OPERATIVE SOCIETY *v.* SHAMBHUNATH SINGH. **23 Pat.L.T. 104.**

——**S. 43**—*Jurisdiction of Registrar—Debt of past member to Society—Award—If invalid or without jurisdiction on ground of claim being barred by limitation or* res judicata *by reason of prior award.*

The Registrar of Co-operative Societies has clearly no jurisdiction over a person who neither is nor has been a member of a Co-operative Society; but he has jurisdiction over a past member, under S. 43 of the Co-operative Societies Act. It cannot be said that his award is without jurisdiction merely on the ground that the claim was barred by limitation or because the award was a second award in respect of the same debt which was the subject-matter of a prior award. These points are clearly within the Registrar's jurisdiction and the fact that he falls into an error of law in deciding them does not make his award any the less valid. (*Wort, J.*) BARHITOLA D. CO-OPERATIVE SOCIETY *v.* SHAMBHUNATH SINGH. **23 Pat.L.T. 104.**

——**S. 57 (2)**—*Applicability—"Touching the affairs of the society"—Award against member—Certificate for enforcement under Public Demands Recovery Act—Attachment of house—Objection to attachment overruled—Suit to restrain liquidator from selling and to raise attachment—Leave of Registrar—If condition precedent.*

The realisation of a sum due to a Co-operative Society is an affair of the society, and unless such debt is realised "the affairs of the society" cannot be wound up under S. 44 (7) of the Co-operative Societies Act. A dispute between the parties as to the manner of enforcement of payment, (a certificate having been obtained under the Public Demands Recovery Act for enforcing an award made by the Registrar) is a dispute touching the business of a society according to the Act. The Registrar of Co-operative Societies made an award against the plaintiff, who was a member of a Co-operative Society which went into liquidation, in respect of a sum of Rs. 1,200 and odd. To enforce the award the liquidator took proceedings under the Bihar and Orissa Public Demands Recovery Act for the realisation of the amount, and the certificate officer attached a house belonging to the plaintiff. The plaintiff's objection to the attachment based on various grounds was overruled and the plaintiff thereupon filed a suit to restrain the liquidator from selling the house and to obtain release of the house from attachment. Leave of the Registrar was not obtained and it was pleaded that therefore S. 57 (2) of the Bihar and Orissa Co-operative Societies Act was a bar to the maintainability of the suit.

Held, that the object of the suit was to prevent the liquidator who was proceeding as liquidator to realise the debt due to the society from realising the debt in question by sale of the house, and therefore the suit must be held to be one on a matter touching the affairs of the society. The dispute being one touching the business of a registered society, it was a suit touching the affairs of the society and could not be instituted or proceeded with under S. 57 (2) of the Act except by leave of the Registrar. (*Harries, C.J. and Fazl Ali J.*) DOMI RAM *v.* LIQUIDATOR, NAWADAH B. CO-OPERATIVE SOCIETY. **197 I.C. 215=22 Pat.L.T. 947=8 B.R. 172=14 R.P. 286=A.I.R. 1942 Pat. 148.**

B. (& O.) EXCISE ACT (1915), S. 19.

BIHAR (AND ORISSA) EXCISE ACT (II OF 1915), S. 19 (4) as amended in 1940—*Notification under—'Bona fide traveller'—Person proceeding from non-prohibited area to prohibited area booking return ticket intending to return home after short stay.*

A person proceeding from one non prohibited area to another prohibited area booking return ticket with the intention of returning to the non-prohibited area after a short stay in the prohibited area, is not a *bona fide* traveller proceeding from one non-prohibited area to another non-prohibited area within the meaning of the Notification No. 3914-L.S.G. issued on November, 18, 1940 by the Governor acting under S.19 (4) of the Bihar and Orissa Excise Act as amended by the Bihar Excise (Amendment) Act, 1940. Possession of country liquor by such a person in the prohibited area will be contrary to the terms of the notification and will be an offence under S. 47 (a), Bihar and Orissa Excise Act. (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD. **21 Pat. 178=197 I.C. 618=8 B.R. 249=1942 P.W.N. 47=43 Cr.L.J. 220=14 R.P. 359=5 F.L.J. (H.C.) 34= A.I.R. 1942 Pat. 351.**

——**S. 19 (4) as amended in 1940**—*Notification under—Legality.*

Notification No. 3914-L.S.G. issued on November 18, 1940, by the Governor acting under S. 19 (4) of the Bihar and Orissa Excise Act as amended by the Bihar Excise (Amendment) Act, 1940, is legal and effective. The latter Act, in so far as it enables partial prohibition to be enforced in parts of the province is not *ultra vires*, the powers of the Provincial Legislature and the Governor who had before 1940 by proclamation issued under S. 93, Government of India Act, 1937, assumed all the powers vested in the Provincial Legislature. (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD. **21 Pat. 178=197 I.C. 618=8 B.R. 249=1942 P.W.N. 47=43 Cr. L.J. 220=14 R.P. 359=5 F.L.J. (H.C.) 34=A.I.R. 1942 Pat. 351.**

——**S. 19 (4)**—*Prohibition—Intention of Legislature.*

There is no reason why in theory or principle an Excise Act should not have a double object, the benefit of the revenue and the improvement of the public health or morals by a greater control of the liquor trade, and there is nothing in the Bihar Excise Act of 1915 which leads to the inference that the Legislature did not intend to deal with the question of Prohibition in the excise legislation. On the other hand, the language of the Act leads to a different inference altogether. (*Gwyer, C.J., Varadachariar and Zafrulla Khan JJ.*) BHOLA PRASAD *v.* EMPEROR. **21 Pat. 587=44 P.L.R. 261=43 Cr. L.J. 481=1942 M.W.N. 378=46 C.W.N. (F.R.) 32=1942 O.W.N. 411=1942 A. Cr. C. 122=14 R.F.C. 19=1942 A.L.W. 463=I.L.R. (1942) Kar.**

B. (& O.) EXCISE ACT (1915), S. 19.

(F.C.) 21=199 I. C. 322=1942 A. W. R. (F. C.) 10 .=1942 O. A. 144=23 P. L. T. 253=1942 P.W.N. 129=8 B. R. 555=5 F.L.J. 17=A. I. R. 1942 F. C. 17=(1942) 2 M.L.J. 6 (F.C.)

——**S. 19 (4)** as amended in 1940—Validity. *See* BIHAR EXCISE (AMENDMENT) ACT, 1940. **5 F.L.J. 17=A.I. R 1942 F C. 17=(1942) 2 M.L.J. 6 (F.C.).**

BIHAR EXCISE (AMENDMENT) ACT (VIII OF 1940)—*If* ultra vires—*Government of India Act, Ss.* 100, 108 *and* 297 (1).

The Bihar Excise (Amendment) Act of 1940, in so far as it enables partial prohibition to be enforced in parts of the province, is not *ultra vires* the powers of the Provincial Legislature and the Governor who had before 1940 by proclamation issued under S. 93, Government of India Act, 1935, assumed all the powers vested in the Provincial Legislature. S. 100 and Art. 31, List II of Sch. VII, Government of India Act give Provincial Legislatures power to legislate with respect to the production, manufacture, possession, etc., of intoxicating liquors. The power is not confined to merely the regulation or restriction of such manufacture, production or possession, etc. It is impossible to say that prohibiting possession of certain forms of intoxicating liquor in specified areas is anything more than legislation with respect to possession or transport of such intoxicating liquor in such areas. The Bihar Excise (Amendment) Act of 1940 is not invalid for want of the Governor-General's sanction to its introduction or enactment, owing to the provisions of S. 108 (2) (*b*) of the Government of India Act. This section merely limits the power of Provincial Legislatures to repeal or amend Governor-General's Acts or ordinances enacted or promulgated under Ss. 42 to 44 of the Government of India Act. The Bihar and Orissa Excise Act of 1915 which was amended was in no sense a Governor-General's Act or even an Act of the Governor-General in Council. It was an Act of the Bihar Legislative authority which at that time required the assent of the Governor-General for its validity under S. 5, India Councils Act. Even if the prohibition of export from the province or the import into the province of intoxicating liquors is one of the objects of the Bihar and Orissa Excise Act, 1915 as amended, it does not become invalid by reason of anything contained in S. 297 (1), Government of India Act. This section does not deal with intoxicating liquors but merely limits the power of the Provincial Legislature to legislate with respect to trade and commerce within the province and with respect to the production, supply and distribution of commodities. Intoxicating liquors are not included in the general terms "trade or commerce" or "production, supply and distribution of commodities". In any event, the amending Act of 1940, in so far as it enables partial prohibition to be introduced, does not restrict legitimate import into, or export, from the province, and, therefore, cannot infringe upon the provisions of S. 297 (1), Government of India Act even if they applied to liquor. S. 11 of the Bihar and Orissa Excise Act as amended by the Government of India (Adaptation of Indian Laws) Order, 1937 strongly suggests that S. 297 (1), Government of India Act was never intended to apply to dangerous articles such as intoxicating liquors or narcotic or dangerous drugs. (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD. **21 Pat. 178=197 I.C. 618=8 B. R. 249=1942 P.W.N. 47=43 Cr. L.J. 220=14 R.P. 359=5 F.L.J. (H.C.) 34=A.I.R. 1942 Pat. 351.**

——*Validity of Act—Government of India Act, Ss.* 108 *and* 297 (1); *List II, Entry No.* 31.

The Bihar Excise (Amendment) Act, 1940, which amended S. 19 (4) of the Bihar and Orissa Excise Act, 1915, was a valid Act and was within the powers conferred upon the Provincial Legislature by S. 100 (3) of the Government of India Act and entry No. 31 of the Provincial Legislative List. A power to legislate "with respect to intoxicating liquors" would, unless the meaning of the words used is restricted or controlled by the context or other provisions of the Act, include the power to prohibit intoxicating liquors throughout the Province or in any specified part of the Province. The words "that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs" which follows "intoxicating liquors and narcotic drugs" in Entry No. 31 of the Provincial Legislative List, are explanatory or illustrative words and not words either of amplification or limitation. These words are apt to cover the whole field of possible legislation on the subject including the power to prohibit. The Amending Act of 1940 does not contravene the provisions of S. 297 (1) (*a*) of the Government of India Act, which refers only to legislation with respect to entry No. 27 and entry No. 29 in the Provincial Legislative List and has no application in respect to anything in entry No. 31. The Bihar and Orissa Excise Act of 1915 is not a Governor-General's Act within the meaning of S. 108 (2) (*b*) of the Government of India Act, and the Act of 1940 which amended it did not, therefore, require the previous sanction of the Governor-General. (*Gwyer, C J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD *v.* EMPEROR. **21 Pat. 587=44 P.L.R. 261 =43 Cr.L.J. 481=1942 M.W.N. 378=46 C.W.N. (F.R.) 32=1942 O W.N. 411=1942 A.Cr.C. 122= 14 R.F.C. 19=1942 A.L.W. 469=1.L.R. (1942) Kar. (F.C.) 21=199 I.C. 322=1942 A.W.R. (F.C.) 10= 1942 O.A. 144=23 Pat.L.T. 253=1942 P.W.N 129 =8 B.R. 555=5 F.L.J. 17=A.I.R. 1942 F.C. 17 =(1942) 2 M.L.J. 6 (F.C.).**

BIHAR (AND ORISSA) LOCAL FUND AUDIT ACT (II OF 1925), S. 11—*Scope—If overrides S.* 9 *of the Public Demands Recovery Act—Order under S.* 11 *—If final and conclusive.*

The mandatory provisions of the Bihar and Orissa Public Demands Recovery Act must apply even to certificates under the Local Fund Audit Act. The Local Fund Audit Act cannot override the mandatory provisions of the Public Demands Recovery Act. If the Legislature had intended that orders under S. 11 of the Local Fund Audit Act should be final and conclusive, they could easily have said so, Where in respect of a surcharge order under the Local Fund Audit Act after an appeal under S. 11 of the Act is rejected, a certificate under the Public Demands Recovery Act is requisitioned and the debtor files objections under S. 9 of the latter Act, it is not only open to the certificate officer to investigate the objections, but he is bound by law to do. (*Middleton, J.*) SITAB CHAND *v.* EXAMINER OF LOCAL FUND ACCOUNTS. **8 B.R. 732.**

BIHAR MONEY-LENDERS ACT (III OF 1938) —*Applicability—Mortgage suit—Puisne mortgagee money-lender impleaded as defendant—Right to claim benefit of Act.*

The Bihar Money-Lenders' Act is intended to give relief to needy debtors as against money-lenders. Where puisne mortgagees who are themselves money-lenders are impleaded as defendants in a mortgage suit on the first mortgage, and a decree is passed, though the puisne mortgagees are judgment-debtors, they cannot claim the benefit of the Act as they are themselves money-lenders. (*Harries, C.J. and Fazl Ali, J.*) PRAYAG LAL *v.* PALAKDEO NARAIN SINGH. **202 I.C. 634=**

BIHAR MONEY-LENDERS ACT (1938).

BIHAR MONEY-LENDERS ACT (1938), S. 12.

9 B.R. 32=15 R.P. 134=1942 P.W.N. 173=23 Pat. L.T. 359=A.I.R. 1942 Pat. 419.

——**S. 12**—Discretion—Order refusing to fix smaller number of instalments—Interference in revision. *See* 1941 Dig., Col. 110. SUKH DAYAL *v.* PAWAN JAI KUMAR. **198 I.C. 656=14 R.P. 481=A.I.R. 1942 Pat. 35.**

——**S. 13**—*Valuation of property without notice to judgment-debtor—Right of latter to ask for fresh valuation.*

Under S. 13 of the Bihar Money-Lenders Act, a notice expressly stating that the Court would value the property must be given to both the parties. If a valuation takes place without a notice served on the judgment-debtor, the latter is entitled to ask the Court to value the property afresh. (*Harries, C. J. and Dhavle, J.*) MEHI SAHU *v.* HARI LAL SAHU. **199 I.C 256=8 B.R. 533=23 Pat.L.T. 336=14 R.P. 566=1942 P. W.N. 201=A.I.R 1942 Pat. 282.**

BIHAR MONEY-LENDERS (REGULATION OF TRANSACTIONS) ACT (VII OF 1939)—*Applicability—Suit on hand-note.*

The Bihar Money-Lenders Act of 1939 does not apply to a suit based upon a hand-note. (*Harries, C.J. and Manohar Lall, J.*) BABU LAL SINGH *v.* RAMNARAIN RAM. **197 I.C. 659=8 B.R. 267=1942 P. W.N. 31=14 R.P. 333=22 Pat.L.T. 1006=A.I.R. 1942 Pat. 138.**

——**S. 3**—*Government notification dated 19th July, 1939—'Year'—Meaning of.*

The word 'year' in the notification dated 19th July, 1939, issued by the Provincial Government under S. 3 of the Bihar Money-Lenders Act, should be taken in its ordinary connotation to be the period from 1st January to the following 31st December. (*Agarwala, J.*) AJIT KUMAR MAITRA *v.* JOY NARAYON AGARWALLA. **199 I.C. 86=23 P.L.T. 760=8 B.R. 493=14 R.P. 531=5 F.L.J. (H.C.) 186=A.I.R. 1942 Pat. 443.**

——**S. 4**—*Applicability—Considerations.*

In order to apply S. 4 of the Bihar Money-Lenders Act, 1939, what is to be seen is whether the plaintiff is registered and if he is not registered whether he is entitled to the benefit of the notification issued by Provincial Govetnment by reason of his total advances in the course of a year being not exceeding Rs. 500. It is immaterial that sometime during the year his advances were less than that amount. (*Agarwala, J.*) AJIT KUMAR MAITRA *v.* JOY NARAYON AGARWALLA. **199 I.C. 86=23 P.L.T. 760=8 B.R. 493=14 R.P. 531=5 F.L.J. (H.C.) 186=A.I.R. 1942 Pat. 443.**

——**S. 4**—*Applicability—Notification—Scope and object of—"Year"—Meaning.*

The reason for the exemption of persons from the operation of S. 4 as stated in the notification itself, was to avoid the necessity for the registration of persons who merely made casual advances to friends and so on, provided that the transactions of this nature did not exceed Rs. 500 in any one year. That was the test prescribed by the Local Government for the purpose of deciding whether a person should be exempted from registration. Ordinarily a year means a period from 1st January to the following 31st December and in deciding whether a person is of that class to which the notification was intended to apply, this definition of year, which is given in the General Clauses Act, should be enforced. Therefore where a person has advanced more than Rs. 500 in the period between January to December but less than Rs. 500 between May when the Act came into force and December, he is not exempt from registration by the notification and therefore is a person whose suit is barred by S. 4 of the Act. (*Agarwala, J.*) RAI SHYAM BAHADUR *v.* RAMESHWAR PRASAD. **203 I.C. 95=9 B.R. 59=15 R.P. 156=A.I.R. 1942 Pat. 441.**

BIHAR M. L. (REGULATION) ACT (1939), S. 11.

——**S. 4**—*If* ultra vires.

The Bihar Money-lenders Act of 1939 deals with money-lending generally and it is only in particular cases that it touches the question of money-lending transactions evidenced by the Nogotiable Instruments. S. 4 of the Act is, therefore, not *ultra vires* of the Provincial Legislature on the pith and substance rule. (*Agarwala, J.*) AJIT KUMAR MAITRA *v.* JOYNARAYON AGARWALLA. **199 I.C. 86=23 P.L.T. 760=8 B.R. 493=14 R.P. 531=5 F.L.J. (H.C.) 186=A.I.R. 1942 Pat. 443.**

——**Ss. 7 and 8**—Bond in respect of old debt with interest—Interest awardable—Power of Court to reopen accounts. *See* 1941 Dig., Col. 113. JADUNANDAN PRASAD *v.* MAHESHWAR NARAIN. **A.I.R. 1942 Pat. 49.**

——**S. 7**—"Loan advanced"—Meaning of—Suit in respect of—Part of loan advanced barred by limitation—Effect of. *See* 1941 Dig., Col. 113. HAKIM SAIYID FIDA ALI *v.* BHUNESHWARI KUAR. **199 I.C 566=8 B.R. 600=14 R.P. 602=23 Pat. L.T. 431=A.I.R. 1942 Pat. 73.**

——**S. 7**—*"Loan based on a document"—Meaning—Hand-note for Rs.* 1,000 *originally lent—Subsequent renewals—Last note for Rs.* 2,909-8-0*—Loan for purposes of S. 7.*

Where a hand-note was executed on 1—1—1935 for Rs. 2,909-8 0, in renewal of an earlier note which itself was in renewal of a still earlier one, the original loan dating back to 12—1—1924, under which the amount advanced was only Rs. 1,000, the amount of the loan for purposes of S. 7 of the Bihar Money-lenders Act, assuming that the Act applies to a suit on a hand-note, is Rs. 2,909 8-0 for which the hand-note on which the suit is based was executed. The liability under the original hand-note having been altered from time to time by the execution of fresh hand-notes after the amounts had been adjusted between the debtor and the creditor, the amount originally advanced cannot be considered to be the loan based on the document within the meaning of S. 7 of the Act. (*Harries, C.J. and Manohar Lall, J.*) BABULAL SINGH *v.* KAMNARAIN RAM. **197 I.C. 659=8 B.R. 267=1942 P.W.N. 31=14 R.P. 333=22 Pat.L.T. 1006=A.I.R. 1942 Pat. 138.**

——**S. 7**—Mortgage suit—*Pendente lite* interest—Power of Court to refuse—C. P. Code, O. 34, Rr. 2, 4 and 11. *See* 1941 Dig., Col. 113. SUKHRAJ RAI *v.* RATINATH PANJIARA. **21 Pat. 167=A.I.R. 1942 Pat. 102.**

——**S. 8**—*Reopening of loan transactions—Principles.*

Where in the case of a loan transaction the greater portion of the indebtedness is interest which has been bearing interest on itself the Courts will re-open the transaction and reduce the rate of interest. But where the transaction is not one in place of earlier indebtedness consisting largely of interest, the Court will not generally reopen the transaction. (*Harries, C.J. and Faxl Ali, J.*) PRAYAG LAL *v.* PALAKDEO NARAIN SINGH. **202 I.C. 634=1942 P.W.N. 173=9 B.R. 32=15 R.P. 134=23 Pat.L.T. 359=A.I.R. 1942 Pat. 419.**

——**S. 11**—"Judgment-debtor"—Question as to—When to be raised—Donee of attached property made

BIHAR M. L. (REGULATION ACT) (1939). S. 12.

party judgment debtor in execution—Order for instalment at donee's instance—Revision—Plea that order is without jurisdiction as donee had no *locus standi* to apply—Sustainability. *See* 1941 Dig. Col. 114. SUKH DAYAL *v.* PAWANJAI KUMAR. **198 I.C. 656=14 R. P. 481=A.I.R. 1942 Pat. 35.**

——**S. 12**—Discretion—Duty of Court to take into consideration matters specified and to give reasons—Failure to give reasons—If justifies interference in revision by High Court. *See* C. P. CODE, S. 115. **23 Pat.L.T. 194.**

——**S. 13** — *Applicability and scope—Decree on promissory note—Valuation—If mandatory—Duty of Court to fix value of property before sale—Application by judgment-debtor to fix valuation on date of sale—Dismissal—If justified—Revision—Interference by High Court.*

There is no foundation for the view that valuation of the property as required by S. 13 of the Bihar Money-Lenders Act cannot be fixed in execution cases arising from decrees on promissory notes. The section does not deal at all with promissory notes. Therefore even in the case of execution of a decree on a promissory note the executing Court is bound to make valuation of the property under S. 13, which is mandatory. If it does not determine the valuation, it fails to exercise a jurisdiction under S. 13, and its order is liable to be set aside in revision by the High Court. The Court is not justified to refuse an application by the judgment-debtor for valuation on the ground that the application was delayed and made only on the date of sale. S. 13 imposes a duty on the Court and the duty must be carried out before the sale is held. There can be no question of the judgment-debtor waiving his rights by refraining from making an application. (*Meredith, J.*) LAL BAHADUR SINGH *v.* BISHWANATH PRASAD SINGH. **198 I.C. 204=8 B.R. 335=1942 P.W.N. 28=14 R.P. 412=23 P.L.T. 14 A.I.R. 1942 Pat. 237.**

——**S. 13**—Second appeal—Order under—If decree. *See* C. P. CODE, S. 47. **23 P.L.T. 14.**

——**Ss. 13 and 14**—Scope and effect—Valuation under—If impediment to ordinary execution sale—Right of decree holder to appointment of receiver for selling property by private treaty. *See* C. P. CODE, S. 51 (*d*). **23 Pat.L.T. 191.**

——**S. 13**—*Scope—Non-compliance—If renders sale void or a nullity.*

Under S. 13 of the Bihar Money-Lenders Act of 1937, the Court is not entitled to hold sale without previously valuing the property. But non compliance with this provision, though it would be a ground for setting aside the sale, does not render the sale void or a nullity. In other words the sale is only voidable. There is nothing in S. 13 to warrant the Court in holding that failure to value the property goes to the root of the Court's jurisdiction to hold the sale so as to make it a complete nullity. (*Fazl Ali and Meredith, JJ.*) SHEO DAYAL NARAIN *v.* MOTI KUER. **21 Pat. 281=8 B.R. 720=200 I.C. 782=15 R.P. 9=1942 P.W.N. 202=23 Pat. L.T. 139=A.I.R. 1942 Pat. 238.**

——**S. 13**—*Valuation—Onus—Judgment-debtor applying for re-valuation—Duty of—Valuation based on cess-revaluation papers of 12 or 14 years ago—Sustainability.*

Where a judgment-debtor comes forward and asks for a fresh valuation on the ground that he has had no notice of the prior *ex parte* valuation, it is for him to show that the valuation already made is wrong and to produce the necessary papers showing the correct annual income. If he relies on cess revaluation papers, which it is open to him to do, it is plainly incumbent on him to show to the satisfaction of the Court how the figures in these papers had been modified by recent proceedings. It is not proper for the Court to fix the value on the cess revaluation papers of twelve or fourteen years ago minus a ten per cent. reduction, especially when owing to agrarian troubles including commutation and rent reduction, the income of the Zamindars have been reduced by thirty to forty per cent. and more. The onus is on the judgment-debtor who has obtained an order regarding instalments on certain representations regarding the income to show that they are not inconsistent with any representations since made by him or to explain away the inconsistencies to the satisfaction of the Court. (*Harries, C.J. and Dhavle, J.*) DEVNANDAN PRASAD SINGH *v.* KANIZ FATMA. **202 I.C. 481=15 R.P. 121=9 B.R. 5=23 Pat.L.T. 376=A.I.R. 1942 Pat. 413.**

B. (& O.) MUNICIPAL ACT (1922), S. 3.

——**Ss. 13 and 14**—*Valuation of property—Duty of Court.*

Before a sale to which the Bihar Money-Lenders Act applies, can take place, valuation of the property must be made in accordance with the provisions of S. 13 of that Act. If such valuation be not made, it is impossible to comply with the provisions of S. 14 of the Act. (*Harries, C.J. and Manohar Lall, J.*) BRIJRAJ KUMARI *v.* RADHA JIWAN RAI. **197 I.C. 303=8 B. R. 190=14 R.P. 294=A.I.R. 1942 Pat. 275.**

——**S. 15**—*Applicability—"Holding" "Raiyat"—Meaning of—If same as in Bihar Tenancy Act.*

There is no reason which compels a Court to apply the definition of "holding" and of "raiyat" given in the Bihar Tenancy Act to the words "holding" and "raiyat" used in the Bihar Money Lenders Act. Once it is conceded that the land held by a judgment-debtor is exclusively his, and can be sold to satisfy his debts, though it may not be a "holding" as defined by the Bihar Tenancy Act, it is clear that the land is held by him or his "holding" for purposes of the Money-Lenders Act. Similarly the word "raiyat" in the Money-Lenders Act has a wider meaning than that given to it under the Tenancy Act and denotes actual cultivators or agriculturists as opposed to zamindars, tenure-holders, ijardars, etc. The land held by the judgment-debtor formed part of a larger area held by a number of co-sharers; the co sharers divided the land amongst themselves without taking the necessary steps to create *vis-a-vis* the landlord distinct tenancies to each portion so divided. But it was held exclusively by each co-sharer.

Held, that for the purposes of S. 15, the judgment-debtor was a raiyat cultivating a holding. (*Harris, C.J. and Dhavle, J.*) RAMAPRASAD SINGH *v.* SAJAN MAHTO. **21 Pat. 357=A.I.R. 1943 Pat. 15.**

——**S. 15**—*Mere equity of redemption—If exempted.*

Under S. 15 of the Bihar Money-Lenders Act, what is exempted is land in the possession of the debtor which would give him a means of subsistence, and not rights in the nature of purely mortgagor's rights. It cannot be said that a person who owns a mere equity of redemption and is not in possession or entitled to possession can be described as an agricultural debtor within the meaning of this section, (*Harries, C. J. and Manohar Lall, J.*) BADRI MAHTO *v.* LOCHAN SAH. **198 I.C. 821=8 B.R. 465=14 R.P. 505=A.I.R. 1942 Pat. 264.**

BIHAR (AND ORISSA) MUNICIPAL ACT (VII OF 1922) S. 3 (9)—*Holding*—Parti *land or land with house in dilapidated condition—If excluded.*

B (& O.) MUNICIPAL ACT (1922), S. 86.

"Holding" as defined by S. 3 (9) of the Bihar and Orissa Municipal Act includes *parti* land or land with a house on it in a dilapidated condition. There is nothing in the definition to exclude such land. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat.L.T. 407=A.I.R. 1942 Pat. 417.**

——**S. 86**—Latrine-tax—Formality not observed—Assessment, if *ultra vires*. *See* 1941 Dig., Col. 136. SHIVA PRASAD *v.* COMMISSIONERS OF DARBHANGA MUNICIPALITY. **A.I.R. 1942 Pat. 81.**

——**S. 98 (1) and (2)**—*Relative scope—Holdings having no habitable buildings—If exempt from tax.*

S. 98 (1) of the Bihar and Orissa Municipal Act covers holdings with buildings of a character outside S. 98 (2) or holdings without any buildings on them at all. There is nothing to show that the Act exempts from taxation holdings merely because they may have no habitable buildings on them. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat.L.T. 407=A.I.R. 1942 Pat 417.**

——**Ss. 107 and 115**—*Relative scope—Failure to give notice under S. 107 (2)—Effect on assessment.*

S. 115 of the Bihar and Orissa Municipal Act clearly applies only to cases where a new list or a revised list is issued. The section cannot by its terms apply to a case where a list has been prepared or revised and subsequently it is found that property has been omitted from the list which should have been included or property has become assessable which was not assessable when the list was prepared or revised. These two latter cases are expressly dealt with in S. 107 of the Act which presupposes an existing list which has been published under S. 115, and that since such publication it has been found that property has been omitted from the list which should have been included or property has subsequently become assessable. If it is proposed to assess such property, a month's notice must be given to the person interested of any alteration the commissioners propose to make and of the date on which the alteration will be made. The omission to give the statutory notice makes the assessment *ultra vires* and not in accordance with law. (*Harries, C.J. and Manohar Lall, J.*) ABDUL KHADAR KHAN *v.* CHAIRMAN, PURI MUNICIPALITY. **21 Pat. 309=8 Cut. L.T. 89.**

——**S. 107 (1) (f)**—*Scope—Application for reduction of valuation of holding—Decision of Municipality—Jurisdiction of Civil Court to question or review.*

S. 107 (1) (*f*) of the Bihar and Orissa Municipal Act contemplates a reduction, on the application of the owner or occupier, of the valuation of any holding which has been wholly or partly demolished or destroyed, or the value of which has diminished from any cause. In the case of such holdings, the person liable to pay the tax can, in view of Ss. 116 to 119, only obtain reduction by applying under Cl. (*f*); and if the Municipality should deal with such an application in accordance with law, no objection can be taken to the decision of the Municipality in the Civil Court. The valuation of all holdings is a matter for the Municipality and not for the Civil Court under S. 119. If an assessment is not reduced under S. 107, the owner remains liable except in case of remissions under S. 110 or S. 111 but apart from that his liability cannot be questioned in the Civil Court. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat.L.T. 407=A.I.R. 1942 Pat. 417.**

B. (& O.) MUNICIPAL ACT (1922), S. 124.

——**S. 108**—*Notice—Duty of transferee to give notice of transfer:*

Under S. 108 of the Bihar and Orissa Municipal Act it is the duty of the transferee of a holding, no less than that of the transferor, to give notice of the transfer to the chairman of the Municipality. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat.L.T. 407=A.I.R. 1942 Pat. 417.**

——**S. 115**—Applicability—Preparation of list or revision of list—Subsequent omission or inclusion of property in list—If covered by S. 115. *See* BIHAR (AND ORISSA) MUNICIPAL ACT, SS. 107 AND 115. **21 Pat. 309.**

——**S. 117**—*Scope—Appellate tribunal—Constitution of—Resolution of Municipality appointing seven members as appellate committee—Four out of seven selected as tribunal to hear particular case and hearing same—Tribunal—If illegally constituted.*

A Municipality, by a resolution, appointed seven members to act as an appellate committee under S. 117 of the Bihar and Orissa Municipal Act, and amongst those seven persons were persons who were elected for the ward in which the house of the plaintiff (assessee) was situate. Out of these seven four only sat on the particular appellate tribunal who dealt with the plaintiff's matter, and not one of the members was in any way connected with the ward in question,

Held, that appellate tribunal in the case was a perfectly legal and properly constituted body and was clearly within the spirit of S. 117 of the Bihar and Orissa Municipal Act. The Resolution of the Municipality was nothing more than the appointment of seven persons to form a rota from which three or more should be selected for any particular appeal as and when required; the resolution did not in substance mean that for each appeal all seven must sit. Hence the assessment was neither illegal nor *ultra vires* on the ground that the appellate tribunal was illegally constituted. (*Harries, C.J. and Manohar Lall, J.*) ABDUL KADAR KHAN *v.* CHAIRMAM, PURI MUNICIPALITY. **21 Pat. 309=8 Cut. L.T. 89**

——**S. 119**—Scope—Assessment *ultra vires*—Assessee's right of suit. *See* 1941 Dig., Col. 136. SHIVA PRASAD *v.* COMMISSIONERS OF DARBHANGA MUNICIPALITY. **A.I.R. 1942 Pat. 81.**

——**S. 123**—*Scope—Non-service of notice under—Effect on right to sue for arrears of tax.*

The notice under S. 123 of the Bihar and Orissa Municipal Act only affects the Municipality's right to levy arrears by distress and sale under S. 124, and not its right to sue under S. 130. The liability to pay tax in respect of a holding does not arise from the notice under S 123 at all, but from the earlier sections of the Act. There is no reason for holding that the right of the Municipality to sue for arrears is dependant on the service of a notice under S. 123. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat.L.T. 407=A.I.R. 1942 Pat. 417.**

——**Ss. 124 and 125**—*Form of warrant not prescribed by Government—Municipality, if debarred from realising tax.*

If the Provincial Government has prescribed a form of warrant the Municipality would be obliged to use that form. But the mere fact that no form has been prescribed does not mean that the Municipality is debarred from realising the tax at all or that it is not to realise it by a warrant of distress although by S. 124 of the Bihar and Orissa Municipal Act it has been authorised to do so. (*Agarwala, J.*) MANGLESHWAR PRA-

B. (& O.) MUNICIPAL ACT (1922), S. 124.

SAD *v.* SHEONATH PRASAD. 203 I C. 60=15 R.P. 163=44 Cr.L.J. 60=9 B.R. 52=A.I.R. 1943 Pat. 4.

——Ss. 124 and 125—*Warrant—Construction—Seizure of property of any other person—If authorised.*

The material portion of a warrant directed to the tax *daroga* of the Municipality was in these words :—"This is to authorize you to distrain the movable property of the said warrantee wherever may be found within the Municipality .... or movable property .... which may be found within the holding specified in the margin .. .... If distress cannot be made of sufficient property of the said warrantee you are to certify the same to us in returning the warrant."

Held, that the latter clause in the first sentence authorized the seizure of movable property belonging to any one other than the defaulter inspite of the omission to state specifically after the words "movable property" in that clause the words "of any other person", and that the omission to require a certificate in the case of property seized on the premises in respect of which the default occurred and belonging to a person other than the defaulter could not affect the operative part of the warrant. (*Agarwala, J.*) MANGLESHWAR PRASAD *v.* SHEONATH PRASAD. **203 I.C. 60=15 R.P. 163=44 Cr.L.J. 60=9 B.R. 52=A.I.R. 1943 Pat. 4.**

——S. 185—*Power of Municipality to levy fees—Nature of—Omission by them to levy fees from stall-holders on public road—If proves custom exonerating them from paying fees.*

The powers conferred on the Municipality empowering them to impose taxes or levy fees are permissive powers, and the Municipality is not bound to exercise those powers. The mere fact, therefore, that the Municipality has not levied fees on the stall-holders on a public road before, does not provide a basis on which it can be held that a custom has grown up exonerating stall-holders from paying the fees which the Municipality may subsequently decide to levy. (*Agarwala, J.*) COMMISSIONERS, PATNA MUNICIPALITY *v* SHAM HAMID HUSSAIN **199 I.C. 95=8 B.R. 497=14 R. P. 534=A.I.R. 1942 Pat. 360.**

——S. 198 — Jurisdiction — Magistrate with second class powers—If empowered to act under. *See* 1941 Dig., Col. 136. CHAIRMAN, BIHAR MUNICIPALITY *v.* RAMNANDI KUER. **8 B.R. 145=43 Cr.L.J. 110.**

——S. 198—Proceeding under—Nature of—If "prosecution"—Conviction or acquittal—If can be recorded—Cr P Code, S. 245. *See* 1941 Dig., Col. 136. CHAIRMAN, BIHAR MUNICIPALITY *v.* RAMNANDI KUER. **8 B.R. 145=43 Cr L.J 110.**

——S. 259 (2)—*Meat shop—If offensive business.*

Quaere: Whether a meat shop can be an offensive business under S. 509 (2) of the B. and O. Municipal Act? (*Harries, C.J. and Fazl Ali, J.*) MAHOMED ISRAIL *v.* PATNA CITY MUNICIPALITY. **21 Pat. 449=A.I.R. 1943 Pat. 34.**

——S. 276 (2)—*Refusal to renew licence—Powers of chairman—Duty to give reasons for refusal—Omission to state reasons—Effect.*

The power of a chairman of a Municipality to refuse a renewal of a licence under S. 276 (2), B & O. Municipal Act, is limited. He cannot refuse to renew a licence granted under the bye-laws for any cause other than failure of the licensee to comply with the conditions of the licence or with any provision of rules made under the Act. The chairman should, however, state the ground on which he refuses to renew the licence, in order to enable the Court to see whether the Municipality acted with or without jurisdiction. The Court cannot make a presumption that the application for renewal was rejected on proper grounds. If no reason is given, the Municipality might find their order set aside on the ground that they had acted arbitrarily. (*Harries, C. J. and Fazl Ali, J.*) MAHOMED ISRAIL *v.* PATNA CITY MUNICIPALITY. **21 Pat. 449=A.I.R. 1943 Pat. 34.**

B. (& O.) PRIVATE IRRIGATION WORKS ACT (1922), S. 38.

——S. 383—*Prohibitory order—What amounts to—Expression of opinion—If amounts to order.*

An order made by the District Magistrate on an application presented by the Hindus of a locality protesting against the renewal of a licence to carry on a beef and meat shop, stating that "I do not think there is any real necessity for a beef shop in the locality. In my view, the licence should not be renewed for the next year", is not a prohibitory order within the meaning of S. 383 of the B. and O. Municipal Act. It is merely an expression of the view of the District Magistrate and it leaves it open to the Municipality to deal with the application for renewal as they might deem proper. (*Harries, C.J. and Fazl Ali, J.*) MAHOMED ISRAIL *v.* PATNA CITY MUNICIPALITY. **21 Pat. 449=A.I.R. 1943 Pat. 34.**

BIHAR (AND ORISSA) MUNICIPAL ELECTION RULES, 1937, Rr. 20 and 18 (2)—*Person entered in final electoral roll by mistake—If qualified for election as Commissioner.*

Under R. 18 (2) read with R, 20 of the Bihar and Orissa Municipal Election Rules of 1937, a person is qualified to be elected as a Commissioner if his name is entered in the final electoral roll, even though he is not qualified to vote under R. 6 and his name is entered in the roll by mistake, provided the person who entered his name in the electoral roll was empowered to decide whether that name should be entered or not. The fact that in coming to his decision a mistake has been made, does not affect the jurisdiction of the registering authority to decide the question. (*Agarwala, J.*) NAND LAL GUPTA *v.* COMMISSIONERS OF THE ARRAH MUNICIPALITY. **198 I C. 834=8 B.R. 468=14 R.P. 507=A.I.R. 1942 Pat 259.**

BIHAR (AND ORISSA) MUNICIPAL SURVEY ACT, (I OF 1920), S. 11—*Entry in Municipal Survey papers that municipality is owner and occupier of certain private road—Presumption of correctness.*

An entry in Municipal Survey papers that the Municipality is the owner and occupier of a certain private road, gives rise to the presumption that at the time the Settlement Officer made the entry he was satisfied that that road had become vested in the Municipality either by reason of the owner of it having consented to this under S. 61 of the present Bihar and Orissa Municipal Act or under S. 30 of the previous Act, or in some other way. The fact that the Municipality has been maintaining this road is a strong piece of evidence in support of the correctness of the entry. (*Agarwala, J.*) COMMISSIONERS, PATNA MUNICIPALITY *v.* SHAM HAMID HUSSAIN. **199 I.C. 95=8 B.R. 497=14 R.P. 534=A.I.R. 1942 Pat. 360.**

BIHAR (AND ORISSA) PRIVATE IRRIGATION WORKS ACT (V OF 1922), S. 38 (1)—*Scope—Powers of Collector to fix parabandi where none existed before.*

S. 38 (1) of the Bihar and Orissa Private Irrigation Works Act does not give power to fix a parabandi (system of rotation) where no parabandi exists S. 38. (3) provides for a new system where none existed before; Cl. (1) equally obviously provides for revision of an existing system. It would be dangerous to assume that Cl. (1) also provides for an entirely new system where none existed, unless it is so expressed with unmistakable clearness. It would be straining the language to hold that cases where the system of rotation is not clearly entered in the record of rights include a case where it

is not entered at all. It is clearly one of ambiguity in the entry and not a complete absence of entry. (*Middleton.*) BABU LAL BIHARI SARAN SINGH *v.* MUTUKDHARI SINGH. 8 B.R. 415.

BIHAR (AND ORISSA) PUBLIC DEMANDS RECOVERY ACT (IV OF 1914)—*Sale under—What passes—Landlord purchasing holding of tenant in execution sale under rent decree—Land settled with another as lessee—Certificate proceedings for arrears of subsequent years—Sale in—What passes to purchaser.*

Where a landlord after having purchased his tenant's holding at a sale in execution of his rent decree in respect of arrears of rent for certain years and after settling the lands with another as tenant, takes out certificate proceedings under the Public Demands Recovery Act in respect of arrears of rent for subsequent years, the certificate sale passes to the purchaser only the landlord's interest which at the time of the sale is clearly subject to the rights acquired by the person settled on the lands as lessee; the purchaser at the certificate sale cannot therefore claim any better title in the lands than that possessed by the landlord at that date. (*Harries, C.J. and Fazl Ali, J.*) KANIK MANDAL *v.* MEDNI RAI. 201 I.C. 560=15 R.P. 56=8 B.R. 806 =23 Pat.L.T. 213=A.I.R. 1942 Pat. 317.

——S. 9—Scope—If abrogated by S. 11, Local Fund Audit Act. *See* BIHAR AND ORISSA LOCAL FUND AUDIT ACT, S. 11. 8 B.R. 732.

——S. 25—"Conclusive"—Meaning of—Order under S. 23—Appealability—S. 60. *See* 1941 Dig. Col. 137. LIQUIDATOR DHUNDHEA CO OPERATIVE SOCIETY *v.* PAGU SAO. 1941 P.W.N. 743 (2).

——Ss. 28 and 31—*Period of 30 days—Power of Court to extend—Application to set aside sale made within 30 days—Compensation money paid beyond time—Effect—Jurisdiction to set aside sale—Office accepting challan filed by debtor without including compensation money—If ground for setting aside sale—Mistake made by officer of Court—Effect of.*

A mere casual act by an officer of the Court who makes a mistake cannot be treated as the Court's act, so as to give the Court jurisdiction to make an order which it has no jurisdiction to make. The Court has no jurisdiction to extend the period of 30 days laid down in S. 31 of the Public Demands Recovery Act; and where the certificate debtor does not deposit the penalty or compensation provided for by S. 28 of the Act within the period of 30 days, the sale cannot be set aside, although he has deposited the demand amount and interest within the period of 30 days, and although the challan filed by the debtor without including the compensation money is accepted by the office of the certificate officer. A sale was held on 6—7—1940 and within the 30 days, the debtor applied under S. 28 of the Bihar and Orissa Public Demands Act depositing the amount of the demand and interest, but not the penalty or compensation of Rs. 5 payable under S. 28. The challan was accepted by the office and treated as correct and the case was treated as fully satisfied and on 6—8—1940, the certificate officer made an order "sale set aside. Realised in fully." Subsequently it was discovered that the compensation of Rs. 5 had not been paid, and a notice was issued to the debtor to show cause why the sale should not be confirmed. On 6—12—1940, the debtor turned up and paid the penalty amount of Rs. 5, but his petition was dismissed by the certificate officer who held that he had no power to set aside the sale when the full amount had not been deposited within the prescribed period. This order was upheld by the Deputy Collector, but the Commissioner reversed it on the

ground that the certificate debtor had been misled by the mistake of the office.

Held, in revision by the Board of Revenue, that the responsibility for writing out the challan lay with the debtor and not with the certificate officer or his office, and the mere fact that the challan was accepted by the office under a mistake did not entitle the debtor to have the sale set aside and the mistake did not at all prejudice the debtor. (*Swaney.*) MAHOMED SHER ALI *v.* ANWAR AHMAD. 8 B.R. 842.

——S. 29—*Certificate issued after death of debtor—Sale—Legality—Application to set aside sale filed by heirs four years after sale—Allegation that they had no knowledge of sale—Sale if can be set aside.*

A certificate sale took place in June, 1937. The certificate debtor was a Mahomedan widow, who had died before the issue of the certificate. The petitioners, who were two widowed daughters of the debtor applied in January, 1941, to have the sale set aside alleging that their brother had cheated them by allowing the property to go to sale. The petitioners alleged that they had no knowledge of the sale until they got notice in a land registration case.

Held, (1) that the certificate filed against the debtor was void *ab initio*, and the sale affected the interests of the petitioners who were therefore entitled to have the sale set aside; (2) that in the absence of evidence or even allegation to show that the petitioners were aware of the sale earlier, the application for setting aside the sale must be admitted though filed about 4 years after the sale. (*Swaney.*) HAFIZAN *v.* RAGHO SAO. 8 B.R. 873

——S. 43—*Limitation—Computation—Adverse order on appeal by Collector—Revision to Commissioner and Board unsuccessful—Starting point of limitation.*

Under S. 43 of the Bihar and Orissa Public Demands Recovery Act, limitation has to be computed from the date of the adverse order of the Collector which determines the matter against the plaintiff; when such order has been passed by the Collector on appeal there is no further appeal but only revision. A suit beyond six months of the Collector's order is therefore barred by limitation under S. 43, though it is within six months of the orders passed in revision by the Commissioner and the Board of Revenue. (*Rowland and Chatterji, JJ.*) SHEORAJ DHARI SINGH *v.* KAMESHWAR SINGH. 200 I.C. 309=8 B.R. 668=14 R.P. 647=23 Pat.L.T. 263=A.I.R. 1942 Pat. 378.

——Ss. 45 and 46—*Scope of—Suit to declare certificate sale fraudulent and void—If barred.*

S. 46 of the Bihar and Orissa Public Demands Recovery Act expressly exempts from the operation of Ss. 25 and 45 of the Act a suit which is based upon a fraud and which is for a declaration that a certificate sale was a fraudulent one and void on the ground of the purchase being a collusive one and on behalf of the real certificate debtors. Such a suit comes under the proviso to S. 45 and is not therefore barred by any rule in S. 46. (*Harries, C.J. and Manohar Lall, JJ.*) BANARSI DAS *v.* BHAWANI KUER. 202 I.C. 57=15 R.P. 83=8 B.R. 843=23 Pat.L.T. 364=A.I.R. 1942 Pat. 386.

——S. 46—*Scope—"Duly filed"—Allegation that part of demand is illegally included—Suit in Civil Court—Maintainability.*

There is no basis for the argument that a certificate cannot be deemed to have been *duly filed* within the meaning of S.46 of the Bihar and Orissa Public Demands Recovery Act, merely because that a portion of the alleged debt was not due. The question of the precise amount of demand due is a question for the decision of

the certificate officer and of the superior officers, and if no defect of procedure is alleged or proved, a suit in the Civil Court challeging the certificate proceedings on the ground that a portion of the demand has been illegally included is barred under S. 46 of the Act, because it relates to a matter referred to in S. 46. (*Rowland and Chatterji, JJ.*) SHEORAJDHARI SINGH *v.* KAMESHWAR SINGH. 200 I.C. 309=8 B.R. 668=14 R.P. 647=23 Pat.L.T. 263=A.I.R. 1942 Pat. 378.

BIHAR RESTORATION OF BAKASHT LANDS AND REDUCTION OF ARREARS OF RENT ACT (IX OF 1938)—*Abatement—Death of applicant before hearing—Failure to substitute heirs—Effect on application—Order for restoration—Legality.*

No proceeding can be carried on in the name of a dead man without substitution. Where an applicant for restoration of bakasht lands dies before the hearing, and no substitution or amendment of the application is made the Court has no jurisdiction to order restoration on such application: (*Middleton.*) MAHOMED ABDUL MAJID *v.* KAMALDHARI LAL. 8 B.R. 227.

———"*Rent*"—*If includes cess—Definition of "rent" in Bihar Tenancy Act—Applicability.*

The Rent Reduction Act of 1938 does not purport to deal with cess at all; and the artificial definition of "rent" in the Bihar Tenancy Act, as including cess, does not apply to the Rent Reduction Act; and therefore for the purpose of Act IX of 1938, cess is not rent. (*Agarwala, J.*) RAM RANBIJAY PRASAD SINGH *v.* INDARDEO SAHAI. 199 I.C. 251=8 B.R. 531=14 R.P. 565=22 Pat L.T. 996=A I.R. 1942 Pat. 119.

———*Revision — Commissioner's power to interfere on questions of fact.*

Where in a case under the Registration of Bakasht Lands Act, the Restoration officer has entirely disregarded important evidence and ignored the recitals in a document of settlement, the commissioner is entitled in revision to interfere on questions of fact. The circumstances being exceptional, such interference is justified and the Board of Revenue will not allow a second revision on that ground. (*Middleton.*) MAHABIR SINGH *v.* RAMDAS ROUT. 8 B.R. 330.

———*Revision—New point—Plea of non-joinder of parties—If can be raised for first time in second revision to commissioner.*

Where a point as to non-joinder of parties is taken for the first time in second revision before the commissioner, he is justified in declining to allow it to be raised. (*Middleton.*) SURENDRADEO NARAIN *v.* DEOKI SINGH. 8 B.R. 149.

———S. 3—*Applicability and scope—Lands in landlord's possession by virtue of compromise—Title not traced from Court-sale—If can be restored.*

A holding was owned by two groups of co-sharers, *H* and *M*. The *H* group obtained a decree for arrears of rent, put up the holding for sale and purchased it in May, 1933. Later the *M* group sued the tenants and the *H* group of landlords for two years' rent, obtained a rent decree against the tenants and a money decree against the *H* group of landlords, and brought the holding to sale themselves purchasing it in 1937. Later, the *H* group brought a title suit against the *M* group which ended in a compromise dividing the lands between the two groups half and half.

Held, in an application for restoration, that though the *H* group had apparently been in possession since 1933, their title to the ½ share allotted to them under the compromise was different from their title under the sale of 1933, which became eliminated by the sale in favour of the *M* group, and since the *H* group had no continuity of title, they were not in possession by virtue of

the Court-sale and hence the land in their possession could not be restored. The fact that they never lost possession was irrelevant. (*Middleton.*) AJODHYA SINGH *v.* BAIJNATH PRASAD SINGH. 1941 P.W.N. 635.

———S. 3—Applicability—Holding purchased by landlord—Delivery of possession not effected—Application by tenant for restoration—Maintainability. *See* 1941 Dig., Col. 116. RAM ASHRAY SINGH *v.* KHAB SURAT KUER. 1941 P.W.N. 740.

———S. 3—*Scope—Several co-sharers—Restoration of possession in respect of share of one landlord—Permissibility.*

Bihar Act IX of 1938 does not authorise restoration of land proportionate to the interest of one set of co-sharer landlords ignoring another set of co-sharer landlords. (*Middleton.*) AJODHYA SINGH *v.* BAIJNATH PRASAD SINGH. 1941 P.W.N. 665.

———S. 6—*Nagdi plot cultivated on behalf of petty landlord or by settlee—Restoration of.*

Where a nagdi plot has been settled *bona fide*, and it appears that the plot has been cultivated on behalf of a petty landlord or has been cultivated by a settlee it cannot be restored under the Bihar Act IX of 1938. (*Swansey.*) SAHODRA KUER *v.* HARIHAR SINGH. 9 B.R. 7.

———S. 6—*Plot not in possession of purchasing landlord—Restoration of—Sale or surrender for consideration—If settlement.*

A sale or surrender for consideration by a landlord of his rights under S. 22 of the Bihar Tenancy Act to a superior landlord is not a settlement for purposes of Bihar Act IX of 1938. Certain landlords purchased the occupancy rights in three *bhauli* plots in 1932. In a subsequent partition in 1937 among the landlords these plots were allotted to another co-sharer; in February 1938, the landlords who purchased the occupancy rights sold the rights which thay had under S. 22 of the Bihar Tenancy Act to the co-sharer in whose patti the plots fell. The tenant filed the application for possession in July, 1939, contending that the sale of February, 1939, was a settlement which, having been made after March, 1938, could not affect his right to restoration.

Held, that the transaction could not be considered to be a settlement and since the plots were not in the possession of the purchasing landlords at the time the application was filed, the application for restoration could not be allowed. (*Swanzey.*) SAHODRA KUER *v.* HARIHAR SINGH. 9 B.R. 7.

———S. 8—*Portion only of decretal amount realised by sale—Amount paid by tenant for restoration of land—If has effect of satisfying entire decree—Right of landlord to realise balance.*

There is no express provision in the Bihar Restoration of Bakasht lands and Reduction of Arrears of Rent Act as to what is to be done in a case where a portion only of the decretal amount has been realised by the sale of a holding. In such a case the payment made by the tenant under S. 8 of the Act for the restoration of the land cannot be taken to have the effect of satisfying the entire decree. The landlord decree-holder will, therefore, be entitled to proceed for the balance. He cannot however realise more than the decretal amount. He can execute his decree for such amount only as remains unpaid after deducting from the decretal amount the amount which has been paid by the tenant in the proceedings regarding the restoration of lands, after making allowance for the costs of the decree. (*Fazl Ali, J.*) HARI MAHTON *v.* JAMAL HOSSAIN. 199 I.C. 24=8 B.R. 482=14 R.P 525=23 P.L.T. 571=A.I.R. 1942 Pat. 304 (2)

BIH. BAKASHT LANDS ACT (1938), S. 9.

——**S. 9**—*Calculation of area—Individual* khatas *—If to be taken as separate holdings.*

For the purpose of calculating the area under S. 9 of the Bihar Act IX of 1938, each individual *khata* has to be treated as a separate holding. The mere fact that there was only one decree, one execution proceeding or one application, will not make two *khatas* one holding. (*Middleton.*) SURENDRADEO NARAIN *v.* DEOKI SINGH. **8 B.R. 149.**

——**S. 12**—Scope and effect of—Sale of holding—Purchase by landlord and delivery of possession—Decree for money in respect of period between sale and delivery of possession—Subsequent restoration of land to tenant under Act—Effect of—Decree for money—If altered into one for rent—Liability to reduction under S. 15 (*a*). *See* BIHAR RESTORATION OF BAKASHT LANDS AND REDUCTION OF ARREARS OF RENT ACT, S. 5. **22 Pat.L.T. 998.**

——**Ss. 15 and 16**—*Applicability and scope—Proceeding for recovery of arrears pending—Application under S.* 16*—Maintainability.*

S. 15 of the Bihar Act IX of 1938 applies only to occupancy holdings for the arrears of rent of which there is a suit or proceeding pending, and not to an occupancy holding for the arrears of rent of which there is no pending suit or proceeding. It is therefore not correct to say that S.15 comprehends all occupancy holdings and that S. 16 consequently does not apply to any occupancy holding. Where a proceeding is pending for recovery of the arrears of an occupancy holding, the holding is one to which S. 15 (*b*) applies and to which S. 16 cannot apply; and an application under S. 16 is not maintainable. (*Agarwala and Shearer, JJ.*) KAMESWAR SINGH BAHADUR *v.* RAMESHWAR SINGH. **21 Pat. 704=1942 P W.N. 205.**

——**Ss. 15 and 16**—*Applicabiliy—Occupancy holding with cash rental—Right of tenant to apply for relief under S.* 16.

S. 15 of the Bihar Act IX of 1938 applies to occupancy holdings at a cash rent and such an occupancy holding with a cash rental is not contemplated by S. 16 of the Act. Such occupancy tenants are given relief under S. 15 of the Act and cannot apply under S. 16 (1) of the Act. If they can obtain no such relief under S. 15, they cannot fall back on S. 16. (*Harries, C.J. and Manohar Lall, J.*) KAMESHWAR SINGH BAHADUR *v.* DHUNMAN GOPE. **21 Pat. 794=1942 P.W. N. 208.**

——**S. 15**—Decree for rent and cess—Reduction of rent subsequently in proceedings under S. 15—Decree for cess—If also reduced. *See* BENGAL CESS ACT, S. 41. **21 Pat. 628.**

——**S. 15** (*a*)—*Applicability—Execution proceedings—Sale held but not confirmed—Rent reduced after sale in favour of decree-holder but before confirmation—Amount to be deposited by judgment-debtor under S.* 174 *of Bihar Tenancy Act.*

The mandatory provisions of S. 15 (*a*) of the Bihar Restoration of Bakasht Lands and Reduction of Arrears of Rent Act are made applicable to proceedings for the execution of a decree by S. 20. The proceedings in execution do not terminate with the sale so that before the sale is confirmed the proceedings still continue to be proceedings in execution. Where, therefore, after a sale of a holding in execution of a rent decree in favour of the decree-holder but before its confirmation, the judgment-debtor obtains an order reducing the rent payable under S. 112-A (1) (*d*) of the Bihar Tenancy Act, he is not bound to deposit the full amount for which the sale was held when he applies to have the sale set aside under S. 174 of the Bihar Tenancy Act.

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He is required to deposit only such amount as the decree-holder is entitled to recover on account of arrears of rent as was finally determined by the Rent Reduction Officer. If the judgment-debtor deposits more, he is entitled to withdraw the excess amount. (*Manohar Lall, J.*) SUKHRAJ ROY *v.* KESHAB MOHAN THAKUR. **8 B.R. 108=197 I.C. 175=1941 P.W.N. 749=A.I.R. 1942 Pat. 262.**

——**S. 15** (*a*)—*Applicability—'Rent"—If includes damages for use and occupation—Decree for damages for compensation for use and damages for period between sale and delivery of possession—If liable to reduction.*

S. 15 (*a*) of the Bihar Act IX of 1938 clearly deals only with rent and not with damages or profits for use and occupation. Where after the sale of a holding for arrears of rent and purchase by the landlord, the landlord obtains a money decree against the ex-tenant for the period between the date of the sale and the date of delivery of possession to the landlord, such decree amount is not rent which can be reduced under S. 15 (*a*). The relationship of landlord and tenant comes to an end and ceases to exist when the holding is sold for arrears of rent; and what would be payable by the occupant is only damages for use and occupation and not rent. The fact that the land is subsequently restored to the tenant under the Bihar Act IX of 1938 does not have the effect of converting the suit and decree for damages for use into one for rent under S. 12 of the Act. S. 12 does not have that effect. As there is no claim for rent and as no decree for rent is passed, S. 15 (*a*) cannot apply. (*Agarwala, J.*) RAM RAN BIJAY PRASAD SINGH *v.* AMI TEWARY. **199 I.C. 676=8 B.R. 607=14 R.P. 609=22 Pat.L.T. 998=A.I.R. 1942 Pat. 131.**

——**S. 15** (c)—*Construction—"The amount of the arrears as so reduced"—Meaning of—Right of landlord to interest on amount of reduced rent and on amount knocked off.*

There can be no doubt that the words "the amount of the arrears as so reduced" in S. 15 (*c*) of Bihar Act IX of 1938 refer to the reduced amount, that is to say, the amount which is payable as a result of the rent reduction proceedings. A decree-holder landlord is not therefore entitled to interest on the reduced amount. Nor is the decree holder landlord entitled to interest on the amount of arrears of rent which has been knocked off as a result of the rent reduction proceedings. Interest on the amount knocked off or disallowed is merely accessory to the principal disallowed and when the principal itself is not recoverable, the interest too is not recoverable. (*Harries, C.J. and Fazl Ali, J.*) INDERDEO SAHAI *v.* RAM RANBIJOY PRASAD SINGH. **21 Pat. 628=203 I.C. 418=9 B.R. 80=15 R.P. 172=A.I.R. 1942 Pat. 470.**

——**S. 15** (c)—*Construction and scope—Landlord if altogether deprived of right to interest on arrears of rent on reduction.*

S. 15 (*c*) of Bihar Act IX of 1938 has not the effect of depriving the landlord altogether of his right to interest on the arrears of interest when the rent has been reduced under the Act. The section has to be read as meaning only that he is not entitled to interest "on the amount of the arrear so reduced", *i.e.*, on the difference between the original rent and the reduced rent. The addition of the words "on" the amount of the arrears so reduced" after interest in S. 15 (*c*) clearly indicates that the Legislature did not intend to deprive the landlord of interest to which he is expressly declared to be entitled by S. 67 of the Bihar Tenancy Act. It is clear that landlord is to get interest only on the basis of the reduced rent (*Agarwala, J.*) RAM RANBIJAY PRASAD SINGH

BIH. BAKASHT LANDS ACT (1938), S. 16.

v. INDARDEO SAHAI. **199 I.C. 251=8 B.R. 531=14 R.P. 565=22 Pat.L.T. 996=A.I.R. 1942 Pat. 119.**

——**S. 16**—*Applicability—Occupancy holding with cash rent.*

S. 16 of the Bihar Act IX of 1938 definitely refers only to holdings which are not referred to in S. 15, and cannot therefore include any occupancy holding paying cash rent. (*Middleton.*) DEONARAIN TEWARI *v.* KAMESHWAR SINGH BAHADUR. **8 B.R. 760.**

——**S. 16**—*Occupancy raiyat—No suit or proceeding pending for recovery of arrears of rent—Right to apply under S. 16 without applying under S. 112-A, Bihar Tenancy Act.*

Quaere.—Whether an occupancy raiyat against whom no suit or proceeding is pending for recovery of arrears of rent of his holding is entitled to make an application under S. 16 of Bihar Act IX of 1938 without having applied for settlement or reduction of rent under S. 112-A of the Bihar Tenancy Act. (*Agarwala and Shearer, JJ.*) KAMESWAR SINGH BAHADUR *v.* RAMESHWAR SINGH. **21 Pat. 704=1942 P.W.N. 205.**

BIHAR TENANCY ACT (VIII OF 1885)—*Rule under—R. 123—Scope—If retrospective.*

R. 123 of the new rules under the Bihar Tenancy Act cannot be given retrospective effect. (*Middleton.*) MAHOMED YUNUS *v.* BISHESHWAR SINGH. **1941 P.W.N. 746=8 B.R. 314.**

——**S. 21**—*Applicability*—Ghairmazrua *land—Settlement for residential purpose after T.P. Act—Entry showing possession of occupant—Value of.*

S. 21 of the Bihar Tenancy Act has no application to the case of land which is not settled with a person as a *raiyat*; where the land is *ghairmazrua* land with a house and *sehan* on it and is settled after the T. P. Act for residential purposes, there being no registered instrument, an entry in the record-of-rights showing a person as being in possession of the land with the house and *sehan* on it, falls outside the purview of record-of-rights under Ch. X of the Bihar Tenancy Act, and no inference of permanent tenancy can be drawn. Such an entry is not meant to be a decision as to the rights of the landlord and tenant respectively. (*Harries, C. J. and Dhavle, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* RAMJIVAN RAM. **200 I.C. 769=8 B.R. 727=15 R.P. 11=23 Pat.L.T. 294=A.I.R. 1942 Pat. 397.**

——**Ss. 22, Expl. and 112-A**—*Applicability—Holding owned by Hindu father—Father and sons forming joint family—Sons purchasing holding in their names—Right to apply for reduction of rent.*

It is only an occupancy raiyat who can apply for reduction of rent under S. 112-A of the Bihar Tenancy Act. In the case of a holding which is owned by a Hindu father, his undivided sons who form a joint family with him must be deemed to have interest in the proprietary right of their father. They cannot therefore have occupancy right as well in the holding by reason of their having purchased the holding in their individual names in the absence of proof that the purchase was made out of self-acquired property or that the family had separated. Explanation to S. 22 of the Act cannot save the undivided sons of the proprietor. (*Middleton.*) SHIBANATH SAHU *v.* SURAJ MOHAN THAKUR. **8 B.R. 538.**

——**(as amended in 1907), S. 22 (2)**—*Co-sharer in possession after purchase of holding in execution of rent decree—Status of—Decree for money payable by him to co-sharers—Execution—Limitation Act—Sch. III, Art. 6—Applicability—Provincial Small Cause Courts Act, Sch. II, Art. 8—Order in execution of decree against co-sharer—Second appeal—Maintainability—C. P. Code, S. 102.*

BIHAR TENANCY ACT (1885), S. 29.

A co-sharer landlord in posession under S. 22 (2) of the Bihar Tenancy Act (as amended in 1907), having purchased an occupancy holding in execution of a decree for rent in his favour against the tenant, is not a tenant under his co-sharers, and what is payable by him to them is not rent. A suit against such a co-sharer by the other co-sharers for what is payable by him under S. 22 (2) of the Act, is not a suit for rent as contemplated by Art. 8 of Sch. II of the Provincial Small Cause Courts Act, and is therefore cognizable by the Court of Small Causes. No second appeal lies in such a case. An application for execution of the decree in such a suit is governed by the general law of limitation and not by Art. 6 of Sch. III of the Bihar Tenancy Act. (*Agarwala, J.*) RAJKISHORE PRASAD NARAIN SINGH *v.* MOJIBUL RAHMAN. **201 I.C. 795=15 R.P. 79=8 B.R. 836=23 Pat.L.T. 348=A.I.R. 1942 Pat. 391.**

——**(as amended in 1934), S. 23 (2)**—*Scope and effect of—Erection of buildings—If impairs value of land or renders it unfit for purposes of tenancy—Residence of raiyat—If included in purpose of tenancy.*

Under S. 23 (2) of the Bihar Tenancy Act, as amended in 1934, it is no longer open to the Courts to speculate or to receive evidence to show that the erection of buildings (not merely a dwelling house as in S. 76) for the domestic or agricultural purposes of the raiyat and his family is or is not an improvement, or does or does not impair the value of the land, or does or does not render it unfit for the purposes of the tenancy. The section says in the broadest terms that it shall not be deemed to impair the value of the land materially or to render it unfit for the purposes of the tenancy. The question as to what proportion of the area of the tenancy is occupied by the structures erected thereon is no longer a point on which such a case has now to be decided. The purposes of an agricultural tenancy include the erection of a building for the domestic purposes of a raiyat and the residence of the raiyat is covered by S. 23 (2) (*c*). (*Rowland and Chatterji, JJ.*) SAHDEO SINGH *v.* JADU MISTER. **199 I.C. 631=8 B.R. 551=1942 P.W.N. 84=14 R.P. 598=A.I.R. 1942 Pat. 370.**

——**(as amended in 1938), S. 23-A (b)**—*Scope—If* ultra vires *or inoperative by reason of repugnancy to S. 37, Contract Act—Government of India Act, S. 100.*

S. 23-A (*b*) of the Bihar Tenancy Act, as amended in 1938 deals with a provincial subject and cannot be held to be *ultra vires* or inoperative by reason of any actual repugnancy to an All India Act, *viz.*, S. 37 of the Contract Act. (*Rowland and Chatterji, JJ.*) DEEN MAHOMED MIAN *v.* HULAS NARAYAN SINGH. **21 Pat. 336=8 B.R. 519=14 R.P. 548=5 FL.J. (H.C.) 79=199 I.C. 182=1942 P.W.N. 66=23 P.L.T. 143=A.I.R. 1942 Pat. 296.**

——**S. 29, first proviso**—*Applicability and scope—Illegal enhancement paid for more than three years—If becomes legal.*

The 1st proviso to S. 29 of the Bihar Tenancy Act refers only to Cl. (*a*) of S. 29. An extra levy which is illegal does not become legal under the proviso when it has been paid for three years. The proviso only provides that if an enhanced rent has been actually paid for three years there is no need for the contract of enhancement being in writing and registered. (*Middleton.*) SHAH HAMID-UD-DIN *v.* FIRANGI SINGH. **8 B.R. 775.**

——**S. 29, proviso (1)**—*Scope and effect of—Enhancement exceeding two annas in the rupee paid for three years—If made legal—Starting point under S. 112-A (d).*

BIHAR TENANCY ACT (1885), S. 38.

Proviso (i) to S. 29 of the Bihar Tenancy Act does not apply to an enhancement exceeding two annas in the rupee, but only applies to make a contract, which is not in writing registered, enforceable if the enhancement has been paid for three years. It does not say that an enhancement exceeding two annas in the rupee is legal as soon as it has been paid for three years. Such an enhancement can therefore be disregarded for purposes of S. 112-A (*d*) of the Bihar Tenancy Act. (*Middleton.*) JAGAT PRASAD SINGH *v.* KULDIP SINGH. **8 B.R. 694.**

——**S. 38 (as amended by Act VIII of 1937)**—Repeal of—Effect—Suit for rent—Claim to abatement on ground that land was covered with sand—Power of Court to grant relief. *See* 1941 Dig., Col. 123. SHEONANDAN PRASAD SINGH *v.* KRISHNA CHANDRA. **197 I.C. 694=8 B.R. 271=14 R.P. 342.**

——**Ss. 40 and 112**—*Commutation*—Chaulaba *rent—Right to commutation—Interference as regards rates and calculations in commutation.*

Chaulaba rents can be commuted and the tenants are entitled to apply and have such rents commuted. If such commutation is refused, the Board will interfere in revision. But the Board will not interfere as regards the rates and calculations which result only in very small differences. (*Middleton.*) DILCHAND MAHTON *v.* SHAH MD. SAJJAD. **8 B.R. 438.**

——**S. 40 (4)**—*Applicability and Scope*—Manhunda *rent—Determination of rent operating as reduction of cash equivalent of produce rent—If illegal.*

S. 40 (4) of the B. T. Act, applies to *Manhunda* rent, and it is not illegal to determine a rent which in effect is a reduction of the cash equivalent of the produce rent as fixed by the document creating the *Manhunda* rent. There is no warrant for holding that a Revenue Court cannot under the guise of commutation vary a contract between the landlord and the raiyat. A raiyat cannot contract himself out of his right to apply for commutation, and if the provisions of the law for effecting commutation make it compulsory (as they do) to have regard to certain factors which may result in a reduction of the rent, the landlord cannot plead that this reduction is illegal. (*Middleton.*) DWARKADHISH PRASAD SINGH *v.* KARTIC MISIR. **8 B.R. 177.**

——**S. 40 (6)**—*Scope—Order rejecting landlord's objections to commutation—Appealability—Remedy.*

Under S. 40 (6) of the Bihar Tenancy Act, an appeal lies from an order under S. 40 (5) commuting rent and not from an order rejecting the landlord's objection to commutation. Where in a commutation case, the landlord objects on the ground that the applicant is not in possession and is not entitled to commutation, and the objection is rejected by the Revenue Officer, there is no right of appeal to the Collector from such rejection. The proper remedy of the landlord is a revision application to the Commissioner. (*Middleton.*) SIDHESWAR SINGH *v.* RAM KIRPAL SINGH. **8 B.R. 329.**

——**S. 48**—Applicability—Occupancy holding—Raiyat carving out portion and settling same with tenant under registered patta for non-agricultural purposes—Suit by heirs of raiyat against successor of tenant—Rent payable—Rate fixed by Act or rate fixed in patta—Transfer of Property Act—Applicability. *See* 1941 Dig, Col. 124. JADO SINGH *v.* BISHUNATH LAL. **A.I.R 1942 Pat. 71.**

——**S. 48 A**—*Scope—Retrospective operation—Under-raiyat in continuous possession for* 12 *years—Notice to quit—Amending Act coming into force—Effect—Ejectment suit—Maintainability.*

S. 48-A of the Bihar Tenancy Act as amended in 1938, is clearly retrospective and applies to all persons

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who have held as under-raiyats for twelve years continuously and who have not been ejected when the Act came into force. Even if the landlord had served a notice to quit on the under-raiyat before the amended Act came into force, the suit for ejectment must fail if before the notice to quit the underraiyat had been in possession for twelve years.

Quaere: Whether S. 48-A will apply to a case where the under-raiyat has been ejected before the amending Act came into force. (*Harries, C. J. and Faz! Ali, J.*) RAM CHARITAR SAH *v.* DOMA MIAN. **1942 P. W.N. 75.**

——**S. 51**—*Presumption—Application of—Rent Reduction case—Rent shown in Terij Laggite of* 1903 *supported by Attested Rent of* 1915*—Presumption—Rent when first became payable—S.* 112-*A.*

The presumption arising under S. 51 of the Bihar Tenancy Act applies not only in respect of a particular succeeding year when it is proved that rent was realised for the immediately preceding year at a particular rate, but also to each successive year one after another, until its operation is arrested by proof on the part of the tenant that the conditions of the tenancy were altered in the meanwhile. Where the evidence for the landlord, consisting of the Terij Laggite of 1903, which is accepted by the Rent Reduction Officer as genuine specifies the rate of rent which tallies with the attested rent in 1915, that would be sufficient to show that the rents were not changed between those dates, and unless this is rebutted by the tenant, it must be held that the rent has been traced back to 1903. The landlord's evidence supported by the Attestation Note and the presumption under S. 51 of the Bihar Tenancy Act would be sufficient to show that the rent first became payable in 1903 or before that year. In proceedings under S. 112-A of the Act, that year must therefore be taken to be the year when the rent first became payable. (*Swanzy.*) RAJ KISHORE PRASAD NARAIN SINGH *v.* BISHUN SAHAI SINGH. **8 B.R. 865.**

——**S. 52 (as amended in 1938)**—Applicability—Suit for rent—Claim to abatement on ground of diluvion—Right to relief—Burden of proof. *See* 1941 Dig., Col. 125. SITAL PRASAD *v.* SURENDRA NATH. **A.I.R. 1942 Pat. 70,**

——**S. 60**—Suit for rent by assignee of rent—Assignee not a registered proprietor—Suit, if barred—Bengal Land Registration Act, S. 78. *See* 1941 Dig., Col. 125. RAM SEWAK KURMI *v.* THAKURJI MAHARAJ. **A.I.R. 1942 Pat. 41.**

——**S. 60**—Suit for rent by assignee of rent—Payment by tenant to registered proprietor—If valid discharge *See* 1941 Dig., Col. 125. RAM SEWAK KURMI *v.* THAKURJI MAHARAJ. **A.I.R 1942 Pat. 41.**

——**S. 65**—*Rent decree against recorded tenant—Sale in execution after recognition by landlord of another as tenant—Legality as against person recognised as tenant—Latter not party to rent decree—Effect.*

Where a decree for rent is obtained by a landlord against the recorded tenant, and a person who had purchased the holding in execution of a money decree is recognised as a tenant by the landlord prior to sale in execution of the rent decree of the landlord, the holding cannot thereafter be sold in execution of the rent decree. The effect of the recognition by the landlord is that a fresh tenancy is created between the landlord and the purchaser under the money decree and unless that tenancy is subject to conditions which would prevent the relationship of landlord and tenant from coming into operation immediately, the holding cannot be sold in execution of the decree to which the purchaser under the money decree was not a party. (*Agarwala, J.*) RAM

BIHAR TENANCY ACT (1885), S. 67.

KISHUN LAL *v.* JUGAL KISHORE LAL. **199 I.C. 670 =8 B.R. 615=14 R.P. 610=23 P.L.T. 165=1942 P. W.N. 108=A.I.R. 1942 Pat. 312.**

——**S. 67**—Scope—Right to interest on arrears of rent—If taken away by S. 15 (*c*) of Act IX of 1938. *See* BIHAR RESTORATION OF BAKASHT LAND AND REDUCTION OF ARREARS OF RENT ACT, S. 15 (*c*). **22 Pat.L.T. 996.**

——**S. 69**—*Discretion of Revenue officer—Rejection of application on ground that part of holding has not been included in application.*

The Revenue officer has full discretion under S. 69 of the Bihar Tenancy Act and he is entitled to reject an application made to him under S. 69 on the ground that the application is only in respect of part holdings only and hence not maintainable even though the excluded part is not cultivable at all. There is no obligation on him to apply S. 71 (3) of the Act even if he thinks that the crops had been removed from the excluded parts. It is open to him to hold that part of the holding has not been included and that the application is not maintainable. (*Middleton.*) GAJADHAR SINGH *v.* CHANDRIKA CHARAN ROY. **8 B.R. 420.**

——**Ss. 69 and 70**—*Scope—Proceedings under—Effect of—Suit for rent in Civil Court—Maintainability—No final order by Collector—Civil Court—If can ignore proceedings.*

When there have been proceedings under Ss. 69 and 70 of the Bihar Tenancy Act in respect of certain years before the Collector, no suit for rents of those years is maintainable in the Civil Court. Once the Collector passes a final order under S. 70 (4) of the Act it cannot be ignored by the Civil Court. A landlord's suit for rent asking that the proceedings under Ss. 69 and 70 should be ignored is not an application to the Civil Court under S. 70 (6) to enforce the Collector's order as a decree, and the Civil Court is not entitled to ignore the proceedings under Ss. 69 and 70 of the Act. Even if no final order has been passed in the proceedings under S. 70 (4), the Civil Court would still be precluded from giving a decree for rent ignoring the proceedings. The remedy of the landlord in such a case is to apply to the Collector to pass a final order. (*Meredith, J.*) SOMAR SINGH *v.* BANKE BIHARI LAL. **198 I.C. 390 =8 B.R. 409=14 R.P. 455=23 Pat. L.T. 51=A.I. R. 1942 Pat. 375.**

——**S. 70 (2)**—*Form and mode of service of notice under.*

There is no particular form of notice prescribed under S, 70 (2) of the Bihar Tenancy Act; nor is there any thing in S. 70 (2) which requires that notice should be served personally upon the parties; and no particular method of serving the notice is prescribed. All that is necessary is that the parties should in one manner or another be given notice of the fact that the *amin* is about to make an appraisement (*Meredith, J.*) SOMAR SINGH *v.* BANKE BEHARI LAL. **198 I.C. 390=8 B. R. 409=14 R.P. 455=23 Pat.L.T. 51=A.I.R. 1942 Pat. 375.**

——**S. 102 (b)**—Ghairmazrua *Khata—Record-of-rights showing possession of successor of original tenant—Tenancy created for residential purposes—Value of entry as regards right of tenant.*

In the case of a tenancy for residential purposes the land being *ghairmazrua khata* of the *malik*, the record-of-rights showing the possession of the widow succeeding to the original tenant cannot be taken to define her rights, because she is not an agricultural tenant and the record-of-rights deals only with rights of agricultural tenants. (*Karries, C. J. and Dhavle, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* RAMJIVAN RAM. **200**

BIHAR TENANCY ACT (1885), S. 112.

I.C. 769=8 B.R. 727=15 R.P. 11=23 Pat.L.T. 294 =A.I.R 1942 Pat. 397.

——**S. 103**—*Record-of-rights—Entry in—Presumption of correctness—Rebuttal—One part of entry—If can be used to rebut another part.*

Under S. 103 of the Bihar Tenancy Act, an entry in a record-of-rights gives rise to a presumption as to its correctness, and it is only by evidence that that presumption is liable to be rebutted. One part of the entry cannot be used to rebut another part of it. A plot was recorded in the record-of-rights as the *bakasht* of the plaintiff (proprietor). In the remarks column however, there was an entry that so far as the trees on the plot were concerned half the interest belonged to plaintiff and half to *P*, the ancestor of the defendants who claimed that the land was their *bhaoli kasht* holding. The entry did not describe *P* as a tenant of the land.

Held, that the entry in the remarks column did not at all imply that *P* had any interest in the disputed plot, and was not in any way inconsistent with *P* not having acquired some interest in the trees by agreement or otherwise without having acquired any interest in the land on which the trees stand. (*Agarwala, J.*) RAMRAN BIJAYA PRASAD SINGH *v.* NAUBAT RAI. **200 I.C. 281=8 B.R. 656=14 R.P. 644=23 Pat.L.T. 42 A.I.R. 1942 Pat. 346.**

——**S. 104 (g)**—*Practice and Procedure Manual, Rr. 81 and 123—Appeal beyond time—Power of Collector to admit—Discretion to excuse delay—"Heard and disposed of"—Meaning of.*

The words "heard and disposed of" in R. 81 of the Practice and Procedure Manual are wide enough to cover all matters of procedure including that of limitation. The Collector has strictly speaking no discretion to extend the period of limitation for an appeal in a matter under S. 112-A, B. T. Act, laid down by R. 123 read with S. 104 (*g*) of the Bihar Tenancy Act. R. 81 does not give the Collector a discretion to admit an appeal filed beyond the time prescribed. (*Swansey.*) DWARKA PANDEY *v.* SHAH HAMIDUDDIN AHMAD. **9 B.R. 25.**

——**S. 104 H**—*Civil and Revenue Courts—Jurisdiction.*

The Civil Court cannot sit in judgment upon the findings of the Revenue Officers, nor can it set aside their orders (except in suits under S. 104-H of the Bihar Tenancy Act) passed with jurisdiction. (*Meredith, J.*) RAM SUNDER RAUT *v.* BHAGWAN SINGH. **199 I.C. 154=8 B.R. 503=14 R.P. 545.**

——**S. 107 (2)**—Scope—Non-compliance—Effect—Decision by Special Judge—Finality and binding character—Omission to prepare schedule and to make note in entry in record-of-rights—If detracts validity or binding character of decision. *See* 1941 Dig., Col. 127 RAM RAN BIJAY PRASAD SINGH *v.* BALESWAR OJHA **198 I.C. 282=14 R. P. 418=8 B.R. 406.**

——**S. 112**—*Government Notification dated June 19, 1937—Occupancy raiyats—If include sharahmoian raiyats.*

The expression "occupancy raiyats" in the Government Notification dated June 19, 1937 issued under S. 112 of the Bihar Tenancy Act, means "raiyats having a right of occupancy". That is to say, it was meant by Government to exclude raiyats not having that status. It was not meant to exclude raiyats such as raiyats at fixed rates of rent, who have a higher status, a status which, though being different in some of its incidents, nevertheless does include occupancy rights. The expression 'occupancy raiyats' will cover, therefore, the case of *sharahmoian raiyats* since they have occupancy rights and more. The Notification must, therefore, be taken

BIHAR TENANCY ACT (1885) S. 112.

to give the Rent Reduction Officer power to deal with any illegal enhancement of the rents of *sharahmoian raiyats*. (*Meredith, J.*) RAMSUNDER RAUT *v.* BHAGWAN SINGH., **199 I C. 154=8 B.R. 503=14 R.P. 545.**

——**Ss. 112 and 112-A**—*Jurisdiction—Application by tenant for reduction of rent—Landlord not made party and notice not served on him—Order of reduction—Validity—If can be given effect to by Court executing decree for rent.*

The Rent-Reduction Officer has no jurisdiction to reduce the rent in proceedings under Ss. 112 and 112-A of the Bihar Tenancy Act, where the landlord is not made a party to such proceedings and no notice has been served upon him. An order of reduction or settlement of rent in such circumstances is without jurisdiction and does not bind the Civil Court and has to be ignored by a Court executing a decree for rent at the instance of the landlord. (*Manohar Lal, J.*) NAND KISHORE LAL *v.* BASDEO SINGH. **199 I.C. 222=23 P.L.T. 159=8 B.R. 532=14 R.P. 563=A.I.R. 1942 Pat. 258.**

——**Ss. 112 and 112-A**—*Jurisdiction—Application for reduction of rent—Plea that application is barred by order under S. 112—Validity of order under S. 112—If can be gone into.*

Where the rent of the original katta which has been subdivided has unquestionably been reduced under S. 112 of the Bihar Tenancy Act and it is recorded in proceedings under S. 112 that the parties were present, the mere fact that the name of a deceased tenant appears in the proceedings would not make them invalid. The order under S. 112 operates as a bar, in view of S. 113, to a reduction under S. 112-A (*d*). An officer acting under S. 112-A, has no jurisdiction to enter into the question of the validity of the prior order under S. 112. (*Middleton.*) BIBI IFATUL-NISSA BEGUM *v.* JEHAL DAS. **8 B.R. 726.**

——**S. 112**—*Jurisdiction—Decision of Rent Reduction Officer—If binding and conclusive on Civil Court.*

Unless the decision of the Rent Reduction Officer under S. 112 was without jurisdiction it is binding on and would have to be accepted by the Civil Court whether it was right or whether it was wrong. It is not for the Civil Court to sit in judgment on the decision of the Rent Reduction Officer. If the latter acted with jurisdiction, the Civil Court is bound by the amount of rent which he found. But, on the contrary, if he had no jurisdiction to consider the rents, then the Civil Courts could ignore entirely the orders of the Rent Reduction Officer. (*Harries, C.J. and Faul Ali, J.*) BHAGWAN SINGH *v.* RAM SUNDAR. **202 I.C. 97=8 B.R. 848=15 R.P. 89=23 P.L.T. 636=A.I.R. 1942 Pat. 388.**

——**S. 112**—*Notification No. 2817-117-34-R, dated 19th June, 1937—"Occupancy raiyat"—Meaning of—If includes fixed rate tenant.*

The notification No. 2817-11T-34-R, dated 19th June, 1937 was issued under S. 112, Bihar Tenancy Act, and the expression occupancy raiyats used in that notification must be given the same meaning as it has in the Bihar Tenancy Act. A clear distinction is drawn between the occupancy raiyats and fixed rate (Sarahmoian) tenants not only in S. 4, Bihar Tenancy Act, but also throughout that Act. The terms "occupancy raiyat" and "fixed rate (Sarahmoian) tenants" are not interchangeable and the term "occupancy raiyat" when used in the Act clearly does not include sarahmoian tenants. It follows that when occupancy raiyats only were mentioned in the notification, such cannot also include sarahmoian tenants. (*Harries, C.J. and Faul Ali, J.*) BHAGWAN SINGH *v.* RAM SUNDAR. **202 I.C. 97=8 B.R. 848=15 R.P. 89=23 P.L.T. 636=A.I.R. 1942 Pat. 388.**

BIHAR TENANCY ACT (1885) S. 112-A.

——**S. 112-A** — Applicability — Kabuliyat creating holding—Provision against enhancement of rent—Application by raiyat for reduction—If barred. *See* 1941 Dig., Col. 127. BAIJNATH PRASAD *v.* JUNG BAHADUR. **8 B.R. 222 (2).**

——**S. 112-A**—*Applicability* —"*Raiyat*"—*Person holding land for building purposes—Right to relief.*

S. 112-A of the Bihar Tenancy Act provides for the reduction of the rent of an occupancy holding, and relief under the section can only be given on an application of an occupancy raiyat in respect of the holding in which he has occupancy rights. A homestead is not an occupancy holding. A person holding an area of land settled exclusively for building purposes at a special rate of rent is not an occupancy raiyat who can apply for or get relief under S. 112-A. (*Middleton.*) BISHESHWAR RAM *v.* RAM RAN BIJOY PRASAD SINGH. **8 B.R. 301.**

——**S. 112-A**—Applicability—Right to apply under. *See* BIHAR TENANCY ACT, SS. 22, EXPL. AND 112-A. **8 B. R. 538.**

——**S. 112-A**—*Date when rent became payable—Settlement under S.* 105—*Subsequent sale of holding and purchase by landlord—Effect—Civil Court settling same rent deciding that rent is payable only on culturable land only—Effect of.*

Where after the rent of a holding had been settled under S. 105 of the Bihar Tenancy Act, the holding was sold and purchased by the landlord, the rent settled previously ceases to exist, and the date of such settlement cannot be taken to be the date when the rent became payable for purposes of S. 112-A of the Act. Where further the Civil Court subsequently fixes the rent on the application of the landlord at the same figure as that fixed under S. 105, but decides that the landlord is to get rent of culturable lands only that is a different rent from that fixed earlier. Therefore the crucial date for purposes of S. 112-A is the date of the settlement by the Civil Court. (*Middleton.*) RAM RAN BIJOY PRASAD SINGH *v.* SHEOPUJAN RAI. **8 B. R. 506.**

——**S. 112-A**—Raiyat at fixed rent—Right to apply for reduction of rent. *See* 1941 Dig., Col. 127. BAIJNATH PRASAD *v.* JUNG BAHADUR. **8 B.R. 222 (2).**

——**S. 112-A**—*Revision—Commissioner's power to interfere* suo motu—*Procedure—Notice to parties.*

No doubt the Commissioner has power to interfere in revision in rent reduction cases without there being an application therefor, but in such a case he should issue a notice on the parties concerned stating that he is contemplating doing so. (*Middleton.*) NIRMAL KUMAR *v.* JAGERNATH MAHTON. **8 B.R. 598.**

——**S. 112-A**—*Revision—Question when rent became first payable—Finality—Interference.*

The question as to the date when a rent became first payable under S. 112-A of the Bihar Tenancy Act is a question of fact and the finding on that by the lower appellate Court is final and cannot be interfered with in revision. (*Middleton.*) CHURAWAN MAHTON *v.* MD. MANIR AHSAN. **8 B. R. 518.**

——**Ss. 112-A and 113**—*Scope—Refusal of reduction under S.* 112—*Effect of—Subsequent application for reduction under S.* 112-*A* (1) (*d*)—*Competency.*

Where in proceedings under S. 112 of the Bihar Tenancy Act, reduction of rent is refused and the existing rent is settled, it is a clear bar for 15 years to the application of S. 112-A of the Act. Except on the grounds specified in Cl. (*c*) of S. 112-A (1) a reduction under Cl. (*d*) of S. 112-A (1) is clearly barred. (*Middleton.*) RAM CHARAN KOERI *v.* SAJEEWAN PRASAD SINGH. **8 B.R. 221.**

——**S. 112-A**—When rent first became payable—Presumption under S. 51—Use and value of in rent

reduction case—Rent specified in Terij Laggite of 1903 confirmed by attested rent in 1915—Effect of. *See* BIHAR TENANCY ACT, S. 51. 8 B.R. 865.

——S. 112-A—*Year of commutation—Order not giving reason for taking particular year—If ground for interference in revision—Presumption as to basis of order.*

Where it is found from the schedule to the order of the Rent Reduction officer that he took different years of commutation in different cases, it must be presumed that he did this on same system of account on the evidence produced in the cases before him. When the order further shows that in certain cases he referred to the landlord's *jamabhandhi* it is safe to assume that he took the various dates from that paper, especially when the landlord was aware of the procedure followed and raised no objection. The landlord cannot in revision object to the order on the ground that no reason is given for taking a particular year as the date of commutation, and the Board will not interfere with the order on that ground in revision. (*Middleton.*) HARIHAR PRASAD SINGH *v.* NATHUNI. 8 B.R. 805.

——S. 112 A (a) & (d)—*Scope—Successive applications under different sub-clauses—Competency—Order reducing enhanced rent—Subsequent order cancelling enhancement and restoring original rent—Legality of.*

A Court has no right to enhance a rent which had been lawfully reduced under S. 112-A (*d*) of the Bihar Tenancy Act. Such rent cannot, by reason of S. S. 113, be enhanced for fifteen years. Assuming that a tenant may apply successively under the different sub-sections of S. 112-A, it cannot be held that a second decision cancelling an enhancement of rent under S. 112-A (*d*), and restoring the original rent would completely destroy the effect of a prior decision under S. 112 A (*d*) reducing the enhanced rent to a figure below the original rent. The second order cancelling the enhancement amounts in effect to an enhancement of rent and hence is an order without jurisdiction and ineffective by reason of the earlier order reducing the rent. If only one application can be made by the tenant under S. 112-A, then the order on the subsequent application would necessarily be without jurisdiction and the prior order reducing the rent stands and no Court can grant a decree for rent in excess of that reduced rent. (*Harries, C. J. and Fazl Ali, J.*) BENGALI SAHU *v.* GUDRI TANTI. 200 I.C. 215=8 B.R. 654=14 R.P. 641=23 Pat. L T. 189= A.I.R. 1942 Pat 394.

——S. 112-A (b)—*Applicability—Material date—Date of commutation order*

For purposes of S. 112-A (*b*) of the Bihar Tenancy Act, the crucial date is the date of the commutation order. An order of commutation was passed on 12-12-1936, directing that the commuted rent would take effect from fasli 1344, *i.e.*, September-October, 1936. In appeal the rent was reduced but the order that it should take effect from 1344 was maintained.

Held, that the rent was clearly commuted between the dates mentioned in Cl. (*b*) of S. 112-A, and the clause therefore applied. (*Middleton.*) SAH RADHAKRISHNA *v.* BANDHU MAHTON. 8 B.R 448.

——S. 112-A (b)—Date of commutation—Date of final order or date from which commutation is directed to take effect—Material date. *See* 1941 Dig., Col. 128- JAGAT KISHORE PRASAD NARAIN *v.* NOKHOO MAHTON. 8 B. R. 405.

——S 112 A (c)—*Amount of remission to be granted—Question as to—Decision on—Finality—Revision—Competency.*

The question of the amount of remission to be granted under S. 112-A (*c*) of the Bengal Tenancy Act is a pure

question of fact and the finding of the lower appellate Court thereon is final; an application for revision cannot therefore be entertained. (*Middleton*). CHURAWAN MAHTON *v.* MD. MANIR AHSAN. 8 B. R. 518.

——S. 112-A (c)—*Onus of proof.*

In order to attract the operation of S. 112-A (*c*) of the Bihar Tenancy Act, the onus is not upon the landlord to show that the land was of good quality but upon the tenant to prove that the land was of bad quality. (*Manohar Lall, J.*) SUKHRAJ RAI *v.* DIP NARAIN PANDEY. 197 I.C. 160=8 B.R. 153=A.I.R. 1942 Pat. 266 (2).

——S. 112-A (c) and (d)—*Procedure—Jurisdiction—Application for reduction under Cl. (c)—Relief under Cl. (d)—Power of Court to grant.*

Where the application for reduction is filed both in form and substance under Cl (*c*) of S. 112-A of the Bihar Tenancy Act, there is no jurisdiction in the Court to grant relief under Cl. (*d*) of the section when there has been no amendment or an application by the tenants in that behalf. (*Middleton.*) GOPAL MAHTON *v.* DULHIN KISHORI KUER. 8 B.R. 639.

——S. 112-A (c) and (d)—*Procedure—Powers of Court—Prior applications under S. 112 A (d) dismissed for default—Subsequent application under S. 112 (c)—Court treating same as under Cl. (d) and allowing reduction—Legality.*

Where two applications for reduction under S. 112-A (*d*) of the Bihar Tenancy Act, filed by the tenants have been dismissed for default, they cannot claim that a subsequent application by them under S. 112-A (*c*) should be treated as under Cl. (*d*) and allowed. If the Court treats such an application as under Cl. (*d*) without any request for amendment and allows reduction under Cl. (*d*), it acts without jurisdiction and its order is liable to be set aside in revision. (*Middleton.*) BABU LAL SAH *v.* JAGDEO SINHA. 8 B.R. 635.

——S. 112-A (c) (ii), proviso—*Order allowing 25 per cent. remission—Remission—Appeal—Power of appellate Court to interfere.*

Where the Rent Reduction Officer allows a remission of 25 per cent. under cl. (*c*) (*ii*) of S. 112-A of the Bihar Tenancy Act, the ordinary remedy of the landlord is under the proviso to cl. (*c*); but he is also entitled to an appellate order in his favour if he can persuade the appellate Court to hold that the remission should not have been granted at all. (*Middleton.*) SHARAFAT HUSSAIN *v.* SURAJDEO RAI. 8 B.R. 599.

——Ss. 112-A (d) and 178 (3)—*Applicability—Agreement between landlord and tenant made before coming into force of S. 112-A that rents agreed upon should not be varied—Application for reduction of rent—Competency.*

It is settled law that a person may have at the same time in respect of the same land a right of occupancy and also the right of a raiyat holding at a fixed rate. An entry in the record of rights showing the tenant as *kaerni* and not as *sharahmoyian* is not, therefore, actually inconsistent with the status of a tenant as holding at fixed rates. If the landlord and tenant have both agreed that the rent can neither be enhanced nor reduced, an application for reduction under S. 112-A, (*d*) of the Bihar Tenancy Act is incompetent. Nor will S. 178 (3) apply when there is a contract between the parties not to vary the rents agreed upon, made before the amending Act which brought S. 112-A into S. 178 (3) (*f*) of the Act. (*Middleton.*) BRAJNANDAN PRASAD SINGH *v.* SHANKER GOPE. 8 B.R. 416.

—— S. 112-A (d)—*Applicability—Condition precedent to:*

BIHAR TENANCY ACT (1885), S. 112-A.

Before S. 112-A (*d*) of the Bihar Tenancy Act can be invoked, it has to be shown that there has been a lull, not due to temporary causes, in the average local prices of staple food crops during the currency of the present rent. If this condition precedent is not fulfilled, there can be no reduction under Cl. (*d*) of S. 112-A. (*Middleton.*) RAMDHANI SINGH *v.* LOCHAN SINGH. **8 B.R. 783.**

——**(as amended in 1938), S. 112-A (d)**—*Applicability—Part of holding submerged—Application for reduction of rent of part not submerged—Maintainability.*

When the rent of a holding has abated under S. 52-A (1) of the Bihar Tenancy Act, it cannot be reduced under S. 112-A (*d*). An application for the reduction of the rent of a part of a holding when the other part is under water and the rent thereof is abated is therefore not maintainable. (*Middleton.*) ROBINSON *v.* PARMESHWAR JHA. **8 B.R. 310.**

——**S. 112-A (d)**—Date from which a rent first became payable—Crucial date—Decree of Civil Court fixing rent from a prior year—Effect—Retrospective effect of order. *See* 1941 Dig., Col. 129. RAM AWTAR LAL *v.* MANGAL PRASAD SAH. **1941 P.W.N. 739 (2).**

——**S. 112-A (d)**—Jurisdiction—Application under S. 112-A (*e*)—No application for amendment—Jurisdiction of Rent Reduction Officer to act *suo motu* and to reduce under Cl. (*d*). *See* 1941 Dig., Col. 129. RAJA PRASAD SINGH *v.* PANO KUMARI. **1941 P.W.N. 739 (1).**

——**S. 112-A (d)**—*Rent dating from period of cheap price—Temporary rise in prices in one year of famine—If to be taken into account.*

Where the rents date from a period of cheap prices in which there occurs only one year of famine when the prices go up temporarily, for the purposes of an application under S. 112-A of the Bihar Tenancy Act, such a temporary rise in one year should be disregarded as the rents clearly date from period of lower prices. (*Middleton*) KARU MAHTON *v.* SHAH MUSTAFA. **8 B. R. 541.**

——**S. 112-A (d)**—"*Rent*"—*When first becomes payable—Illegal enhancement in* 1900 *and paid till* 1909 *and then cut off—Starting point under S.* 112-*A* (*d*)—1900 *or* 1909.

The rent of a holding is what is lawfully payable, and an illegal enhancement which had been paid for several years and which has since been cut off, does not become part of the rent. Where the legal rent has remained the same since 1900, it must be held to have become payable in 1900 for purposes of S. 112-A (*d*) of the Bihar Tenancy Act. The fact that there was an illegal enhancement in 1900 and that it was being paid from 1900 till 1909, when it was cut off, is no ground for holding that the rent became first payable in 1909. (*Middleton.*) SHAH HAMID UD-DIN *v.* FIRANGI SINGH. **8 B.R. 775.**

——**S. 112-A (d)**—*Right to apply—Applicant not occupancy* raiyat *at time of applying—Accrual of occupancy rights subsequently—If ground for grant of application.*

Under S. 112-A (*d*) of the Bihar Tenancy Act, only an occupancy raiyat can apply for reduction of rent. An application by a person who at the time of filing thereof was not an occupancy *raiyat* is incompetent and cannot be granted even though occupancy rights might accrue to him by the time an order is made on it. (*Middleton.*) SADHU ISWAR *v.* AKHOY KUMAR MANDAL. **8 B.R. 644.**

——**S. 112-A (d)**—Starting point—Illegal enhancement paid for three years—If to be taken into account.

BIHAR TENANCY ACT (1885), S. 112-A.

See BIHAR TENANCY ACT, S. 29, PROVISO (1). **8 B. R. 694.**

——**S. 112 A (d)**—*Starting point—Rent enhanced in* 1900, *but restored to original figure in* 1909—*Crucial date.*

Rents were enhanced from 1900, but this enhancement was cut off at the settlement and the rent prevailing in 1900 was attested in 1909 and had been paid since.

Held, that rent was what was lawfully payable, and therefore the illegal enhancement was not a part of the rent, the legal rent having remained the same since 1900, the currency of the present rent dated from 1900 and not from 1909, for purposes of S. 112 A (*d*). (*Middleton.*) BASUDEV SINGH *v.* SHAH HAMIDUDDIN AHMAD. **8 B.R. 681.**

——**S. 112-A (d)**—*Starting point—Rent when first becomes payable—Rent commuted in* 1922—*Collectorate partition in* 1922 *apportioning rent among several landlords—Effect of.*

Rents were commuted in 1911, and in a collectorate Batwara under the Bengal Estates Partition Act, the holdings were partitioned among different *maliks* in 1922. The Rent Reduction Officer held that new rents and new holdings were created in 1922 by the Batwara and that the rent first became payable from 1923.

Held, that the fact that the tenants who originally paid certain rents to a certain landlord now paid the same total rent to more than one set of landlords did not amount to a breach in the continuity of the rent, and it could not be said that the currency of the present rent dated from the time when the rent was split up among more than one proprietor. The starting point there was 1911 and not 1923. (*Middleton.*) JHARI SINGH *v.* RAMESHWAR PRASAD SINGH. **8 B.R. 653.**

——**S. 112-A (1) (a) (b) and (d)**—*Applicability and Scope—Case falling under Cl.* (*a*) *or Cl.* (*b*)—*If can be dealt with under Cl.* (*d*).

It is not correct to hold that if a case falls under either Cl. (*a*) or Cl. (*b*) of S. 112-A (1) of the Bihar Tenancy Act, it cannot be dealt with under Cl. (*d*). Cl. (*d*) empowers reduction of the rent of any occupancy holding on account of a fall in prices during the currency of the existing rate, and there is nothing to indicate that the clause does not apply to cases in which the rent has been enhanced or commuted. On a plain reading of the section, it must be held that it is open to an occupancy raiyat to apply under Cl. (*d*) even if the circumstances are such that he could have applied under Cl. (*a*) or Cl. (*b*). (*Middleton.*) FOUJDAR ROUT *v.* NAGNARAIN SINGH. **8 B.R. 191.**

——**S. 112-A (1) (b) and (d)**—*Applicability—Application filed under Cl.* (*b*)—*Disposal as one under Cl.* (*d*)—*Jurisdiction.*

Where an application is filed under Cl. (*b*) of S. 112-A (1) of the Bihar Tenancy Act, the Rent Reduction Officer has no jurisdiction to treat it as one under S. 112-A (1) (*d*) and deal with it. He must dispose of it as one under Cl. (*b*) itself. (*Middleton.*) RAMA PRASAD *v* RAM RANBIJAYA PRASAD SINGH. **1941 P.W.N. 741.**

——**S. 112-A (1) (b) and (d)**—*Scope—If mutually exclusive.*

There is no warrant for holding that no relief can be granted under Cl. (*d*) of S. 112-A (1) of the Bihar Tenancy Act in cases where Cl. (*b*) of the sub-section will apply. Cl. (*d*) plainly means that any class of occupancy rent can be reduced at any time, and there is nothing to justify the inference that the legislature did not intend that Cl. (*d*) should apply to cases to which Cl. (*b*) also applied. There is nothing in the section to

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justify the inference that Cl. (*d*) ought to be interpreted as though it were preceded by the words "subject to the provisions of Cls. (*a*) and (*b*)" or "in cases other than in which rent has ben enhanced or commuted." (*Middleton.*) MAHOMED YUNUS *v.* BISHESHWAR SINGH. **1941 P.W.N. 746=9 B.R. 314.**

——**S. 112 A (1) (d)**—*Rent, when first became payable—Landlord alleging* mafi *or remission—Rent receipts not mentioning* mafi—*Effect.*

It was alleged that from 1924, which was taken to be the year from which the rent first became payable, that some remission or *mafi* had been given each year and the landlord produced laggits to show that *mafi* was given. The rent receipts, however, did not mention any *mafi* anywhere,

Held, that in the absence of any mention of reduction or *mafi* in the rent receipts, the case as to *mafi* could not be accepted, and the rent must be taken to have first became payable from 1924 and the rent was rightly reduced under S. 112 A (1) (*d*) of the Bihar Tenancy Act. (*Peck.*) RAI RADHAKRISHNA *v.* RAMCHARITAR SINGH. **1941 P.W.N. 688.**

——**(as amended in 1937), S. 112 A (2)**—*Limitation—Application under Cl. (b) of S. 112-A (1) filed on 2—3—1939—If barred.*

An application under Cl. (*b*) of S. 112-A (1) of the Bihar Tenancy Act, which is filed on 2—3—1939 is not barred under Cl. (2) S. 112-A of the Bihar Tenancy Act, as amended by Act VIII of 1937, which came into force on 10—3—1938. (*Middleton.*) RAMA PRASAD *v.* RAM RANBIJAYU PRASAD SINGH. **1941 P.W.N. 741.**

——**S. 113**—*Applicability and Scope—Proceedings under S. 112—Rent not reduced as it was considered fair—Application under S. 112-A—Bar of.*

Even when the rent is not reduced in proceedings under S. 112 of the Bihar Tenancy Act because the rent is considered fair, it amounts to a settlement, because the maintaining of the existing rents is a form of settlement under S. 104 A. Hence such settlement is a bar under S. 113 to an application under S. 112-A. (*Middleton.*) BANSROPAN SAH *v.* BRIJNANDAN SINGH. **8 B.R. 360.**

——**S. 113**—*Applicability and Scope—Proceedings under S. 112—Settlement of rent by maintaining existing rentals—Subsequent application under S. 112-A—Maintainability.*

Where there has been a settlement of fair rents under S. 112 of the Bihar Tenancy Act, an application under S. 112 A of the Act is barred by S. 113. S. 104 A (*d*) clearly provides for settlement of rent by maintaining the existing rentals recorded in the record of rights as one of the methods by which rent may be settled. Even when the existing rents are maintained and entered, it amounts to a settlement and S. 113 operates as a bar to an application under S. 112-A. (*Middleton.*) RAJKUMAR CHAUDHRY *v.* DULHIN BACHOKUER. **8 B.R 334.**

——**S. 113**—*Applicability—Order cancelling enhancement—Subsequent review and cancellation of rent roll and order maintaining existing rent—Order without jurisdiction—If bar to reduction of rent under S. 112-A.*

The tenants applied in 1935 for cancellation of enhancements made in 1913 under S. 105 of the Bihar Tenancy Act, and the Assistant Settlement Officer cancelled the enhancements under S. 112, but later on, the landlord having raised objections, he revised the order of cancellation and maintained the existing rents by cancelling the rent roll under S. 104-E, and he advised the tenants to apply under S. 112-A.

BIHAR TENANCY ACT (1885), S. 163-A.

Held, that the Assistant Settlement Officer having been empowered in Notification No. 2817—II. T—34 R, dated 19—6—1937, only to deal with cases of money rent which first became payable on or after 1—1—1920, and on or before 31—12—1933 any decision under S. 112, whether positive or negative was clearly without jurisdiction; and S. 113 of the Bihar Tenancy Act would not therefore operate as a bar to reduction under S. 112-A of the Act. (*Swaney.*) JAGMANAN SAHU *v.* MAHOMED SAFI. **8 B.R. 888.**

——**S. 121**—Distraint of crops for realisation of produce rents—Permissibility. *See* 1941 Dig., Col. 130. SAJIWAN PRASAD SINGH *v.* KARAMDHARI SINGH. **A.I.R. 1942 Pat. 193.**

——**S. 148-A**—Rent suit—Co-sharer landlords made *pro forma* defendants—If bound by decree and execution—If can treat same as nullity. *See* 1941 Dig., Col. 130. CHANDER MAHTON *v.* EMPEROR. **43 Cr.L.J. 101.**

——**S. 158 B**—*Landlord being joint Hindu family—Rent suit—Decree and sale—Minor not joined in suit and execution—Minor represented in suit by father and in execution by karta—Sufficiency.*

In the case of a joint Hindu family, which is the landlord, the fact that there was a minor member of the family who did not join either in the suit for rent or in the execution proceedings, would not prevent a decree and a rent sale. Where the minor was represented by his father in the suit, and the karta of the family appeared in the execution proceedings, there is sufficient and substantial representation of the entire body of landlords for the holding to pass under the sale under S. 158-B of the Bihar Tenancy Act. TIRJUGI PRASAD SINGH *v.* PREMSUKH DAS. **8 B.R. 479=199 I.C. 18 =14 R.P. 521=A.I.R. 1942 Pat. 392.**

——**S. 163-A**—*Construction and scope—Decree-holder refusing to bid up to amount fixed in sale-proclamation—Procedure—Duty of Court—Dismissal of execution application—If justified.*

S. 163 A of the Bihar Tenancy Act only provides that a holding shall not be sold for a price lower than that specified in the sale proclamation. There is nothing in the section which can force the decree-holder to bid up to the amount fixed by the sale proclamation in default whereof the execution application must be dismissed. Where in execution of a rent decree the property is put up for sale, but the amount bid by the decree-holder is less than the amount fixed by the Court in the sale proclamation and the decree-holder refuses to raise his bid up to that amount, the Court will not be justified in dismissing the execution on that ground. The duty of the executing Court in such a case is to issue a fresh sale proclamation at the expense of the decree-holder and advertise the property again, and to call for a fresh set of bidders. (*Manohar Lall, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* LACHMI SINGH. **200 I.C. 621=8 B.R. 702=15 R.P. 1=23 Pat. L. T. 352=A.I.R. 1942 Pat. 365.**

——**S. 163-A**—*Scope—Sale in contravention of—Void or voidable.*

S. 163-A of the Bihar Tenancy Act contains a clear statutory prohibition against the sale of a holding for a price less than the value fixed for it in the sale proclamation, and unless a case falls within one of the two provisos to the section, the Court has no power to sell at any price below that fixed. A sale in contravention of S. 163-A is therefore void and not merely voidable. (*Agarwala, J.*) RAJENDRA PRASHD *v.* GANESH PRASAD SINGH. **1942 P.W.N. 174.**

——**S 163-A**—*Second clause—Applicability—Decree holder unwilling to bid up to valuation of Court—Procedure—Dismissal of execution case—Propriety.*

BIHAR TENANCY ACT (1885), S. 167.

An executing Court is not justified in dismissing an execution case on the ground that the decree-holder is not willing to bid up to the extent of valuation fixed by the Court. The only courses open to the Court in such a case are either to re-sell the property or to proceed under S. 165-A, second clause of the Bihar Tenancy Act. (*Manohar Lall, J.*) SYED RAFIQUL RAHMAN *v.* NAWAZIS HUSSAIN. **200 I.C. 885=15 R.P. 23=8 B.R. 74=1941 P.W.N. 680 (1)=A.I.R. 1942 Pat. 266 (1).**

——**S. 167**—*Question whether landlord purchaser has taken steps to annul encumbrance when to be raised—If can be raised or agitated in second appeal.*

The question whether a landlord auction-purchaser has or has not taken steps to annul the encumbrances under S. 167 of the Bihar Tenancy Act is a pure question of fact and cannot be agitated in second appeal. Nor can such question be raised for the 1st time in second appeal. TIRJUGI PRASAD SINGH *v.* PREMSUKH DAS. **8 B.R. 479=199 I.C. 18=14 R.P. 521=A.I.R. 1942 Pat. 392.**

——**S. 173 (d)**—Applicability — Contract between landlord and tenant not to vary rent agreed upon—Contract made before Amending Act bringing S. 112 A into operation—Effect of. *See* BIHAR TENANCY ACT, SS. 112-A (*d*) AND 173. **8 B.R. 416.**

——**(as amended in 1937), S. 178-B**—*Scope—If* ultra vires *as being in conflict with Permanent Settlement Regulation—Government of India Act, S.* 107.

S. 178-B of the Bihar Tenancy Act as amended in 1937, is not invalid or *ultra vires* by reason of any conflict or supposed conflict between it and the Permanent Settlement Regulation of 1793. (*Rowland and Chatterji, JJ.*) DEEN MAHOMED MIAN *v.* HULAS NARAYAN SINGH. **21 Pat. 336=199 I.C. 182=1942 P.W.N. 66=23 P.L.T. 143=8 B.R. 519=14 R.P. 548=5 F.L.J. (H.C.) 79=A.I.R. 1942 Pat. 296.**

——**Sch. III, Art. 2**—*Applicability—Agricultural lease—Test to decide—Nature of lands or purpose of tenancy.*

The question whether a lease of lands is governed by the Bihar Tenancy Act or not turns on the nature of the lands leased and not on the purpose of the tenancy. Under a registered kabuliyat the lessee was given the right to collect the rents of lands which were, in the main agricultural lands. He was also authorised to cultivate *bakasht* lands and appropriate the proceeds to himself. In a suit for arrears of thica rent,

Held, that a suit for rent was governed by Art. 2 of Sch. III of the Bihar Tenancy Act, and the claim for rent beyond three years would be barred.

Per *Rowland, J.*—The lease was of agricultural lands and the lessee was a tenure holder under the Bihar Tenancy Act. The predominant object of the lease was the collection of rents and it was a tenure.

Per *Chatterji, J.*—The lease was for agricultural purposes and therefore the suit for rent came within the provisions of the Bihar Tenancy Act, and was governed by the three years' rule in Art. 2 of Sch. III. (*Rowland and Chatterji, JJ.*) HAJI SHEIKH MAHOMED HASAN KHAN *v.* SHEIKH MAHOMED AKHTAR HASAN KHAN. **21 Pat. 469=202 I.C. 223=8 B.R. 861=15 R.P. 99=A.I.R. 1942 Pat. 474.**

——**Sch. III, Art. 3**—*Applicability—Conditions—Order under S. 145, Cr. P. Code, in landlord's favour—Suit for possession by tenant—Limitation—Limitation Act, Art. 47.*

Art. 3 of Sch. III of Bihar Tenancy Act applies to a suit by a raiyat against a landlord who has dispossessed him *qua* landlord. For the application of this article two conditions are necessary, *viz.*, that the plaintiff has been dispossessed and that the dispossession has been by his landlord as such. If these two conditions exist, the suit is of the class intended to be covered by this Article and as this Act is a special Act, it will govern in preference to the provisions of the general law of limitation. When an order under S. 145, Cr. P. Code, is made affirming the possession of the landlord and forbidding the tenant from disturbing that possession, nobody is dispossessed at all. Further even if the order is regarded as dispossession of the tenant, it is not dispossession by the landlord as such. It follows from that that in no case can an order under S. 145 be regarded as dispossession by a landlord for the purpose of Art. 3 of Sch. III of Tenancy Act. Consequently, a suit by the tenant to recover possession from the landlord in such circumstances is governed not by this article, but by Art. 47 of the Limitation Act. (*Agarwala, J.*) UDAIBHAN SINGH *v.* PARAS PANDE. **8 B.R. 413=198 I.C. 347=14 R.P. 453=A.I.R. 1942 Pat. 287.**

——**Sch. III, Art. 3**—*Applicability—Money decree against tenant in favour of landlord—Execution—Purchase of tenant's land by landlord—Delivery through Civil Court—Tenant continuing in possession—Subsequent dispossession by landlord—Suit by tenant for possession—Limitation.*

Where a landlord purchases in auction the lands of his tenants in execution of a money decree against them and fails to get possession through the Civil Court, and the tenants continue in possession, but long after the sale and Civil Court delivery of possession he dispossesses the tenants, such dispossession must be held to be a dispossession in his capacity as a landlord and not as auction-purchaser. A suit by the tenants for recovery of possession of the lands from the landlord is governed by Art. 3 of Sch. III of the Bihar Tenancy Act for purposes of limitation. (*Harries, C.J., and Manohar Lall, J.*) BIBI AYESHA *v.* SRIPAT SINGH. **21 Pat. 517.**

——**Sch. III, Art. 6**—Applicability—Co-sharer in possession under S. 22 (2)—Decree against for amount payable to other co-sharers—Execution—Limitation. *See* BIHAR TENANCY ACT, S. 22 (2). **23 Pat.L.T. 348.**

——**Chap. VII**—*Under-raiyat—Acquisition of status—Land not agricultural at time of occupation—Its subsequent conversion into agricultural land—If makes occupier under-raiyat.*

Where land was not agricultural at the time of its original occupation but was a dense orchard infested with monkeys and the occupier was allowed to clear some portion of the land for the benefit of the owner of the orchard, his subsequently converting the land into agricultural land will not make him an under-raiyat (*Manohar Lall, J.*) PHULCHAND *v.* NATEE MIRZA. **199 I.C. 421=14 R.P. 574=8 B.R. 564=23 P.L.T. 678=A.I.R. 1942 Pat. 325.**

BOMBAY ACTS, ETC.

Abkari Act (V of 1878).
Borstal Schools Act (XVIII of 1929).
Children Act (XIII of 1924).
City Municipal Act (IV of 1902).
City Police Act (IV of 1902).
Cotton Contracts Act (IV of 1932).
District Local Boards Act (VI of 1923).
District Police Act (IV of 1890).
High Court (Appellate side) Rules (1936).
High Court Circular (1940) No. 1257.
High Court Criminal Circular (1934), No. 160-A.
High Court (Insolvency) Rules.
High Court (Original Side) Rules (1936).
Jail Manual.

Land Revenue Code (V of 1879).
Rules (1921).
Land Tenures.
Municipal Boroughs Act (XVIII of 1925).
Native Share and Stock Brokers Association Rules (1939).
Prevention of Gambling Act (IV of 1887).
Revenue Jurisdiction Act (X of 1876).
Salt Act (II of 1890).
Securities Contracts Control Act (VIII of 1925).
Shops and Establishments Act (XXIV of 1939).
Tabacco Duty (Town of Bombay) Act (IV of 1857).
Village Panchayats Act (IX of 1920).
Village Police Act (VIII of 1867).

BOMBAY ABKARI ACT (V OF 1878), S. 4—Scope and effect of—Powers of Provincial Government and of Collector in regard to grant of licences for tapping and drawing toddy from trees. *See* 1941 Dig., Col. 140. RATANSHAW NUSSERWANJI *v.* G. W. MC.ELHINNY. **I.L.R. (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

——**S. 14 (1)**—Duty of Collector under to issue licences to tap toddy—Toddy Tapping Rules, Rr. 2 and 9 to 13. *See* 1941 Dig., Col. 140. RATANSHAW NUSSERWANJI *v.* G. W. MCELHINNY. **I.L.R. (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

——**S. 14 (1)**—Scope—If controlled by S 4—Collector—Discretion of, to grant or refuse licence—Duty to grant licence when application complies with requirements of rules. *See* 1941 Dig., Col. 141. RATANSHAW NUSSERWANJI *v.* G. W. MCELHINNY. **I. L. R. (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

——**S. 14-B (2)**—Construction and scope—Notification prohibiting possession by any person in Sind of charas—If *ultra vires*. *See* 1941 Dig., Col. 141. EMPEROR *v.* DHOLA RAM HOLARAM. **199 I. C. 101=14 R.S. 167=43 Cr.L.J. 468.**

——**S. 30**—Construction and scope—If empowers or regulates grant of tapping licences. *See* 1941 Dig., Col. 141. RATANSHAW NUSSERWANJI *v.* G. W. MCELHINNY. **I.L.R. (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

——**Ss. 35 and 35 A**—Rules under—Effect of on power to grant licences—Order under S. 4—If can override rules. *See* 1941 Dig., Col. 141. RATANSHAW NUSSERWANJI *v.* G. W. MCELHINNY. **I.L.R. (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

——**S. 54 (b)**—*Applicability—Conditions of.*

Before S. 54 (*b*) of the Bombay Abkari Act can come into operation there must be an offence committed under the Act, an article must be liable to confiscation under S. 54 (*a*), and that article must be dealt with in the manner specified along with, or in addition to, the other articles sought to be confiscated. (*Beaumont, C. J. and Wadia, J.*) EMPEROR *v.* SALAMAT MARZBAN. **I.L.R. (1942) Bom. 254=200 I.C. 879=43 Cr.L.J. 730=15 R.B. 60=44 Bom.L.R. 239=A.I.R. 1942 Bom. 154 (2).**

——**S. 54 (b)**—*Construction—"Article liable to confiscation under cl. (a)"—Meaning of—Sale of beer without license—Raid—Liquor found in kitchen and godown of house of accused—Confiscation—Legality.*

The expression "an article liable to confiscation under cl. (*a*)" occurring in Cl. (*b*) of S. 54 of the Bombay Abkari Act, cannot be construed as meaning an article which may become liable to confiscation under Cl. (*a*) on the commission of the offence which brings S. 54 into operation. The only sound way of construing the clause is to take the words literally, and to hold that the only articles which are liable to confiscation under Cl. (*b*) are articles lawfully imported, transported, manufactured, had in possession or sold along with something which had actually at the time become liable to confiscation. The accused was charged and convicted under S. 43 (1) (i) of the Bombay Abkari Act, for having sold without license two bottles of beer and a bottle of rum to a bogus customer who was sent by the police. The place was raided by the police who seized the bottles sold and also found a large quantity of liquor in the kitchen adjacent to the place where the sale took place and in a godown at the back of the house of the accused. In convicting the accused the magistrate also passed an order under S. 54, confiscating the liquor found in the kitchen and the godown.

Held, that the liquor in question found in the kitchen and godown was never had in possession along with the bottles sold after they became liable to confiscation, having been seized by the police after the sale when the liability to confiscation arose, and therefore the liquor in the kitchen and godown could not legally be confiscated. (*Beaumont, C.J. and Wadia, J.*) EMPEROR *v.* SALAMAT MARZBAN IRANI. **I.L.R. (1942) Bom. 254=200 I.C. 879=43 Cr.L.J. 730=15 R.B. 60=44 Bom.L.R. 239=A.I.R. 1942 Bom. 154 (2).**

——**S. 60**—Construction—Discretion and duty of Commissioner. *See* 1941 Dig., Col. 141. RATANSHAW NUSSERWANJI *v.* G. W. MCELHINNY. **I.L.R (1942) Bom. 259=198 I.C. 849=14 R.B. 339=A.I.R. 1942 Bom. 1.**

BOMBAY BORSTAL SCHOOLS ACT (XVIII OF 1929), Ss. 12 and 21, proviso—*Scope—Order for detention—Alteration—Power of High Court in appeal or revision.*

Where the trial Court has substituted an order for detention in a Borstal School for a sentence of transportation or imprisonment, the High Court cannot interfere with that order in appeal or revision and alter it to some other order. In view of the proviso to S. 21 of the Borstal Schools Act; such an order can only be altered by the Government under S. 12 of the Act. (*Broomfield and Wassoodew, JJ.*) EMPEROR *v.* BALVANT JIVAN. **199 I.C 85=43 Cr.L.J. 475=14 R.B. 351=44 Bom. L.R. 48=A.I.R. 1942 Bom. 78.**

——**S. 21, proviso**—Scope and effect of—Order for detention by magistrate in lieu of imprisonment—High Court's power to alter in revision. *See* BOMBAY BORSTAL SCHOOLS ACT, SS. 12 AND 21, PROVISO. **44 Bom.L.R. 48.**

BOMBAY CHILDREN ACT (XIII OF 1924) S. 27—*Scope—Powers of Magistrate to inflict penalties prescribed by section.*

S. 27 of the Bombay Children Act does not confer upon the Court powers which it does not otherwise possess; it does not confer fresh powers upon magistrates. A magistrate therefore cannot do any of the things specified in S. 27 unless he is authorised to do so by some other law. (*Davis, C. J.*) KUNDAN TILLU MAL *v.* EMPEROR. **I.L.R. 1942 Kar. 288=203 I.C. 646=A.I.R. 1942 Sind 162.**

——**S. 46**—*Scope—Jurisdiction of Juvenile Court—If exclusive.*

S. 46 of the Bombay Children Act, if taken as an independent code, apart from the provisions of the rest of the code, might mean that the Juvenile Court, when

BOMBAY CITY MUN. ACT (1888), S. 390.

established, was to have exclusive jurisdiction over cases at which the attendance of a child is required. But it is necessary to notice also the other sections of the Act. Reading the Act as a whole, it must be held that the jurisdiction of the Children's Court is not exclusive; the other Presidency Magistrates can try cases in which children are concerned. (*Beaumont, C.J. and Wassoodew, J.*) EMPEROR *v.* DAMODAR GOPAL. **203 I.C. 643=44 Bom.L.R. 804=A.I.R. 1942 Bom. 341.**

BOMBAY CITY MUNICIPAL ACT (III OF 1888), (as amended in 1916), S. 390 (1)—*Scope—Offence of working factory without permission—Nature of—Prosecution—Limitation—S. 514—Applicability.*

S. 390 (1) of the Bombay City Municipal Act constitutes two quite independent offences; (1) establishing a new factory in which mechanical power is intended to be employed without permission; and (2) working such a factory, that is to say, a factory in which mechanical power is intended to be employed, without permission. While the establishment of a factory without permission is an offence committed once and for all when the factory is established, the working of a factory without permission is an offence which arises on every day on which the factory is so worked. S. 514 does not apply to a prosecution in respect of such an offence and is not a bar to a prosecution. (*Beaumont, C.J. and Wassoodew, J.*) EMPEROR *v.* KARSANDAS GOVINDJI. **44 Bom L.R. 756=203 I.C. 592=A.I.R. 1942 Bom. 326.**

——**S 514**—Applicability—Offence under S. 390 (1)—Prosecution—Limitation. *See* BOMBAY CITY MUNIPAL ACT, S. 390 (1). **44 Bom.L.R 756.**

BOMBAY CITY POLICE ACT (IV OF 1902), S. 9 (1) (a)—Scope—Agent of Society for prevention of cruelty to animals—Appointment in 1934 as additional Police Officer by Commissioner of Police—Duration of—Subsequent vesting of power of appointment in Local Government and re-vesting in commissioner—Arrest by such Police officer without warrant in 1940—Legality. *See* 1941 Dig., Col. 142. DHULA JETHA *v.* EMPEROR. **198 I.C. 259=43 Cr.L.J. 341=14 R.B 297=A.I.R. 1942 Bom. 32.**

——**S. 22 (1) (f) (i) and (g)**—*Rules under, Rr. 4 and 7—Construction and scope—Absence of keeper of restaurant during non-prohibited hours—If offence.*

The rules under S. 22 (1) (f) (i) and (g) of the City of Bombay Police Act do not and cannot require a license to be obtained for the keeping open of a place of public entertainment of the *B* class character for the non-prohibited hours, *i.e.*, between 5-30 A.M. and 9-30-P.M. and R. 7 of rules only means that the keeper of a restaurant of that class should not absent himself during the period covered by the license, *viz.*, between 9-30 P.M. and 5-30 A.M. The natural construction of rr. 4 and 7 is that the necessity of the keeper of the restaurant being present in the premises only applies to the period covered by the license, *i.e.*, the prohibited hours. (*Beaumont, C.J. and Wadia, J.*) EMPEROR *v.* KOPPALKAR. **I.L.R. (1942) Bom 231=201 I.C. 266=43 Cr L J. 642=15 R.B. 69=44 Bom.L.R. 228=A I.R. 1942 Bom 190.**

——**S. 22 (1) (f) (i) and (g)**—*Rules under R. 6—Scope—If* ultra vires—*License under—If to be taken as covering non-prohibited hours.*

R. 6 of the rules framed under S. 22 (1), (f) (i) and (g) of the City of Bombay Police Act, in so far as it in effect compels the keeper of a place of public entertainment of class *B* to obtain a license for hours which are not prohibited, *i.e.*, the hours between 5 30 A.M. and 9-30 P.M. is *ultra vires* the Act under which the rules are made, as it goes too far. Though the effect of r. 6 is to insist on a person who wants to keep his premises

BOM. COTTON CONTRACTS ACT (1932), S. 5.

open during the prohibited hours, also obtaining a license to keep it open during the non-prohibited hours, a license held under the rule must be held to cover only the prohibited hours after 9-30 P M. (*Beaumont, C. J. and Wadia, J.*) EMPEROR *v.* KOPPALKAR. **I.L.R. (1942) Bom. 231=201 I.C. 266=43 Cr.L J. 642=15 R B. 69=44 Bom.L R. 228=A.I R. 1942 Bom 190.**

——**S. 27 (as amended in 1938)**—Order of externment—Revision—Jurisdiction of High Court—Commissioner of Police—If "Court"—Cr. P. Code, S. 439. *See* 1941 Dig., Col. 142. ALLA DATTA *v.* EMPEROR. **43 Cr L J. 25.**

——**S. 27 (2-A), (as amended in 1936)**—Construction—'Convicted more than twice"—Conviction on several counts at joint trial in respect of same transactions—If single conviction or separate convictions for purposes of S. 27 (2 A). *See* 1941 Dig., Col. 143. EMPEROR *v.* CHHOTALAL BAPALAL. **I.L.R. (1941) Bom. 690=197 I.C. 577=14 R.B, 232=43 Cr.L.J. 210.**

——**S. 63**—*Scope—Statements to Police by witnesses during nvestigation—Use of at trial—Limit to—Power of judge to question witnesses on such statements.*

Under S. 63 of the City of Bombay Police Act, which is in the form which S. 162, Cr. P. Code, took before it was amended in 1923 and is a good deal less wide than the amended S. 162, Cr. P. Code, the right to cross-examine a prosecution witness on his statements made to the Police is a privilege conferred on the defence. It is not competent to the judge to call for the police statement and to put to the witnesses questions founded on those statements. To do so is a clear breach of the provisions of S. 63 of the Bombay City Police Act. (*Beaumont, C. J., Wadia and Sen, JJ.*) EMPEROR *v.* KASAMALLI MIRZALLI. **I.L.R. (1942) Bom. 384=199 I.C. 202=14 R B. 357=44 Bom.L R 27=43 Cr. L J. 529=A.I.R. 1942 Bom. 71 (F. B.)**

——**S. 66**—*Applicability—Documents referred to in S. 54 of the Income-tax Act—Power of police to seize on search.*

Though S. 66 of the Bombay City Police Act does not in terms enable the police officer to seize anything, there is no doubt that the police officer conducting the search under S. 66 is entitled to take possession of that for which he is authorized to search. The police are therefore entitled to seize on a search under S. 66. S. 66 cannot be held to be inapplicable so far as documents referred to in S. 54 of the Income-tax Act are concerned. All that S. 66 of the Bombay City Police Act means is that the police officer must be satisfied that the person in possession of the document or thing in question will not produce it of his own accord, or under the compulsion of a summons. If he is so satisfied, then he may search and the seizure of a document at such search is perfectly legal. (*Beaumont, C. J. and Sen, J.*) EMPEROR *v.* OSMAN CHOTAM. **203 I.C. 365=44 Cr.L J. 7=1942 I T.R. 429=44 Bom L.R. 618=A.I.R. 1942 Bom. 289.**

BOMBAY COTTON CONTRACTS ACT (IV OF 1932), Ss. 5 and 6—*East India Cotton Association, Rules, R. 96—Construction and scope of—Contract by member of East India Cotton association—Death of member—Contract carried out by heir—Suit to recover money due on—Arbitration proceedings—If condition precedent to suit—Validity of bye-law.*

It is not obligatory upon a plaintiff who seeks, as personal representative of his deceased father, to recover from the defendant a sum of money alleged to be due by the defendant in respect of contracts made by his deceased father and carried out by the plaintiff, to submit claim made by him to arbitration in accordance with the

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bye-laws of the East India Cotton Association; nor is the obtaining of an award in his favour a condition precedent to the institution of any suit by him in respect of the transactions. The second part of Art. 96 of the Rules of the East India Cotton Association, which pro vides that the obtaining of an award shall be a condition precedent to the commencement of legal proceedings is a provision of a very serious charater, ousting as it does the right of a person to resort to a Court of law, and cannot be treated as a bye-law and cannot be relied on as a valid bye-law barring a suit. (*Blackwell, J.*) CHIRANJILAL RAMCHANDRA *v.* JATASHANKAR N. JOSHI. 203 I.C. 322=44 Bom L.R. 692=A.I.R 1942 Bom. 297.

BOMBAY DISTRICT LOCAL BOARDS ACT (VI OF 1923), S. 136 (2)—*Applicability—Protection under—When available — Prosecution falling under proviso to S.* 136 (2)—*Effect.*

If the act alleged to be criminal is done by a public servant in his official capacity, that is, if it is an act which it is his duty to do as such public servant under the law governing the case, he is protected by S. 136 (2) of the Bombay District Local Boards Act although by reason of the fact that he has done the act dishonestly or fraudulently or in any other manner contrary to the law, he may have committed a criminal offence. On the other hand, if the offence charged involves an act or acts which the accused is not required to do and which are outside its official duties, the liability to prosecution is unfettered. But when the prosecution falls under the new proviso in S. 136 (2), S. 136 (2) itself will not apply, and no question of its application or the protection given by it can arise. (*Davis, C. J. and Weston, J.*) NABI BAKHSH *v.* EMPEROR. **I.L.R. (1942) Kar. 557=199 I.C. 198=14 R.S. 172=43 Cr.L.J. 514=A.I.R. 1942 Sind 45.**

——S. 136 (2), proviso—*Object and scope of.*

The addition of a new proviso to S. 136 (2) of the Bombay District Local Boards Act recognises for the purpose of time and notice, a distinction between public prosecution, and private prosecutions. The purpose of the proviso is to exclude from the protection of the section prosecutions by the crown-prosecutions by or under the order of the Provincial Government. A prosecution instituted by the Public Prosecutor is a prosecution instituted by the Provincial Government within the meaning of the proviso and to such a prosecution S. 136 (2) will not apply. (*Davis, C.J. and Weston, J.*) NABI BAKHSH *v.* EMPEROR. **I.L.R. (1942) Kar. 557=199 I.C. 198=14 R.S. 172=43 Cr. L. J. 514=A.I.R. 1942 Sind 45.**

BOMBAY DISTRICT POLICE ACT (IV OF 1890), S 61 (1) (f)—*Construction—"In any other way whatsoever"—Person inviting people and giving dinner to caste people in public street—Obstruction—Offence.*

S. 61 (1) (*f*) of the Bombay District Police Act must be read as a whole in one part only and not in two parts or three parts separately. Under that section, a person is not entitled to obstruct a street by exposing things for sale in or upon any stall and so forth in the street, and that type of obstruction is prohibited apart from any regulation made by the District Magistrate. The general words "any other way whatsoever" must be read *ejusdem generis* with the words which have gone before.

Obstruction of a street by inviting people to sit in it for a length of time is of the same genus as obstructing it by leaving vehicles or animals or packages in the street. Hence where a person gives a caste dinner in the street outside his residence, and thus causes obstruction is liable to conviction under S. 61 (1) (*f*) of the Bombay District Police Act. (*Beaumont, C. J.,*

BOM. HIGH COURT (A. S.), RULES (1936), R. 1.

and Wadia, J.) EMPEROR *v.* DHARMAPPA. **I.L.R. (1942) Bom. 235=200 I.C. 344=15 R.B. 35=43 Cr. L.J. 701=44 Bom L.R. 241=A.I.R. 1942 Bom. 150.**

——S. 61-D—Convictions—Requisites for—Person found in suspicious circumstances—Liability to conviction. *See* 1941 Dig., Col. 147. HAROON AHMED *v.* EMPEROR. **43 Cr.L.J. 112.**

——S. 61-D—"Reputed thief"—Meaning of. *See* 1941 Dig., Col. 147. HAROON AHMED *v.* EMPEROR. **43 Cr.L.J. 112.**

——S. 61-E—*Burden of proof—When shifts to accused—Duty of prosecution to prove that property in possession of accused is stolen property.*

Under S. 61-E of the Bombay District Police Act, before an accused person can be called upon to account for the possession of property, it is necessary that the Magistrate should be satisfied that there is reason to believe that the property is stolen property. There must be evidence, amounting to proof, to the satisfaction of the Court that the accused possessed a thing of which it could be predicated after judicial consideration by the Court that it may be reasonably suspected of being stolen. It is only then and not until then, that the burden of proof of innocence shifts to the accused. (*Davis, C.J. and Weston, J.*) MAHOMED VASI ABDUL GHANI *v.* EMPEROR. **I.L.R. (1941) Kar. 554=199 I.C. 137=14 R.S. 185=43 Cr.L.J. 528=A.I.R. 1942 Sind 50.**

——S. 80 (1)—*Applicability—Illegal acts done with knowledge of their illegality — If protected—"Good faith."*

S. 80 (1) of the Bombay District Police Act does not extend a general protection to a police officer for all acts in good faith under colour of his office; the protection is limited to any act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of Act or any rule, order or direction lawfully made or given thereunder. The section must, however, be read with S. 51 of Act, which by its wording extends the protection to acts done under other laws. S. 80 (1) read with S. 51 is intended to protect illegal acts. But S. 80 (1) is not intended to apply to illegal acts which are done with the knowledge that they are illegal. S. 80 (1) cannot apply to a case where a Sub-Inspector of Police with open eyes breaks the law, and he is not entitled to invoke the protection of S. 80 (1); he cannot be said to act in good faith when he knowingly breaks the law. A man is answerable under the law for his own acts. He cannot plead the unlawful order of his official superior as his defence. (*Davis, C J.*) HAJI MAHOMED KHAN *v.* EMPEROR. **I.L.R. (1942) Kar. 94=202 I.C. 681=15 R.S. 58=43 Cr.L.J. 888=A.I.R. 1942 Sind 106.**

BOMBAY HIGH COURT (APPELLATE SIDE) RULES (1936), App. E, Rr. I and VI—*Advocate's fee—Computation—Suit for injunction—Valuation—Principles.*

Appendix E of the Appellate Side Rules of the Bombay High Court does not refer to the value for purposes of Court-fee or jurisdiction. It bases the amount of the advocate's fee on the amount of the subject matter in the suit. The true rule to be derived from the terms of Appendix E is that the advocate's fee should be computed on the value of the subject-matter in dispute, where that value can be ascertained by the Taxing Officer from materials on the record. In the case of an injunction it may frequently be quite impossible to ascertain that value, *e.g.*, in a suit for an injunction to restrain interference with a right of way. In such a case the proper course is to allow the minimum

BOM. HIGH COURT (A.S.) RULES (1936), R. 143.

fee. But if the materials on record enable the Taxing Officer to say what is the value of the subject matter in dispute, he should base the advocate's fee on that value subject to the qualification that the value of the subject-matter should never be regarded as greater than the amount necessary for ascertaining the pecuniary jurisdiction of the Court. The Taxing Officer should never base the advocate's fee on an amount in excess of the pecuniary jurisdiction of the Court which tried the suit. (*Beaumont, C.J., Wassoodew and Sen, JJ.*) RAMA KALINGA MAHAR *v.* BALAPA KALINGA. **I.L.R (1942) Bom. 520=201 I.C. 68 =15 R.B. 104=44 Bom L.R. 459=A.I.R. 1942 Bom. 203.**

——**R. 143**—*Applicability—Memo of cross-objections filed beyond time—Registration refused by Registrar—Application to Court to excuse delay—Rejection—Right to refund of Court-fee on memo. of cross-objections.*

Where the registration of a memorandum of cross-objections preferred by a respondent beyond time is refused by the Registrar as being out of time and the Court subsequently rejects an application by the respondent to excuse the delay and declines to excuse the delay, the effect is merely to uphold the refusal of the Registrar. The case falls within the plain terms of R. 143 of the Appellate Side Rules of the Bombay High Court and there must be an order for refund of the Court fee paid on the cross-objections. (*Beaumont, C.J. and Wadia, J.*) AMRITLAL MOHANLAL *v.* SPECIAL LAND ACQUISITION OFFICER, AHMEDABAD. **199 I.C. 798=14 R.B. 394=44 Bom.L.R. 137=A.I.R. 1942 Bom 125 (1).**

BOMBAY HIGH COURT CIRCULAR NO 1257 OF 1940—*Scope—If mandatory—Non-deposit of costs of paper book—Judge if obliged to dismiss appeal—Power to excuse delay.*

Bombay High Court Circular No.1257 of 1940 relating to the deposit of costs of the paper book of the appeal has not the effect of a rule under the C.P.Code, and it does not make it obligatory on the appellate Judge to dismiss an appeal for failure to deposit the costs without leaving any option to consider the merits of the reason for not depositing the costs. The Judge has power to excuse the delay on proper terms if he is satisfied that the nonpayment was due to sufficient reasons. (*Divatia, J.*) NINGAPPA NARSINGAPPA *v.* CHANDRA JAKKAPPA. **201 I.C. 653=15 R.B. 103=44 Bom. L. R. 367=A.I.R. 1942 Bom 198.**

BOMBAY HIGH COURT CRIMINAL CIRCULAR No. 160-A (1934)—"Papers exhibited in the proceeding"—Meaning of. *See* 1941 Dig., Col. 147 PARASHURAM DETARAM *v.* HUGH GOLDING COCKE. **I.L.R (1942) Bom. 71=198 I.C. 114=14 R.B. 283=43 Cr.L.J. 306=A.I.R. 1942 Bom 26.**

BOMBAY HIGH COURT INSOLVENCY RULES R. 180 (b)—*Rate of commission—Material date for ascertaining—Date of payment of amount or date of sanctioning of scheme or composition.*

The commission payable to the official Assignee under R. 180 (*b*) of the Bombay Insolvency Rules must be charged at the rate existing on the date of payment of the amount and not at the rate existing on the date of the sanctioning of a composition or scheme of arrangement in pursuance of which the amount is paid. The appropriate time for ascertaining the correct rate of commission on the amount to be charged is the date of payment and not when the liability to pay the amount is declared. (*Beaumont, C.J. and Kania, J.*) OFFICIAL ASSIGNEE OF BOMBAY *v.* MOTILAL CHAMPALAL. **202 I.C. 560=15 R.B. 170=44 Bom.L.R. 591 =A.I.R. 1942 Bom. 272.**

BOM. LAND REV. CODE (1879).

BOMBAY HIGH COURT RULES (ORIGINAL SIDE) (1936)—Practice — Evidence—Commission to examine witness—Deposition of witness—When becomes evidence in the case. *See* C. P. CODE, O. 26, RR. 7 AND 8. **44 Bom.L.R. 609.**

——*Costs—Taxation—Fees of three counsel as between party and party—When to be allowed—Discretion of taxing master.*

According to the English practice, which is applicable in the Bombay High Court, the Taxing Master has a discretion to allow the fees of more than two counsel and he can therefore allow fees of three counsel. But it is an unusual expense and therefore it requires a very strong case to induce the Court to sanction the fees of more than two counsel as between party and party. The test is whether the case was one in which a reasonable and prudent man, acting with ordinary prudence, would not have ventured to come into Court without three counsel. When there is no dispute as to facts, the taxing master is not justified in allowing fees of three counsel merely on the ground that matter was of considerable importance, when the point of law, though important, was within a comparatively narrow compass. (*Blackwell, J.*) BYRAMJI JEEJEEBHOY *v* PROVINCE OF BOMBAY, (No. 2). **203 I.C. 603=44 Bom.L.R. 687=A.I.R. 1942 Bom. 312.**

——Table of fees to be taken by Attorneys, Items 40 and 41—Construction—Allowance of Rs. 15 for 1st hour of each day—If justified—Midday adjournment—If to be included in calculating hours of attendance. *See* 1941 Dig., Col. 150. SHAMDASANI *v.* CENTRAL BANK OF INDIA, LTD. **I.L.R. (1941) Bom. 606=199 I.C. 513=14 R.B. 368=A.I.R. 1942 Bom 90.**

——**R. 562**—*Attorney—Bill of costs—"Instructions for Brief"—Looking up the law—Ascertainment of legislative practice in various places—Right to remuneration.*

In Bombay, where the English practice is followed, no remuneration is allowed to attorneys for looking up the law, under the head "Instructions for Brief," in the Bill of costs. Legislative practice in various places is a question of fact. Where a suit involves the question as to whether the levy of a particular tax is legal or not, attorneys are entitled to remuneration under the item "Instructions for Brief" for ascertaining the legislative practice with regard to taxation in various parts of India and elsewhere. (*Blackwell, J.*) BYRAMJI JEEJEEBHOY *v.* PROVINCE OF BOMBAY, (No. 1.) **203 I.C. 279=44 Bom.L.R. 682=A.I.R. 1942 Bom 310.**

——**R. 563**—Discretion of Master—'Matter'—Meaning of—Chamber summons adjourned into Court—If Court matter. *See* 1941 Dig., Col. 149. SHAMDASANI *v.* CENTRAL BANK OF INDIA, LTD. **I.L.R. (1941) Bom. 606=199 I.C. 513=14 R.B. 368=A.I.R. 1942 Bom 90.**

——**R. 567**—Matter originating in chambers and adjourned in Court—Refresher fee—Power to allow—Taxing master not asked to allow additional brief fee—Power of Court to increase. *See* 1941 Dig., Col. 149. SHAMDASANI *v.* CENTRAL BANK OF INDIA, LTD. **I.L.R (1941) Bom. 606=199 I.C. 513=14 R.B. 368 =A.I.R. 1942 Bom. 90.**

BOMBAY JAIL MANUAL—Force of—Courts if bound by rules in. *See* 1941 Dig., Col. 150. EMPEROR *v.* FAZAL KHUSH MAHOMED. **43 Cr.L.J. 105.**

BOMBAY JAIL MANUAL. R. 392—Scope—Validity of. *See* CR. P. CODE, S. 397. **44 Bom L.R. 807.**

BOMBAY LAND REVENUE CODE (V OF 1879)—Sale under—Effect of—If different from sale by Civil Court—Award against manager of joint Hindu

BOM. LAND REV. CODE (1879), S. 61.

family in respect of family debts—Sale under Land Revenue Code—What passes. *See* 1941 Dig., Col. 151. MULGAND CO-OPERATIVE CREDIT SOCIETY *v.* SHIDLINGAPPA ISHWARAPPA. **I.L.R. (1941) Bom. 682 = 197 I.C. 428 = 14 R.B. 215.**

—— **S. 61**—*Scope and effect of—Summary eviction—Right of Government.*

Under S. 61 of the Bombay Land Revenue Code the Government is entitled to adopt the remedy of summary eviction if any person remains on any land after he has ceased to be entitled to do so under any of the provisions of the Act. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v* CHIMAN LAL JAMNADAS **I.L.R. (1942) Bom 357 = 201 I.C. 420 = 15 R.B. 76 = 44 Bom L.R. 295 = A.I.R. 1942 Bom. 161.**

——**S. 68**—*Scope—Grant of land for certain period—Holder continuing in possession after expiry of period—Effect—Notice under S. 202—If order of eviction—No appeal from order—Suit in Civil Court—Maintainability—Bombay Revenue Jurisdiction Act, S. 11.*

Under S. 68 of the Land Revenue Code the Government have the power to grant lands to occupants on certain terms and conditions; and if a grant is made for a certain period the Government would, under the combined effect of Ss. 61, 68 and 202 of the Code, be entitled to resume the lands at the expiration of that period. If any occupation thereafter of the land would be a wrongful occupation rendering the holder to summary eviction, and if the Government decide to evict such person, they can do so by giving a notice under S. 202. Such a notice is not a mere communication to hand over possession, but is a decision that the occupant is bound to hand over possession of the lands. It is a decision though it takes the form of a notice under S. 202, and therefore S. 11 of the Bombay Revenue Jurisdiction Act applies. If no appeal is preferred against the order, a suit in the civil Court is barred. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357 = 201 I.C. 420 = 15 R.B. 76 = 44 Bom.L.R. 295 = A.I.R. 1942 Bom. 161.**

——**Ss. 86 and 87**—*Scope—If controlled or affected by O. 34, R. 14, C. P. Code—Mortgage and lease back—Rent note by mortgagor—Sale by Collector to recover rent—If invalid—C. P. Code, O. 34, R. 14—Applicability of.*

There is nothing in the provisions of the Bombay Land Revenue Code to suggest that the powers of assistance which the Collector has under Ss. 86 and 87 of the Land Revenue Code are in any way fettered by the provisions of O. 34, R. 14, C. P. Code. O. 34, R. 14, C. P. Code, cannot apply to a sale held by the revenue authorities under S. 86 of the Bombay Land Revenue Code. Where a mortgagee lets the mortgagor into possession of the property mortgaged to him under a rent note, he becomes a superior holder and the mortgagor is an inferior holder under the Land Revenue Code and the mortgagee is entitled to apply to the Collector for sale of the property as a means of recovering the rent under the rent note. If the Collector makes an order for sale and the sale takes place, such sale is not invalid by reason of O. 34, R. 14, C. P. Code, and is binding on the mortgagor. (*Beaumont, C. J. and Wadia, J.*) RAMA SANKAYYA *v.* MAHADEVA ANANT. **I.L.R. (1942) Bom. 608 = 202 I.C. 593 = 15 R.B. 174 44 Bom. L.R. 597 = A.I.R. 1942 Bom. 278.**

——**Ss. 137 and 151**—*Relative scope—General right of priority for Crown debts—If taken away by S. 151.*

BOM. LAND REV. CODE (1879), S. 211.

The Crown has a general right of priority in respect of debts due to the Crown over other debts due to unsecured creditors. S. 137 of the Bombay Land Revenue Code confers rights of priority upon Government claims recoverable under Ch. XI of the Land Revenue Code; S 151 of the Act does not take away the general right of the Crown to preference when the debt is recoverable as an arrear of land revenue. (*Weston, J.*) JUMOMAL *v.* TANWARMAL HEMUMAL. **I.L.R. (1942) Kar. 473 = A.I.R. 1943 Sind 30.**

——**S. 151**—Scope—If curtails or takes away rights conferred by S. 137. *See* BOMBAY LAND REVENUE CODE, SS. 137 AND 151. **I.L.R. (1942) Kar. 473.**

——**S. 154**—Collector acting under—If "Court"—Seizure of goods by Collector—If seizure under legal process. *See* LIMITATION ACT, ART. 29. **44 Bom.L.R. 668.**

——**S. 154**—*Money in Court—Power of distraint.*

Money in the custody of a Court cannot be distrained by the Crown under S. 154 of the Bombay Land Revenue Code. There is nothing in the Bombay Revenue Jurisdiction Act which prohibits a Court from dealing with the property of a land revenue defaulter which is in its custody. The ordinary rule is that money in the custody of the Court cannot be distrained; and there is no difference in principle whether the distraining authority is another Court or the Collector. (*Weston, J.*) JUMOMAL *v.* TANWARMAL HEMUMAL. **I.L.R. (1942) Kar. 473 = A.I.R. 1943 Sind 30.**

——**Ss 202 and 203**—*Scope—Powers of Government to issue notice of eviction without previously passing order—Such notice—If decision or order under S. 203—Notice—If should expressly mention section.*

It is clear that Government can pass an order for eviction of a person who is wrongfully in possession of land by giving him a notice as prescribed by S 202, Bombay Land Revenue Code. Such a notice in fact amounts to a decision or order contemplated by S. 203. It is not necessary that before a notice under S. 202 is given the Government should actually pass an order and communicate it to the party concerned. It is open to the Government to pass an order in the form of a notice and to serve it on the party concerned and if that is done, the Government must be deemed to have complied with the provisions of the Land Revenue Code. Nor is it necessary that the notice should mention that it is given under S. 202, if it is clear on the wording thereof that it is under that section and under no other provision of law. The Government possesses larger powers than a private landlord. While a private landlord has no power to summarily evict a tenant who is holding over, the Government have that power, and at the termination of the period for which a particular right had been granted by Government to any person, it is open to Government to give him a notice to vacate it and if the holder still remains in possession after its expiry, he must be deemed to be holding the land in wrongful possession. That being so, the Government would be entitled to give a notice as required by S. 202 of the Land Revenue Code. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357 = 201 I.C 420 = 15 R.B. 76 = 44 Bom.L.R. 295 = A.I.R. 1942 Bom. 161.**

——**S. 211**—*Applicability—Sanad issued under S. 65 based on agreement and fixing non-agricultural assessment for fixed term—Right of Government to enhance assessment or cancel sanad before expiry of term.*

S. 211 of the Bombay Land Revenue Code does not apply to a sanad or document embodying terms and

BOM. LAND REV. CODE (1879), S. 213.

conditions agreed to between the Government and the occupant. It is not therefore competent to the Government to modify the terms of a sanad issued under S. 65, or cancel it before the expiry of the term fixed if it embodies certain terms and conditions which are agreed to between the Government and the occupant; and the Government cannot claim the right to enhance the non-agricultural assessment beyond what is fixed in the sanad. (*Divatia, J.*) GOVERNMENT OF BOMBAY *v.* MATHURDAS LALJIBHAI. **202 I C 301=15 R B. 153 =44 Bom L R. 405=A.I.R. 1942 Bom. 256.**

——**S. 213**—Printed map of wards of city prepared by Government—Admissibility in evidence. *See* EVIDENCE ACT, SS. 36, 83 AND 87. **44 Bom.L.R. 295.**

BOMBAY LAND REVENUE RULES (1921), R. 43—*Building sites—Grant of on restricted tenure—Permissibility.*

It is not the law that building sites cannot be granted on restricted tenure under the Bombay Land Revenue Rules. Under R. 43, there may be a grant on an inalienable tenure. (*Broomfield and Macklin, JJ.*) PRABHAKAR BHASKAR *v.* KRISHNARAO MOROBA. **203 I.C. 443=44 Bom.L R. 718=A.I.R. 1942 Bom. 317.**

BOMBAY LAND TENURES—*Inam land—Jat inam sheri land—Sale in execution of all right, title and interest of inamdar—What passes—Sale—If restricted to sale of rights as occupants apart from rights as inamdar to recover assessment.*

Where all the right, title and interest of an inamdar in jat inam sheri lands are brought to sale in execution of a decree against him on a mortgage comprising the full right of the inamdar in the inam land, the sale passes to the purchaser not only his right as occupant in the land but also his right as inamdar to recover assessment from the tenants. The distinction between his rights as inamdar and as occupant with respect to the same land is only a notional distinction and not a distinction in fact. (*Divatia, J.*) SADASHIV RAMCHANDRA *v.* AMRITRAO GOVIND **202 I.C. 348= 15 R.B. 8=44 Bom.L.R. 141=A I.R. 1942 Bom. 123**

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII OF 1925), S. 3 (2)—"*Building*"—*Fence consisting of wooden planks attached to posts imbedded in earth—If wall or enclosure.*

A fence six feet in height consisting of wooden planks attached to posts embedded in the earth on the boundaries of an open piece of ground adjacent to a house is not a "building" as defined by S. 3 (2) of the Bombay Municipal Boroughs Act. It is neither a wall nor an enclosure merely because it screens off completely the outer view. Hence the erection of such a fence without the permission of the Municipality is not an offence under S. 123 (7) of the Act. (*Broomfield and Wassoodew, JJ.*) EMPEROR *v.* HASANBHAI. **199 I.C. 417 =14 R B. 383=43 Cr.L J. 559=44 Bom.L.R. 45=A. I.R. 1942 Bom. 94**

——**S. 34 (2) and 58 (f)**—Suspension of Municipal servant—Right of latter to pay during period of suspension. *See* MASTER AND SERVANT—SUSPENSION OF SERVANT. **44 Bom.L.R. 814.**

——**S. 58 (f)**—*Power of Municipality to dismiss servants—Jurisdiction of Civil Courts to review dismissal.*

There can be no doubt that the action of a Municipality in dismissing its servants under the authority delegated under the Bombay Municipal Boroughs Act is not open to review in a Court of law, provided that the Municipality has reasonably acted within its powers, that is, that the grounds of dismissal are proved, that the inquiry against the servants is conducted in accordance with the principles of natural justice, and that the

BOM. MUN. BOROUGHS ACT (1925), S. 110.

servants are given reasonably opportunity of being heard in their defence. Whether such opportunity was given or not must depend upon the circumstances and facts proved. A dismissal cannot be challenged on the ground that the evidence did not warrant a drastic action like dismissal, for on that point the Municipality is the sole judge. Where the procedure adopted in dismissing a Municipal servant was faultless, there can be no review of the Municipality's Act in a Civil Court. (*Wassoodew, J.*) PADMA KANT MOTILAL *v.* AHMEDABAD MUNICIPAL BOROUGH. **44 Bom.L.R. 814=A.I.R. 1943 Bom 9.**

——**S. 63**—*Construction and scope—Public well getting filled up and ceasing to be used as public well—If vests in Government or continues in Municipality—"Belong"—Meaning of.*

All the properties specified in sub-S (2) of S. 63 of the Bombay Municipal Boroughs Act are properties of a public character and include public wells. When property of the nature specified in S. 63 ceases to be used for the purpose which led to its being vested in a municipal borough, as for example, when a public well ceases to be used as a public well by getting filled up, the land does not vest in the Provincial Government. The scheme of the Act is that property used for a public purpose, as specified in S. 63, is to vest in the Municipality, and if it ceases to be used for the public purpose, the municipality can sell it with the consent of the commissioner and the proceeds will form part of the municipal fund. There is nothing in the Act which suggests that Government has any interest in the matter. There is nothing inherently unjust or unreasonable in the Legislature having provided that property once vested in the municipality shall for all times be held for the benefit of the local public.

The word "belong" denotes ownership. (*Beaumont, C.J. and Wadia, J.*) THE BOROUGH MUNICIPALITY OF AHMEDABAD *v.* GOVERNMENT OF BOMBAY. **I.L. R. (1942) Bom. 463=201 I C 329=15 R.B. 66=44 Bom L. R. 354=A.I.R. 1942 Bom. 183.**

——**Ss. 73 (x) and 91**—*Ahmedabad Municipal Rules R. 344—Scope*—Ultra vires.

S. 73 (*x*) of the Bombay Municipal Boroughs Act deals only with a general water rate or a special water rate. Those rates may be imposed in the form of rates assessed on buildings and lands or in any other form including that of charges for supply of water. But what is imposed must be a rate, and not an arbittrary lump sum. It is clear that a lump sum imposed arbitrarily by the standing committee of a Municipality on certain trade and not on the district generally and not depending on the value of the property assessed is not a rate, and is not authorised under S. 73 (*x*) or S. 91 of the Act. R. 344 of the Ahmedabad Municipal Rules, providing for lump charges instead of a special water rate in the case of water supplied without meter an the case of a trade, is therefore *ultra vires*. (*Beaumont, C. J. and Sen, J.*) MOTIRAM KESHAVDAS *v.* AHMEDABAD MUNICIPAL BOROUGH. **202 I.C. 847=14 R B. 87= 44 Bom.L.R. 280=A.I.R. 1942 Bom 177.**

——**S. 110**—Appeal—Scope—Assessment—If can be questioned. *See* 1941 Dig., Col. 152. MUNICIPAL BOROUGH OF AHMEDABAD *v.* ARYODAYA GINNING AND MANUFACTURING CO. **I L.R. (1941) Bom. 658 =14 R.B 252=197 I C.833.**

——**S. 110**—Magistrate acting under—Position and powers of—Power to take evidence or additional evidence. *See* 1941 Dig., Col. 153. MUNICIPAL BOROUGH OF AHMEDABAD *v.* ARYODAYA GINNING AND MANUFACTURING CO. **I.L.R. (1941) Bom. 658 =14 R.B. 252= 97 I.C 833.**

BOM. MUN. BOROUGHS ACT (1925), S. 111.

——S. 111—Construction—"Decision upon any appeal"—Meaning—Interlocutory order—Revision. *See* 1941 Dig., Col. 153. MUNICIPAL BOROUGH OF AHMEDABAD *v.* ARYODAYA GINNING AND MANUFACTURING CO. **I.L.R. (1941) Bom. 658 = 14 R.B. 252 = 197 I.C. 833.**

——S. 114—*Power of Municipality to 'stop up' public street—If covers power to authorise permanent obstruction by private individuals.*

The power conferred upon the Municipality for the purposes of the Bombay Municipal Boroughs Act to "stop up" streets under S. 114 of the Act cannot be extended to cover a case where the Municipality authorizes or rather purports to authorize certain individuals to build a wall across a public street for their own purposes. The "stopping up" of a street does not mean its obstruction in the ordinary sense of that word. To "stop up" a street means that the street shall no longer be used as a street; but this is a special power conferred under S. 114 of the Act and to be exercised only subject to the previous sanction of the commissioner. (*Davis, C.J. and Weston, J.*) CHELLARAM VERHOMAL *v.* EMPEROR. **I.L.R. (1942) Kar. 90 = 200 I C. 741 = 15 R.S. 3 = 43 Cr.L.J. 714 = A.I.R. 1942 Sind 91.**

——S. 123 (5)—Burden of proof—Duty of accused relying on S. 123 (5)—Rule. *See* 1941 Dig., Col. 153. BHIKABHAI MOTIRAM *v.* EMPEROR. **198 I C. 120 = 14 R.B. 282 = 43 Cr. L.J. 313 = A.I R. 1942 Bom. 28.**

——S. 123 (7)—Fence of wooden planks attached to posts imbedded in earth—Erection without permission of Municipality—Offence. *See* BOMBAY MUNICIPAL BOROUGHS ACT, S. 3 (2). **44 Bom.L.R. 45.**

——S. 186 (2)—*Applicability—Imposition of daily penalty—Condition precedent to—Penalty in anticipation of repetition of offence—Legality.*

A daily penalty under S. 186 (2) cannot be imposed n anticipation of a repetition of the offence. S. 186 (2) does not indicate that an order of fine for further continuance of the nuisance must necessarily be passed in the same order as that which records the first conviction. Therefore on the principle that a person should not be punished in anticipation of the commission of an offence, it is necessary in every case where a fine for continuance of the offence is sought to be imposed, for a fresh prosecution to be instituted. There must be a conviction for a previous breach and then a subsequent fresh conviction for continuing the breach after the date of that first conviction before the daily penalty under S. 186 (2) can be imposed. (*Davis, C.J. and Weston. J.*) TULSIOMAL TEKCHAND *v.* EMPEROR. **I.L.R. (1942) Kar. 5 = 200 I C. 340 = 14 R.S. 214 = 43 Cr.L. J. 700 = A.I.R. 1942 Sind 78.**

BOMBAY NATIVE SHARE AND STOCK BROKERS' ASSOCIATION RULES (1939), R. 16—Construction and scope—If creates right in legal representative of deceased member. *See* 1941 Dig., Col. 154. FRAMROZ DADABHOY MADON, *In re*, **198 I.C. 291 = 14 R.B. 291 = A.I.R. 1942 Bom. 33.**

——Rr. 36 (h) and 38—Construction—Right of membership of association—If property—Probate duty—If leviable. *See* 1941 Dig., Col. 154. FRAMROZ DADABHOY MADAN, *In re*. **198 I.C. 291 = 14 R.B. 291 = A.I.R. 1942 Bom. 33.**

——Rr. 46 and 167—*Scope and effect of—Share-broker—Suit for losses sustained in transactions of constituent—Cause of action—Express averment as to incurring of liability and payment in respect of losses—If essential—Cause of action.*

In a claim for indemnity, *e.g.*, a claim by a share-broker for recovery of losses sustained by him in respect of transactions entered into for his constituent, the plaintiff must aver that he has sustained the losses for which he claims to be indemnified. Where the plaint contains an allegation that the plaintiff was carrying on business as a certified share, stock and exchange broker in the Bombay Native share and Stock Brokers' Association and had entered into certain contracts on behalf of the defendant (his constituent) for which contract notes had been sent to him, and those contract notes state that they are subject to the rules and regulations of the Native share and Stock Brokers' Association, it does certainly disclose a cause of action. It is not necessary that there should be an express averment that the plaintiff incurred liability in respect of the transactions of the defendant and that he made payments in respect of the losses incurred in respect of the transactions of the defendants. (*Beaumont, C.J. and Semiee, J.*) PROMATHA NATH MULLICK *v.* BATLIWALA AND KARANI. **I.L.R. (1942) Bom. 655 = 202 I.C. 166 = 15 R.B. 136 = 44 Bom.L.R. 475 = A.I.R. 1942 Bom. 224.**

BOMBAY PREVENTION OF GAMBLING ACT (IV OF 1887), S. 4 (a)—*Sentence—Fine—Amount—Discretion—First offence—Imprisonment—Desirability.*

It cannot be held that lack of means on the part of the accused is not a special reason justifying the imposition of the less than the maximum fine under the proviso to S. 4 (*a*) of the Bombay Prevention of Gambling Act. The vice of a fine as a means of punishment is that its severity necessarily depends on the financial position of the accused. The Court has discretion to impose a sentence of imprisonment or fine; and where the accused is shown to be gambling on a large scale, and may be presumed to be making a good deal of money out of it, it may be that the only punishment, likely really to act as a deterrent, would be imprisonment. *Prima facie*, however, it is undesirable to impose a sentence of imprisonment for a first offence. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* KARSANDAS NANJI. **201 I.C. 508 = 15 R.B. 107 = 43 Cr.L.J. 759 = 44 Bom.L.R. 443 = A.I.R. 1942 Bom. 206 (2).**

——S. 5—Offence under—If cognizable. *See* PENAL CODE, S. 342. **I L.R. (1942) Kar. 94 = A.I.R. 1942 Sind 106.**

BOMBAY REVENUE JURISDICTION ACT (X OF 1876), S. 11—Applicability—Notice under S. 202 of Bombay Land Revenue Code—Failure to appeal—Civil Suit—Bar of. *See* BOMBAY LAND REVENUE CODE, S. 68. **44 Bom.L.R. 295.**

——S. 11—*Scope—Bar of suit—Order passed without jurisdiction—If need be set aside—Bar under S. 11—If arises.*

An order which is *ultra vires* does not invoke the bar of S. 11 of the Bombay Revenue Jurisdiction Act. Where a Revenue Officer purports to do an act or to pass an order which is invalid, his action does not operate to raise a bar under S 11. The principle is well-established that where an authority which purports to pass an order is acting without jurisdiction, the purported order is a mere nullity, and it is not necessary for anybody, who objects to that order, to apply to set it aside. He can rely on its invalidity when it is set up against him, although he has not taken steps to set it aside. An order which is a nullity does not give rise to any right whatever, not even to a right of appeal. This principle applies to S. 11 of the Bombay Revenue Jurisdiction Act also. (*Beaumont, C. J., Wassoodew and Sen, JJ.*) ABDULLAMIYAN ABDULREHMAN *v.* GOVERNMENT OF BOMBAY. **202 I. C. 321 = 15 R. B. 154 = 44 Bom.L.R. 577 = A.I.R. 1942 Bom. 257.**

——S. 11—*Scope—Occupant of Government land claiming right by long possession—Notice by Collector*

BOMBAY SALT ACT (1890), S. 3.

under S. 202, Land Revenue Code—If illegal—Failure to appeal—Suit in Civil Court—Bar of.

If a person claims to remain in possession of Government land merely on the strength of his long possession in the past though without any rightful title in him, Government have the right to assert their ownership which has not been divested by any act of the occupant, and they have a right of resumption so long as the occupant does not prove any acquisition of right in him by adverse possession against Government. The giving of a notice by Government under S. 202 of the Bombay Land Revenue Code to the occupant cannot be regarded as an invalid or *ultra vires* act. It may be an incorrect order liable to be set aside on appeal under S. 203. But merely because it is incorrect, it cannot be said to be invalid or illegal in law. It would not be a case where the notice or order is vitiated by want of power, excess of jurisdiction or any other illegality, so as to take it out of the operation of S. 11 of the Bombay Revenue Jurisdiction Act when no appeal has been preferred against it. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357 = 201 I.C. 420 = 15 R.B. 76 = 44 Bom.L.R. 295 = A.I.R. 1942 Bom 161.**

BOMBAY SALT ACT (II OF 1890), S. 3 (o)—Construction and scope—Removal of possession of contraband salt from custom station by cartman engaged by another—Liability of cartman—Ss. 38 (1) and 47 (*a*). *See* 1941 Dig., Col. 155. EMPEROR *v.* LAXMAN KRISHNA. **198 I.C. 437 = 14 R.B. 323 = 43 Cr.L.J. 369 = A.I.R. 1942 Bom. 25.**

——**S. 47 (a) and (c)**—Applicability and construction—Possession of contraband salt—When offence—Removes or transports—Meaning of. *See* 1941 Dig., Col. 155. EMPEROR *v.* LAXMAN KRISHNA. **14 R.B. 323 = 43 Cr.L.J. 369 = 198 I.C. 437 = A.I.R. 1942 Bom. 25.**

BOMBAY SECURITIES CONTRACTS CONTROL ACT (VIII OF 1925), S. 6—*Applicability and scope of—Contract for purchase or sale of securities—What amounts to.*

S. 6 of Bombay Act VIII of 1925 relates only to contracts for the purchase or sale of securities. A document which merely gives intimation to a constituent of contracts of purchase or sale effected by a share broker as the constituent's broker and for and on account of the constituent is not a contract of purchase or sale of securities under the Act. (*Beaumont, C.J. and Somjee, J.*) PROMATHA NATH MULLICK *v.* BATLIWALA AND KARANI. **I.L.R. (1942) Bom. 655 = 202 I.C. 166 = 15 R.B. 136 = 44 Bom.L.R. 475 = A.I.R. 1942 Bom. 224.**

BOMBAY SHOPS AND ESTABLISHMENTS ACT (XXIV OF 1939), S. 4(1) (a)—Owner of shop—If person occupying position of management. *See* 1941 Dig., Col. 155. EMPEROR *v.* MAHOMED KASSAM PANWALLA. **I.L.R. (1942) Bom. 167 = 198 I.C. 226 = 43 Cr.L.J. 321 = 14 R.B. 295 = A.I.R. 1942 Bom. 39.**

——**Ss. 5 and 30**—Applicability—One man shop conducted by owner himself—"Employer"—Owner of shop conducting and keeping without employing any one—Liability for contravention of S. 5—S. 2 (5) and (6). *See* 1941 Dig., Col. 156. EMPEROR *v.* MAHOMED KASSAM PANWALLA. **I.L.R. 1942 Bom. 167 = 198 I.C. 226 = 43 Cr.L.J. 321 = 14 R.B. 295 = A.I.R. 1942 Bom. 39.**

——**S. 5**—"*Enactment*"—*If includes Rules under Tobacco Duty Act* (1857).

The word "enactment" in S. 5 (1) of the Bombay Shops and Establishments Act clearly includes rules made under a statutory power vested in Government

BOM. TOB. DUTY (TOWN OF BOM.) ACT (1857), S. 11.

and therefore includes the rules framed under the Bombay Tobacco Duty Act of 1857. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* BABAJI SHIVRAM. **I.L.R. (1942) Bom. 614 = 201 I.C. 774 = 43 Cr.L.J. 780 = 15 R.B. 125 = 44 Bom.L.R. 446 = A.I.R. 1942 Bom. 220.**

——**S. 17 and R. 12 (4)**—*Applicability—Persons employed by day and not by week or month.*

There is nothing in S. 17 or R. 12 (4) of the rules, of the Bombay Shops and Establishments Act to suggest that they do not apply to establishments which employ persons only from day to day and not on weekly or monthly terms. (*Wadia and Wassoodew, JJ.*) EMPEROR *v.* HASANALI GULAMALI. **198 I.C. 710 = 14 R.B. 353 = 43 Cr.L.J. 422 = 44 Bom.L.R. 50 = A.I.R. 1942 Bom. 79.**

——**Rules under R. 12 (10)**—Scope—"Employer"—Owner keeping shop himself without employing any one—Omission to maintain visit book—Offence. *See* 1941 Dig., Col. 155. EMPEROR *v.* MAHOMED KASSAM PANWALLA. **I.L.R. (1942) Bom. 107 = 198 I.C. 226 = 43 Cr.L.J. 321 = 14 R.B. 295 = A.I.R. 1942 Bom. 39.**

BOMBAY SMALL HOLDERS' RELIEF ACT (VIII OF 1938), S. 9 (1)—*Construction—Right to relief—Payment of rent of current year—Sufficiency—Non-payment of arrears—If bar to relief.*

Under S. 9 (1) of the Bombay Small Holders Relief Act all that has to be paid by a tenant before the 15th of May is the rent due, not down to June 30, but for the year ending June 30. The fact that the rent due for previous years has not been paid is irrelevant; and the omission to pay rent in previous years does not defeat the tenant's claim to protection under the Act. (*Beaumont, C. J.*) MURARRAO NARSINGRAO *v.* GOVIND SANTU. **44 Bom.L.R. 847 = A.I.R. 1943 Bom. 26.**

——**S. 9 (1)**—*Joint tenants—Payment of rent by one—If enures for benefit of all.*

Where one of several joint tenants makes a payment or tender within the prescribed period and expresses his willingness to hold the land, such tender and expression of willingness operate for the benefit of all the joint tenants. It is not necessary that all the joint tenants should pay and express willingness. (*Beaumont, C. J.*) MURARRAO NARSINGRAO *v.* GOVIND SANTU. **44 Bom.L.R. 847 = A.I.R. 1943 Bom. 26.**

BOMBAY TOBACCO DUTY (TOWN OF BOMBAY) ACT (IV OF 1857), as amended in 1938, S. 11—*Licence*—"*Rules framed thereunder*"—*Meaning of.*

Where a licence granted under S. 11 of the Bombay Tobacco Duty Act as amended in 1938, contains a reference to the Act and the "rules framed thereunder", the "rules framed" mean rules which have been framed, and the expression does not cover rules not at present in existence, but which may be framed at a future date (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* BABAJI SHIVRAM. **I.L.R. (1942) Bom. 614 = 201 I.C. 774 = 43 Cr.L.J. 780 = 15 R.B. 125 = 44 Bom.L.R. 446 = A.I.R. 1942 Bom. 220.**

——**S. 11**—*Licence under—Power of Government to alter terms and conditions during currency of licence.*

Where the Government have issued a licence under S. 11 of the Bombay Tobacco Duty (Town of Bombay) Act for a particular year authorising the licensee to keep his premises open up to midnight, they are not entitled, after such issue, to alter the terms and conditions of the licence so as to cut short the hours for which the premises may be kept open, during the currency of that licence, in the absence of a clear reservation in the licence to that effect. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* BABAJI SHIVRAM. **I.L.R. (1942) Bom.**

BOM. VILL. PANCH. ACT (1920), S. 27.

614 = 201 I C. 774 = 43 Cr.L J. 780 = 15 R.B. 125 = 44 Bom.L.R. 446 = A.I.R. 1942 Bom 220.

BOMBAY VILLAGE PANCHAYATS ACT (IX OF 1920), S. 27—Right to coilect taxes from occupants of sites in village market—Contract of lease—If *ultra vires*—Suit to recover money due under—Maintainability—Contract Act, S. 65. *See* 1941 Dig., Col. 136. GOVIND KESHAV *v.* YESHWANT PANDHARINATH I.L.R. (1941) Bom 666 = 14 R.B. 249 = 197 I.C. 825.

BOMBAY VILLAGE POLICE ACT (VIII OF 1867), S. 14—*Procedure—Proceedings before Police Patel—Accused's right to appear by pleader—Personal attendance of accused if can be dispensed with—Crl. P. Code, S.* 340.

A Police Patel acting under S. 14 of the Bombay Village Police Act is a Criminal Court within the meaning of S. 340, Cr.P. Code, and an accused person has therefore a right to appear through a pleader in proceedings under S. 14 of the Act. But the Police Patel has no discretion to dispense with the presence of the accused. (*Beaumont, C.J. and Sen, J.*) WARUBAI KRIPARAM *v.* SHIVSHANKAR BALMUKUND. **201 I.C. 688 = 43 Cr.L J. 786 = 15 R B. 148 = 44 Bom.L.R. 442 = A.I.R. 1942 Bom. 205 (2).**

BUDDHIST LAW (Burmese)—Adoption—Apatitha form—Apatitha child living apart from parents—Right to inherit—Proof of joint living—Necessity. *See* 1941 Dig., Col. 157 MA TIN AYE *v.* KHIN KHIN GYI. **198 I.C. 37 = 14 R.R. 154.**

——*Adoption, Keittima—Proof of—Overwhelming positive evidence of adoption—Natural father gifting property to adopted son and styling him as son—If can affect conclusion from positive evidence.*

Where there is overwhelming positive evidence in favour of a Keittima adoption the fact that the natural father describing himself as father and the adopted boy as his son in a deed of gift, gives the latter a share in his property cannot overthrow the conclusion to be arrived at from positive evidence. (*Ba U, J.*) M.R.M. M. MEYAPPA CHETTYAR *v.* MA NYUN. **1941 Rang. L.R. 742 = A.I.R. 1942 Rang. 68.**

——**(Burmese)**—Adoption—Keittima form — Proof of—Formal ceremony if necessary—Conduct of publicity and notoriety. *See* 1941 Dig., Col. 157. MA TIN AYE *v.* KHIN KHIN GYI. **198 I.C. 37 = 14 R.R. 154.**

——**(Burmese)**—Inheritance—Manw kye, Book X, S. 8—Construction—Rights of children of first marriage on death of their mother. *See* 1941 Dig., Col. 159. U. HLA PE *v.* MA HLA KHIN. **198 I.C. 149 = 14 R. R. 184.**

——**(Burmese)**—Keittima adoption — Proof of—evidence of notoriety and publicity when relevant—Nature of admissible evidence regarding conduct. *See* 1941 Dig., Col. 159. MA NYUN YIN *v.* MA KYIN. **198 I.C. 42 = 14 R.R. 157.**

——**(Burmese)**—Orasa—Attainment of status of—Test. *See* 1941 Dig., Col. 161. DA E. *v.* MAUNG AUNG THEIN. **198 I.C. 139 = 14 R.R. 175 = A.I.R. 1942 Rang. 1 (F.B.).**

——**(Chinese)** — Adoption— Proof of. *See* 1941 Dig., Col. 161. MA AYE MYA *v.* CHEW CHENG GUAT. **198 I.C. 777 = 14 R.R. 225.**

BURDEN OF PROOF. *See* EVIDENCE ACT; PRACTICE—BURDEN OF PROOF.

BURMA CONTRIBUTORY PROVIDENT FUND RULES, R. 5 (3) and Burma General Clauses Act, S. 2 (44)—*Construction of R. 5 (3)—Person—Meaning of—Validity of nomination of a Charity Home to receive fund.*

BURMA DEFENCE RULES.

R. 5 (3) of the Burma Contributory Provident Fund Rules says that a subscriber may nominate a person or persons to receive the fund and in order to discover, what is the meaning of 'a person' it is necessary to refer to the Burma General Clauses Act; and in Cl. (44) of S. 2 of that Act it is enacted that " 'person' shall include any company or association or body of individuals, whether incorporated or not" unless there is anything repugnant to the subject or context. There is nothing repugnant to this meaning of 'person' in the Burma Contributory Provident Fund Rules. Hence if a subscriber has no family, he is not compelled to leave it to an individual or individuals. The nomination of a Charity Home for girls as the person entitled to receive the fund, is therefore quite a valid one. (*Sharpe, J.*) HANNAY *v.* RODRIGUEZ. **1941 Rang L.R. 712.**

——**R. 5 (3)**—"*Person*"—*If includes association.*

In construing the act and the Rules made thereunder for the purpose of carrying out the Act regard must be had to the provisions of the Burma General Clauses Act. In view of the provisions of S. 2 (44), Burma General Clauses Act, the word "person" in R. 5 (3) must be taken to include any company, association or body of individuals whether incorporated or not. (*Roberts, C.J. and Dunkley, J.*) ELLEN FLORENCE RODRIGUEZ *v.* EDITH MARY HANNAY. **A.I.R. 1942 Rang. 64 (2).**

——**R. 5 (7), (3) and (6)**—*Previous nomination in form valid but cancelled by subsequent nomination which was found invalid—Effect.*

The subscriber to the Government Provident Fund who had no family, nominated "Bishop Strachan's Home, Prome Road, Rangoon," on 27th July, 1935, in the nomination form as her nominee to receive the full amount of her provident fund in the event of her death. On 14th February, 1939, she made a second nomination which was exactly the same as the first; it was in favour of "Bishop's Home Strachan for Girls," this being merely an inversion of the proper name of the Home and Bishop Strachan's Home was again nominated to receive the whole amount of her provident fund. But shortly before the subscriber's death the second entry was crossed out by a single ink line and underneath it were typed the words "The Lord Bishop of Rangoon, the Rt. Rev. G. A. West," and under this typed entry appeared the subscriber's signature. The signature under the last nomination not having been witnessed by two witnesses as required by the rules was held invalid.

Held, that under R. 5 (6) a nomination could be cancelled only by another nomination, *i.e.*, another valid nomination, and when the subsequent nomination in favour of Rt. Rev. G. A. West was found to be invalid the result was that the previous nomination of 14th February, 1939, still remained uncancelled and was a perfectly good nomination. But even if this nomination was also invalid, the only result was that the nomination of July, 1935, remained valid, and in any case the nominee to receive the whole of the provident fund was the Bishop Strachan's Home for Girls. (*Roberts, C.J. and Dunkley, J.*) ELLEN FLORENCE RODRIGUEZ *v.* EDITH MARY HANNAY. **A.I.R. 1942 Rang. 64 (2).**

BURMA COURTS MANUAL, Para. 104 A—Burma Court Manual—Scope of—Departure from directions in, if gives a right of appeal—Applicability of Para. 104-A. *See* 1941 Dig., Col. 162. BHAWANI SANKAR JAISI *v.* GANGA PRASAD. **198 I.C. 516 = 14 R R. 204.**

BURMA DEFENCE RULES—Control of Prices Order (1940), Para. 6—Liability of master for acts of servants. *See* 1941 Dig., Col. 163. ISMAIL MAHOMED

BURMA DEFENCE RULES. R. 2.

HAJEE *v.* THE KING. **14 R.R. 152=197 I.C. 845=43 Cr.L.J. 287.**

———**Rr. 2 (9) and 130**—Public servant within the meaning of—Head clerk of controller of prices Competency to file complaint. *See* 1941 Dig., Col. 163. ISMAIL MAHOMED HAJEE *v.* THE KING. **14 R.R. 152=197 I.C. 845=43 Cr.L.J 287.**

BURMA INCOME-TAX ACT (XI OF 1922), S. 10 (2) (ix)—Income-tax Rr. 25 and 36—Interpretation of—Life Assurance Company with head office in British India and branch in Burma — Computation of Income—Proportion of Burma premia to world premia—It to be taken into account—Interim bonus paid to policy holders—If deductible. *See* 1941 Dig., Col. 165 COMMISSIONERS OF INCOME-TAX, BURMA *v.* LAKSHMI INSURANCE CO., LTD., RANGOON. **198 I. C. 330=14 R.R. 190.**

BURMA MUNICIPAL ACT (III OF 1898 as amended in 1933), S. 79 (5)—Competency of reference—Questions of fact as to communication of notice. *See* 1941 Dig., Col. 166. DAWSONS BANK LTD., PYAPON *v.* MUNICIPAL COMMITTEE, KYAIKLAT. **198 I.C. 180=14 R.R. 187.**

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III OF 1930), S. 14—*Finding as to age—Relevant point of time—Inquiry into age—Procedure.*

The age which is to be considered in passing orders under the Young Offenders Act as to detention of juveniles, is the age found by the Court under S. 14 of the Act, and not the age at the date of sentence or conviction. The inquiry as to age must, usually at all events, include a medical examination and the doctor will testify to what appears to him to be the age of the accused at the time he examines him. (*Mosely, J.*) THE KING *v.* TUN MAUNG. **199 I.C. 378=43 Cr.L.J. 555=1941 Rang. L.R. 801=14 R.R. 271=A.I.R. 1942 Rang. 60.**

BURMA TENANCY ACT (X OF 1939), S 40—Bar of civil suit—Dispute as to compensation between two tenants. *See* 1941 Dig., Col. 167. U. SHWE YON *v.* MAUNG E. **198 I C. 99=14 R R. 174.**

CALCUTTA HIGH COURT RULES AND ORDERS (ORIGINAL SIDE), Chap. X, R. 35—*Exercise of powers under—Rule as to.*

No rule can be laid down for the exercise of the Court's powers under Rule 35 of Chap. X of the Rules of the Original Side of the Calcutta High Court except perhaps this, that before a Court under this rule deprives a litigant of his right to prosecute his claim, it should be satisfied that to do otherwise would be to permit an abuse of its process. One test as to whether there is an abuse of the process of the Court is to challenge the hesitating or laggard plaintiff to set down his case at once and proceed according to the rules. (*Derbyshire, C.J. and Nasim Ali, J.*) DAWOODAYAL KOTHARI *v.* SHIB NATH ROY. **46 C.W.N. 653.**

———**Ch. XXVI, R. 89**—Application for further time made after expiry of 14 days—If competent. *See* 1941 Dig., Col. 167. RAMENDRA NATH DATTA *v.* MANICK LAL MITRA. **200 I C. 92=14 R.C 661.**

———**Ch. XXVI, R. 89**—Notice of motion—Service on all parties—Necessity for. *See* 1941 Dig., Col. 167. RAMENDRA NATH DATTA *v.* MANICK LAL MITRA. **200 I.C 92=14 R.C. 661.**

———**Chap. XXXV-A R. 44 and (Appellate Side), Part 1, Chap. III, R. 3**—Applicability—Application for transfer under S. 8, para. (2) of Divorce Act. *See* 1941 Dig., Col. 167. MALATI *v.* SURENDRA NATH. **199 I.C. 621=14 R.C. 598=A.I.R. 1942 Cal. 32.**

CALCUTTA MUNICIPAL ACT (1923), S. 127.

———**Chap. XXXVI, Rr. 32 (iv) and 6**—*Provisions not complied with—Discretion of Court—If can be exercised.*

In a suit for partition there was a preliminary enquiry before a Referee and a report was made by him. On the application for confirmation of the report by the Judge, two counsel were engaged for more than one day and refresher fees were paid to them. In the taxation for costs as between attorney and client, the client objected to the allowing of fees to two counsel with refresher fees on the ground that they were unusual fees and should not be allowed in the absence of a written consent of the client under Ch. XXXVI, R. 32 (4) of the Rules of the High Court.

Held, that Ch. XXXVI, R. 32 (*iv*) and R. 6 are specific and would seem to allow no room for discretion of the Court if those provisions are not complied with. (*Ameer Ali, J.*) BIJON KRISHNA NAWN *v.* SUDHIR CHANDRA NAWN. **I.L.R. (1942) 1 Cal. 273=202 I. C. 200=15 R C. 302=A I.R. 1942 Cal. 468.**

CALCUTTA IMPROVEMENT ACT (XVIII OF 1911), S. 77 (2)—*Execution of award of tribunal by Small Cause Court—Certificate of non-satisfaction—If must be obtained—C. P. Code, O. 21, R. 6.*

Under S. 77 (2) of the Calcutta Improvement Act, the award of the tribunal is to be executed by the Small Causes Court as if it were a decree made by that Court. This clearly shows that that Court is not to be deemed to be a transferee Court and the procedure laid down in O. 21, R. 6, C. P. Code, will have no application to the award. The party in whose favour that has been made need not, therefore, obtain a certificate of non-satisfaction to get it executed by the Court of Small Causes. (*Mukherjea and Sen, JJ.*) ASMABOO KURBAN HOSSAIN *v.* PROVINCE OF BENGAL. **203 I.C. 429=46 C. W.N. 927=A.I.R. 1942 Cal. 569.**

CALCUTTA MUNICIPAL ACT (III OF 1923), S. 127—'*Let*'—*Meaning of—House owned by firm occupied by one of its partners without rent—If assessable under Cl.* (a) *or* (b).

The word "let" in S. 127 of the Calcutta Municipal Act means "granting the use of the land for rent". Where a house owned by a firm is occupied by one of its partners who neither pays any cash rent nor renders any service to the firm in lieu thereof, his occupation, in the absence of any evidence to the contrary, is that of one of the co-owners of the house and not that of a tenant. Such a house, when there is no suggestion that it was erected for letting purposes, is assessable under Cl. (*b*) and not under Cl. (*a*) of S. 127 of the Act. (*Nasim Ali and Blagden, JJ.*) CORPORATION OF CALCUTTA *v.* SHAW WALLACE & CO. **46 C.W.N. 978.**

———**S. 127 (a)**—*Valuation of property—English principle of valuing.* "rebus sic stantibus"—*How far applicable—Valuation of vacant land—Vacant land not used by owner except for occasional golf practice—Owner asking corporation to ignore such occasional user—Proper basis of valuation.*

The English principle of valuing "*rebus sic stantibus*" (*i.e.*) with reference to the property in its actually existing condition taking into account neither the past conditions nor the future possibilities, can with perfect propriety be applied to cases coming under S. 127 (*a*) of the Calcutta Municipal Act where the owner has put the property to some use. The annual value in such cases must be determined on the basis of the rent expected from a hypothetical tenant who takes it from year to year. The above principle of English Law can have no application to a case where land is kept vacant and the owner does not put it to any use at all. Such a case can

CALCUTTA MUNICIPAL ACT (1923), S. 127.

not possibly arise in English Law, as a owner who does not use or occupy his land is not rateable under the English Law at all. Under the Calcutta Municipal Act, an owner who keeps his land vacant is bound to pay rates. In determining the value of such land, the standard cannot be the amount of rent payable by a tenant who would keep it fallow and unoccupied. As the owner is not using it in any particular way, there is no presumption in favour of the continuance of any kind of user. The standard in such cases must be the rent which could be expected from a tenant, who would take the land as it is, and put it to such use as is possible for a yearly tenant to do. Where a piece of vacant land is not used by the owner except occasionally as an imperfect golf course, and the owner has expressly asked the Corporation to ignore such occasional user and treat it as vacant land so that he may have the vacancy remissions, it would be proper to value the land on the basis of annual letting value of lands in the vicinity let out as vacant lands to yearly tenants (*Mukherjea and Akram, JJ.*) BENGAL NAGPUR RAILWAY CO., LTD. *v.* CORPORATION OF CALCUTTA. **I.L.R. (1942) 2 Cal. 152 =46 C.W.N. 637=A.I.R. 1942 Cal. 455.**

——**S. 127 (b)**—*Value of land—Mode of assessment—English system of rating—If applicable.*

The Legislature has not laid down any definite method of estimating the present value of the land required to be estimated by S. 127 (*b*) of the Calcutta Municipal Act. There may be different methods of making this estimate and it will be for the expert valuers to make the estimate in each particular case and for the Court to come to a decision whether or not their valuation is correct. The word 'value' in this part of the section means the selling price of the property in question between a willing seller and a willing purchaser, subject to the advantages or disadvantages involved in its present condition. As Cl. (*b*) of S. 127 has been introduced to meet the cases where determination of the 'annual rent' by any direct method is impossible, it will be absurd to suggest that in valuing the land the self-same impossible item was intended by the Legislature to supply the starting point. Therefore, the profits basis or the contractor's basis of rating prevailing in the English system, which are all methods not of determining the value of the land but of ascertaining the hypothetical annual rent, have no application in determining the value of the land under the section. (*Nasim Ali and Pal, JJ.*) PROVINCE OF BENGAL *v.* CORPORATION OF CALCUTTA. **201 I.C. 42=15 R.C. 121=46 C.W. N. 496=A.I.R. 1942 Cal. 418.**

——**S. 135**—Application for separate assessment of out-house—Duty of executive officer—Power to impose condition on applicant. *See* 1941 Dig., Col 169. CORPORATION OF CALCUTTA *v.* SAMARENDRAJIT SHAW. **200 I.C. 89=14 R.C. 665.**

——**Ss. 135 and 149**—Application made for separate assessment of out-house—Applicant, if escapes liability to pay consolidated rate thereafter. *See* 1941 Dig,, Col. 169. CORPORATION OF CALCUTTA *v.* SAMARENDRAJIT SHAW. **200 I.C. 89=14 R.C. 665.**

——**S. 135**—Premises consisting of storeyed house and out-houses—Out-houses alone occupied—Corporation failing to consider owner's application for separate assessment—If can claim consolidated rates from him. *See* 1941 Dig , Col. 170. CORPORATION OF CALCUTTA *v.* NANDALAL CHOWDHURY. **198 I.C. 632=14 R.C. 478.**

——**S. 179**—*Conviction for not taking out scavenging licence—When sustainable.*

To sustain a conviction of an owner of a market under S. 179 of the Calcutta Municipal Act for not taking out a scavenging licence, it is incumbent on the prosecution to prove that the commissioner had determined the average amount of rubbish removed daily from the market. (*Henderson, J.*) SURENDRA NARAYAN BANERJI *v.* HOWRAH MUNICIPALITY. **I.L.R. (1941) 2 Cal. 385.**

CALCUTTA MUNICIPAL ACT (1923), S. 407.

——**S. 300, (as applied to Howrah)**—Service of notice—Premises owned by company—Notice addressed to managing agents—If proper. *See* 1941 Dig., Col. 170. N. N. BOSE *v.* MANAGER, KEDARNATH JUTE MANUFACTURING CO., LTD. **43 Cr.L.J. 33.**

——**S. 386 (1) (b)**—*Premises let out for business—Business carried on without required licence—Liability of owner.*

An owner of premises who has let them out for the purpose of carrying on a business is not liable under S. 386, (1) (*b*) of the Calcutta Municipal Act, when there is no suggestion that he intended that the letting should be for the purpose of carrying on the business without a licence, if a licence was necessary and could not be obtained. The fact that when he was told by the Corporation to take steps for the removal of the business he protested that the refusal of the license was unwarranted and urged that no licence was required, is irrelevant. It does not establish that he had permitted the carrying on of the business within the terms of the section. (*Roxburgh, J.*) MOTI LAL *v.* CORPORATION OF CALCUTTA. **I.L.R. (1942) 2 Cal. 105=46 C.W. N 418=A.I.R. 1943 Cal 39.**

——**Ss 386 (1) (b) and 488**—Prosecution under—Proof required. *See* 1941 Dig., Col. 170. ATUL CHANDRA BHANDARY *v.* CORPORATION OF CALCUTTA. **199 I.C. 179=14 R.C. 534=43 Cr.L.J. 513 =A.I.R. 1942 Cal. 142 (2).**

——**S. 388**—*Order under—Who can pass.*

Under S. 388 of the Calcutta Municipal Act, it is only the Magistrate who imposes a fine under S. 488 for contravention of the provisions of S. 386 (1) of the Act, that is authorised to pass an order directing that the premises should no longer be used for the purpose which created the nuisance. No other Magistrate has jurisdiction to do so. (*Lodge and Roxburgh, JJ.*) J. N. SARMA & SONS *v.* CORPORATION OF CALCUTTA. **I.L.R. (1942) 1 Cal. 527=202 I.C. 592=15 R.C. 382 =43 Cr.L.J. 870=A.I.R. 1942 Cal. 529.**

——**Ss. 406 and 407**—*Prosecution in respect of luchis fried in adulterated ghee—Proof required.*

The accused who was in charge of a sweet-stall was frying some *luchis* in ghee. The Public Analyst to whom a sample of the ghee was sent stated that it did not contain any butter-fat. The accused was prosecuted with respect to the *luchis*.

Held that as the *luchis* were not seized or analysed, there was nothing to show that any of that ghee was in the *luchis* and that further it had to be shown that *luchis* fried in that ghee would be of an inferior quality to those fried in ghee which the Public Analyst would describe as unadulterated and that in the absence of such evidence the accused could not be convicted under Ss. 406 and 407 of the Calcutta Municipal Act. (*Henderson, J.*) JOY KALI GANGULY *v.* BANERJEE. **202 I.C. 679=43 Cr.L.J. 896.**

——**S. 407 (1) (ii)**—*Conditions in respect of butter—Power of Government to prescribe—Notification dated* 28—3—1928—*If* ultra vires.

There is no limit on the power given to the Local Government to prescribe conditions in respect of butter although Sub-Cl. (*ii*) of S. 407 (1) of the Calcutta Municipal Act does itself lay down certain conditions. The Notification dated 28th March, 1928, prescribing the condition that butter should not contain more than

CALCUTTA MUNICIPAL ACT (1923), S. 407.

20 per cent. of water is not in any way an unreasonable abuse of the power given by the section and is not *ultra vires* of the Provincial Government. (*Roxburgh and Akram, JJ.*) P. BANERJEE *v.* MURALI MOHAN DAS. **203 I.C. 89=A.I.R. 1943 Cal. 30.**

——**S. 407 (3)**—*Liability of vendor temporarily in charge of shop.*

The fact that the seller was merely temporarily in charge of the shop while the actual manager was away, does not relieve him of his technical liability. (*Roxburgh and Akram, JJ.*) P. BANERJEE *v.* MURALI MOHAN DAS. **203 I.C. 89=A.I.R. 1943 Cal. 30.**

——**Ss. 492 and 179**—Conviction of owner of market for not taking out licence—Legality—Amount of rubbish removed not determined by corporation. *See* 1941 Dig., Col. 169, JITENDRA MULLICK *v.* CORPORATION OF CALCUTTA. **43 Cr.L.J. 28.**

——**(as applied to Howrah), S. 534**—Prosecution under S. 488/300—Limitation. *See* 1941 Dig., Col. 172. N. N. BOSE *v.* MANAGER, KEDARNATH JUTE MANUFACTURING CO., LTD. **43 Cr.L.J. 33.**

——**S. 534 (1)**—Limitation—Duty of Magistrate. *See* 1941 Dig., Col. 172. ATUL CHANDRA BHANDARY *v.* CORPORATION OF CALCUTTA. **199 I.C. 179=14 R.C. 534=43 Cr.L.J. 513=A.I.R. 1942 Cal. 142 (2).**

——**S. 535**—*Complaint by Sanitary Inspector in his personal capacity—If competent.*

Under S. 535 (2) of the Calcutta Municipal Act, a Msgistrate is not entitled to act upon a complaint filed by a Sanitary Inspector in his personal capacity and not on behalf of the Municipality when he is not residing or owning property in Calcutta. (*Lodge and Blagden, JJ.*) KESHABDEO KEDIA *v.* BANERJEE. **202 I.C. 753=43 Cr.L.J. 900=A.I.R. 1943 Cal. 31.**

CANTONMENTS ACT (II OF 1924), S. 210 (3) (a)—*'Same part of the Cantonment"—Meaning of.*

Under S. 210 (3) (*a*) of the Cantonments Act, a person who has been carrying on a trade in the same part of the Cantonment from the commencement of the Act is not bound to apply for a licence unless the Cantonment authority has given him three months' notice of his obligation to apply for a licence. The word 'part' in this clause means something more than the same shop or the same house. It may well cover all that part of the Cantonment where the bazaar is situated and where the trader can carry on his occupation without offence or danger to other parts of the Cantonment not used for the purpose of a bazaar, but where residences of officers or the barracks for troops are situated. (*Davies, C.J. and Weston, J.*) EMPEROR *v.* NATHOO. **I.L.R. (1942) Kar. 87=15 R.S. 6=201 I.C. 66=43 Cr.L.J 733=A.I.R. 1942 Sind 95.**

——**Ss. 210 (3) (a) and 213**—*Person carrying on trade from commencement of Act—Obligation to apply for licence—Failure to apply—Offence.*

Where a person had been carrying on a trade in the same part of the cantonment from the commencement of the Act, there is no obligation upon him to apply for licence to carry on the trade and it is incumbent upon the cantonment authority to give him three months notice of his obligation to apply for a licence; without such notice he cannot be convicted for carrying on trade without a licence. (*Davis, C. J. and Weston, J.*) EMPEROR *v.* NATHU. **I.L.R. (1942 Kar. 87=15 R.S 6=201 I.C.66=43 Cr.L.J. 733=A.I.R. 1942 Sind 95.**

CATTLE TRESPASS—Damage done by cattle of various persons—Allocation of extent of damage by each not possible—Damage to which plaintiff would be entitled. *See* 1941 Dig., Col. 173, HAR KRISHNA LAL *v.* QURBAN ALI. **17 Luck. 284=A.I.R. 1942 Oudh 73.**

CENSUS ACT (XXIV OF 1939), S. 9—*Sanction for prosecution—Formalities—Particulars — Necessity for statement of.*

Where in a case the Sub-divisional Magistrate moved the District Magistrate for sanction under S. 10 of the Census Act to prosecute a census officer without mentioning or even knowing any particulars and proceeded to summon the accused on receipt not of a sanction by the District Magistrate, but of an intimation by the District Census Officer that the District Magistrate had sanctioned the prosecution, there is no legal sanction as required by the Act, and the case should not be allowed to proceed any further. (*Dhavle, J.*) RAM SAKAL SINGH *v.* EMPEROR. **197 I.C. 359=14 R.P. 319=8 B.R.192=43 Cr.L.J. 160=1941 P.W.N. 677=A.I.R. 1942 Pat. 130.**

——**S. 9 (a)**—*Ingredients of offence—Conviction—Evidence requisite for — Accused producing receipt equivalent to discharge—Effect of.*

S. 9 (*a*) of the Census Act deals with refusal or neglect to use reasonable diligence in performing any duty imposed upon a census officer for not obeying any order issued to him in accordance with the Act or any rule made under it when there is no mention of any particular occasion on which the officer failed to discharge any particular duty imposed upon him and where there is no evidence on the record to show that he had disobeyed any orders sent to him in accordance with the Act or any rule under the Act, the conviction of the officer cannot be sustained, especially when he has produced a receipt equivalent to his discharge. (*Dhavle, J.*) RAM SAKAL SINGH *v.* EMPEROR. **197 I.C. 359=14 R.P. 319=8 B.R. 192=43 Cr.L.J. 160=1941 P.W.N. 677=A.I.R. 1942 Pat. 130.**

——**S. 11, Proviso**—Prosecution for giving false answer to census officer under Ss. 193 and 417, I. P. Code—Sanction of Provincial Government—If necessary. *See* 1941 Dig., Col. 173. EMPEROR *v.* HARIDAS UKIL. **198 I.C. 196=14 R.C. 457=43 Cr.L.J. 326.**

——**S. 13**—*Record by census officer—Entries made therein by outsider—Admissibility in criminal proceedings.*

Under S. 13 of the Census Act, a book, register or record made by a census officer is not admissible in evidence in a criminal proceeding relating to an offence which is not an offence under that Act, even in respect of entries made therein by an outsider. (*Lodge and Roxburgh, JJ.*) EMPEROR *v.* HARI CHARAN CHAKRAVARTY. **46 C.W.N. 258.**

CENTRAL PROVINCES ACTS, ETC.

Children Act (X of 1928).
Court of Wards Act (XXIV of 1899).
Debt Conciliation Act (II of 1933).
Excise Act (I of 1915).
Land Alienation Act (II of 1916).
Land Revenue Act (II of 1917).
Local Self Government Act (IV of 1920).
Money Lenders Act (XIII of 1934).
Motor Vehicles Taxation Act (1940).
Municipalities Act (II of 1922).
Prohibition Act (1938).
Reduction of Interest Act (XXXII of 1936).
Relief of Indebtedness Act (XIV of 1939).
Tenancy Act (I of 1920).
Usurious Loans Act (1918) (Amendment Act) (1934)
Village Sanitation and Public Management Act (1920).

CENTRAL PROVINCES CHILDREN ACT (X OF 1928) S. 3—*Applicability—'Youthful' offender.*

Only S. 3 of the Central Provinces Children Act is made applicable to male persons in the whole of the Central Provinces with effect from 15th September, 1932. That section contains the definition of the expression 'youthful offender' but it cannot include the case of a boy under the age of 16 years at the time of conviction and sentence who has been convicted of any offence punishable with death. It is wrong for the Sessions Judge to suppose that the whole Act was brought into force in the Central Provinces and under that mistaken impression fail to award the sentence provided by law. (*Niyogi, J.*) PROVINCIAL GOVERNMENT, CENTRAL PROVINCES AND BERAR *v.* MAKHOO HIRDE LODHI. **I.L.R. (1942) Nag. 305=200 I.C. 368=15. R.N. 11=43 Cr.L.J. 631=1942 N.L.J. 210=A.I.R. 1942 Nag. 74.**

CENTRAL PROVINCES COURT OF WARDS ACT (XXIV OF 1899)—*Scope—If contemplates taking over of a partnership business by the Court of Wards against the wishes of other partners.*

The Central Provinces Court of Wards Act limits itself throughout to the 'person or property' of the Government Ward. A partnership business and its assets are not the property of the Ward. They belong to the firm and cannot be split up among the partners until dissolution. The Act does not contemplate the taking over of a partnership business by the Court of Wards against the wishes of other partners. (*Stone, C.J. and Bose, J.*) SUNDRA BAI *v.* RAMLAL MADHAO RAO. **1942 N.L.J. 229.**

——**S. 13 (1)**—*Scope of—Substantial compliance with—Sufficiency.*

The provisions of S. 13 (1) of the Central Provinces Court of Wards Act are of course mandatory, but they are procedural and all that the section requires is substantial compliance with its terms rather than compliance with the letter, and provided there is no prejudice or injury, the Court of Wards can waive small and unessential irregularities. (*Stone, C.J. and Bose, J.*) SUNDRA BAI *v.* RAMLAL MADHAO RAO. **1942 N.L.J. 229.**

——**Ss. 15 (3), 12 and 13**—*'Claim' contemplated by S. 15 (3)—Receipt of claim submitted and documents produced—Effect—S. 15 (3) when comes into operation.*

S. 15 (3) of the Central Provinces Court of Wards Act only speaks generally of "a claim" and not of a claim submitted in accordance with the provisions of S. 12 (1). Hence when "a claim" though not strictly in accordance with S. 12 (1) is once received and the documents produced are accepted the force of Ss. 12 and 13 spends itself so far as the claim submitted and received and the documents produced are concerned. When the parties are unable to agree as to the settlement of the claim, S. 15 (3) of the Act comes into operation. (*Stone, C.J. and Bose, J.*) SUNDRA BAI *v.* RAMLAL MADHAO RAO. **1942 N.L.J. 229.**

——**S. 30**—*Scope.*

S. 30 of the Central Provinces Court of Wards Act can only relate to suits which the ward alone can bring It clearly cannot affect the rights and interests of others who are not affected by the Act. It is doubtful whether the section prevents the ward from suing. (*Stone, C.J. and Bose, J.*) SUNDRA BAI *v.* RAMLAL MADHAO RAO. **1942 N.L.J. 229.**

CENTRAL PROVINCES DEBT CONCILIATION ACT (II OF 1933), S. 4—Prescribed—Meaning of—Increase of pecuniary limit by notification—Legality—Rule and notification—Difference. *See* 1941 Dig., Col. 174. MANAGER, COURT OF WARDS *v.* MOOLCHAND. **200 I.C. 715=15 R.N. 18.**

C. P. DEBT CONCILIATION ACT (1933), S. 12

——**Ss. 7 and 8**—Absence of notice—Validity of subsequent proceedings. *See* 1941 Dig., Col. 174. NANHOO *v.* ZILLIMUL. **I.L.R. (1941) Nag. 732=198 I.C. 262=14 R.N. 210=A.I.R. 1942 Nag. 3.**

——**Ss. 8 and 9 A**—Absence of verification of statement—If a curable irregularity. *See* 1941 Dig., Col 175. ABDUL MAJID KHAN *v.* DIGAMBAR JAIRAM. **199 I. C. 427=14 R.N. 276.**

——**S. 8**—*Discharge of debt, how arises—Not a matter of declaration but a statutory effect.*

The Debt Conciliation Act makes no provision for the passing of any order discharging the decree under S. 8 of the Act. The discharge comes about automatically, as a result of statutory provision, and without any order, when certain indicated facts occur. (*Stone, C. J.*) MAKHANLAL *v.* BODHIRAM. **1942 N.L.J. 348.**

——**Ss. 8 (2), 9 (1) and 9-A**—Statement signed and filed by creditor's son—Sufficient compliance with requirements. *See* 1941 Dig., Col. 175. NETRAM *v.* BHAGWAN. **199 I.C. 354=14 R.N. 272.**

——**S. 12**—*Agreement under—Validity—Non-compliance with prescribed form—Inclusion of extraneous matter.*

Where there is clearly an amicable settlement between the debtor and his creditors, and this settlement is reduced to writing in the form of an agreement as required by S. 12 of the Debt Conciliation Act, the mere fact that it contained extraneous matter and was not in the prescribed form would not invalidate it as an agreement. (*Pollock, J.*) GULAM ALI *v.* ABDUL HUSSAIN. **1942 N.L.J. 52.**

——**S. 12**—*Effect of agreement under—Questioning its validity and cancelling it—Powers of Revenue Court and Debt Conciliation Board.*

Under S. 12 of the Central Provinces Debt Conciliation Act an agreement once executed has the effect of a Civil Court decree. A Revenue Officer cannot dispute its validity when called upon to execute it, and a Debt Conciliation Board has no power of review and no general power to cancel an agreement once executed. For cancellation a Civil Court would have to be moved. (*Greenfield, R.A.*) CHAND KHAN *v.* SYED AMIR MOHAMMAD. **1942 N.L.J. 60.**

——**S. 12**—*Scope and object of the Act—Fraudulent concoction of debts to show the necessary percentage of consenting creditors—Refusal of relief.*

The Central Provinces Debt Conciliation Act was designed to secure a particular class of debtors from the rapacities of creditors and was never intended to be used as an instrument of fraud. The whole basis on which conciliation proceeds is destroyed, if a debtor when coming before such a tribunal under the powers conferred by such an Act, fraudulently concocts debts so that an imaginary percentage of creditors appears to be willing to agree. Where false creditors falsely appear to agree to a false agreement, the Board necessarily brings into play powers which it would know it did not possess were it not for the fraud. The Board's conciliation falls to the ground. Agreements made must be set aside. (*Stone, C.J. and Bose, J.*) BHUPSINGH *v.* HIRAGIR. **1942 N.L.J. 194.**

——**Ss. 12 (1) and 13**—*Agreement under S. 12 (1)—Decree on mortgage to be obtained in case of default—Proper remedy open to mortgagee.*

An agreement drawn up under S. 12 (1) of the Central Provinces Debt Conciliation Act provided that if there was a default in the payments as set out the creditor had the full right to recover the amount due by obtaining a decree on the mortgage. It was *held*, that the proper procedure to enforce the agreement was by having

C.P. DEBT CONCILIATION ACT (1933), S. 12-B.

resort to S. 13 of the Act. (*Gruer, J.*) ATMARAM SAO v. SHEOPRASAD. **1942 N.L.J. 18.**

——**S. 12 B**—*Applicability—Instalment falling due on* 1—4—39.

S. 12-B, C. P. Debt Conciliation Act applies to all agreements registered on or after 1—4—33 and to that extent it is retrospective. But there is nothing in that section to indicate that it is applicable to instalments which fell due prior to the Act coming into force. Hence an instalment which fell due on 1—4—39 would not be postponed by that section. (*Binney, F.C.*) GAJANAN *v.* RAMGOPAL. **1942 N.L.J 384.**

——**S. 13**—*Application under — Suspension—Proceedings after expiry of period of—Fresh application, if necessary.*

Under S. 13 of the C. P. Debt Conciliation Act, when an instalment is not paid, the amount is recoverable as an arrear of land revenue. Where in respect of an instalment which fell due on 1—4—39 an application was duly made within time but the instalment was suspended till I—4—40, after that date proceedings to recover the instalment due can be continued without a fresh application. (*Binney, F.C.*) GAJANAN *v.* RAMGOPAL. **1942 N.L.J. 384.**

——**S. 13**—*Instalments due from debtor having only a life estate in* inam *holding—Recovery by sale of* inam *holding on the death of the debtor.*

Where the debtor who had agreed to pay instalments under the Debt Conciliation Act has only a life estate in an *inam* holding fails to pay and dies, the debt cannot be recovered from the *inam* holding when it had once passed to his heirs. (*Binney, F.C.*) PRABHAKAR SHANKARRAO *v.* SHAMSHERALI ABDUL. **1942 N.L. J. 562.**

——**Ss. 13 and 13-A**—*Order permitting deposit in proceedings under S.* 13—*Nature of—Jurisdiction of Commissioner to interfere with such order.*

An order permitting a debtor to deposit the amount due in proceedings under S. 13 of the Central Provinces Debt Conciliation Act is one passed under S. 13 of the Act and cannot be construed to be one passed under Central Provinces Land Revenue Act. The Commissioner has no jurisdiction to interfere with such an order of the Deputy Commissioner. (*Binney, F.C.*) DAYALDAS *v.* RAMRAO. **1942 N.L.J. 68.**

——**S. 13 (1)**—*Applicability—Execution of agreement in Civil Court, when permissible.*

S. 13 (1) of the Central Provinces Debt Conciliation Act applies only when the debtor has defaulted in paying any amount due in accordance with the terms of the agreement under S. 12. Where there is no term in the agreement as to the mode of payment, S. 13 would not apply and it would be open to the decree holders to take out execution in the Civil Court. (*Pollock, J.*) GULAM ALI *v.* ABDUL HUSSAIN. **1942 N.L.J. 52.**

——**S. 13 (1), (as applied to Berar)**—*Berar Land Revenue Act, S.* 164 (c)—*Order of Deputy Commissioner on application under S.* 13 *of Central Provinces Debt Conciliation Act—Appeal.*

The Deputy Commissioner in taking cognizance of an application under S. 13 of the Central Provinces Debt Conciliation Act exercises jurisdiction under the Berar Land Revenue Code and his procedure is governed by Chap. XII. An order directing recovery to proceed under S. 13, Central Provinces Debt Conciliation Act is an order passed under S. 164 (*c*) which is a section in Chap. XII of the Berar Land Revenue Code and an appeal lies to the Commissioner against such an order. (*Greenfield.*) WASUDEO *v.* NIHAL CHAND. **1942 N. L.J. 34.**

C. P. LAND REV. ACT (1917).

——**S. 13 (3)**—*Order granting certificate under—Appeal.*

An order of the Deputy Commissioner granting under S. 13 (3) of the C. P. Debt Conciliation Act, a certificate as to non recoverability of an instalment is not appealable. (*Greenfield, R.A.*) ISHWARI PRASAD HARI PRASAD *v.* SHANKARLAL. **1942 N.L.J. 420.**

——**S. 13 (3)**—*Transfer of land and payment of instalments agreed to—Land not transferred—Certificate, if can be issued.*

Where the settlement provides for the transfer of land and payment of instalments, on the failure to transfer the land a certificate under S. 13 (3) of the C.P. Debt Conciliation Act could not be given by the Deputy Commissioner. (*Greenfield, R. A.*) ISHWARI PRASAD HARI PRASAD *v.* SHANKARLAL. **1942 N.L.J. 420.**

——**S. 13-A**—*Order as to retention of deposit until determination of person entitled to it—If appealable.*

Where in permitting a deposit to be made under S. 13-A of the C. P. Debt Conciliation Act, it is ordered to be retained till the determination in civil suit of the person entitled to receive it, the order is not appealable under C.P. Land Revenue Act. (*Binney, F.C.*) DAYALDAS GIRDUSA *v.* RAMRAO MUKUND RAO. **1942 N.L. J. 390.**

——**S. 15 (2)**—*Cantankerous creditor who refused to accept any terms of settlement—Allowing of maximum rate of interest—Propriety.*

Where a creditor had behaved in an extremely untractable manner before the Debt Conciliation Board and not only refused what the Board considered a fair offer but also refused to make a settlement on any terms whatever, it was held that it was manifestly unfair that such a person should be awarded the maximum rate of 6 per cent. which the law provided and that 2 per cent. would be the proper rate. (*Grille and Pollock, JJ.*) KALUSINGH *v.* CHHITTU SINGH. **1942 N.L.J. 455.**

CENTRAL PROVINCES EXCISE ACT (I OF 1915), Ss. 34 (a) and 37 and Rr. 84 (7) and 498—*Rules regarding collection of a fee or the necessity of licence in respect of purchase or indent of foreign liquor—If* ultra vires.

Before Government can make rules for licence or collect fees in respect of purchase or indent of foreign liquor, it must be empowered to do so *under the Act*. The C. P. Excise Act (as distinct from the rules) nowhere authorises the collection of a fee or requires the possession of a licence in respect of the purchase of or indent of liquor. The Act nowhere prohibits or regulates or restricts the purchase or indent of liquor, whether foreign or otherwise. Such restrictions or prohibitions cannot be imposed by the rules. Hence Rr. 84 (7) and 498 are consequently *ultra vires* in so far as they attempt to regulate the purchase or indent of liquor. A violation of such rules cannot be punished as offences under the Act. (*Bose, J.*) J. V. C. LOBO *v.* EMPEROR. **203 I.C. 532 = 1942 N.L.J. 552 = A.I.R. 1942 Nag. 133.**

CENTRAL PROVINCES LAND ALIENATION ACT (II OF 1916), S. 9—Mortgage prior to Act—Subsequent declaration of mortgagor to be a member of an aboriginal tribe—Mortgage, if affected. *See* **1941** Dig., Col. 176. JANKILAL *v.* DEPUTY COMMISSIONER, BILASPUR. **I.L.R. (1942) Nag. 602.**

CENTRAL PROVINCES LAND REVENUE ACT (II OF 1917)—*Irrigation rights—Entry in settlement* khasra—*Value.*

The entries in a settlement *khasra* as to irrigation from a particular source does not necessarily imply a *right* to irrigation. In the absence of an indication that such a right was recognized at settlement, it would

be wrong to make such an entry in the record of rights. (*Binney, F.C.*) QAZI ISHAQUE MOHAMMAD, *In re.* **1942 N.L.J. 160.**

———*Scope of the conclusive effect of revenue entries.*

The conclusive effect of revenue entries should be restricted to the purposes of the C. P. Land Revenue Act under which they are made. They should not lightly be allowed to destroy legal rights, and when such rights exist they should not be found against unless one is compelled so to do as the consequence of a conclusive presumption. (*Stone, C.J.*) CHHOTELAL *v.* SUDDIBAI. **1942 N.L.J. 403.**

———**S. 2 (17) and C.P. Tenancy Act (1920), S. 49**—Revival of *sir* right—Re-acquisition of a portion of proprietary right, if enough—Beneficial construction of S. 2 (17) of the C.P. Land Revenue Act and S. 49 of the C.P. Tenancy Act. *See* 1941 Dig., Col. 176. KESHEORAO BAPUJI *v.* GANESHRAO. **200 I.C. 806=15 R.N. 27.**

——— **S. 49**—*Mutation—Basis for—Registered sale deed in satisfaction of decree—Sufficiency.*

A registered sale deed executed in consideration of the satisfaction of a decree debt is sufficient evidence of transfer of possession for the purposes of recording the share transferred in the vendee's name. (*Binney, F.C.*) BADRI NARAYAN GOPAL PRASAD *v.* MOHANLAL JAGANNATH SONAR. **1942 N.L.J. 474.**

———**S. 49**—*Proceedings under—Conditions for initiation—Duty of Thasildar in relation thereto—Removal of recorded proprietor with defective title but in possession, if possible.*

Proceedings under S. 149 of the C. P. Land Revenue Act can only be initiated when there has been a change of the possession recorded in the register of proprietary mutations. If there has been a transfer of possession, the Thasildar has to decide whether the person who has entered into possession is in "lawful possession'. If he finds that no one can be said to have entered into lawful possession, he has to report to the Sub-divisional Officer who decided which person is best entitled to the property and who can, if necessary, oust a person who has obtained unlawful possession. But sub-Ss. (2) and (3) cannot be used independently of sub-S. (1) to remove a recorded proprietor whose title has been found to be defective but who has not lost possession. (*Binney, F.C.*) ABDUL RASHID KHAN *v.* MUSTKEEM KHAN. **1942 N.L.J. 536.**

———**S. 56**—*Right of Provincial Government under—If lost by transfer of military land without recovering capitalisation of land revenue.*

The Government of India held certain land on behalf of the Secretary of State who had prescribed rules which covered the disposal of that particular kind of land. These rules are shown in Revenue Book Circular 17. The note to R. 8 makes it clear that the Government of India is not entitled to dispose of land as a revenue free holding unless the capitalized value of the land revenue has been paid to the Local Government. Where in such a case there was nothing to indicate that the capitalized value was recovered from the purchaser, it was held that in the circumstances the Provincial Government's rights under S. 56, C. P. Land Revenue Act, to levy land revenue was not affected by the transfer even though the transfer mentioned that it was free from all encumbrances. (*Binney, F. C.*) HANSKUMAR KISHANCHAND, *In re.* **1942 N.L.J. 165.**

———**S. 78**—*Settlement Instructions—Recording of irrigation rights—Presumption—Onus as to absence of enquiry.*

In view of S. 78 of the Central Provinces Land Revenue Act and Settlement Instructions which make

it obligatory upon a Settlement Officer to ascertain and record the custom in regard to irrigation rights in each village it has to be presumed that due enquiry was made by him before he prepared the *wajib-ul-arz*. The burden of proof lies upon the person who asserts that no such enquiry was made. (*Pollock and Gruer, JJ.*) HALDHAR *v.* NANHU. **1942 N.L.J. 102.**

———**S. 84 (3)**—*Drawback allowed under—Liability of lambardar to account for.*

The drawback allowed under S. 84 (3) of the Central Provinces Land Revenue Act is part of the village profits for which the lambardar is liable to account to his co-sharers. (*Grille and Gruer, JJ.*) RAJA RAM *v.* BABULAL GOVINDRAM HISSAR. **I.L.R. (1942) Nag. 615=202 I.C. 524=15 R.N. 87=1942 N.L.J. 211=A.I.R. 1942 Nag. 124.**

———**Ss. 106 (a) and 88**—*Lands within settled mahal—Enhancement of assessment—Powers.*

The C. P. Land Revenue Act does not permit the enhancement of the assessment of a mahal on the ground that it had escaped assessment at settlement. S. 106 (*a*) of the C. P. Land Revenue Act which empowers settlement officers to assess land revenue on lands which are liable to assessment but have not been assessed, cannot be invoked to impose assessment on lands in a settled mahal. The assessment on the mahal is fixed for the period of settlement. It is only under the second proviso to S. 88 (1) that assessment can be revised. (*Binney, F.C.*) SHAMRAO BHAGWANTRAO DESHMUKH, *In re.* **1942 N.L.J. 365.**

———**S. 112**—*Scope.*

S. 112, C. P. Land Revenue Act, is intended to be used where the protected thekadar has failed to pay share of the profits to the other members of the family entitled to a share in the theka. The section is not mandatory and should only be used in the case of persistent defaults by the *thekadar*. (*Binney, F. C.*) BRIJLAL *v.* JAILAL. **1942 N.L.J. 596.**

———**Ss. 141 (2), 146 and 148**—*Holding of sale before expiry of 30 days—Irregularity if affects sale.*

The holding of a sale before the expiry of 30 days prescribed by S. 141 (2), C.P.Land Revenue Act, cannot make it a void one. The same principles which apply to Civil Court sales are applicable to revenue sales also (*Binney, F. C.*) TANSA CHIMANSA KALAR *v.* KEDARNATH RAMNATH BHARGAO. **1942 N.L.J. 373.**

———**S. 145**—*Scope of—Sufficient compliance with—Tender in Court of money to be deposited on the last day but after treasury was closed—Payment into treasury the next day—Revenue Book Circular 11-15 if affects the law on the subject.*

S. 145 of the C. P. Land Revenue Act lays down that the deposits may be made within 30 days from the date of the sale. The implication is that the deposits may be made within Court hours and there is nothing in the section which could possibly justify the refusal of an amount offered in Court hours but after the closing of the treasury to public transactions. That would be a sufficient compliance with the provisions of S. 145. Revenue Book Circular 11-15 does not affect the law on this subject. (*Binney, F.C.*) MOOLCHAND *v.* MST. RADHABAI. **1942 N.L.J. 163.**

———**S. 145**—*Who can apply under—Person acquiring interest after sale.*

Where the interest in the property sold has been acquired after such a sale, the person acquiring such interest is not entitled to apply under S. 145 of C. P. Land Revenue Act for setting it aside. (*Binney, F.C.*) DAYA SHANKAR *v.* RAJA DOLAN SINGH. **1942 N.L.J. 545.**

C. P. LAND REV. ACT (1917), S. 146.

——**S. 146**—*Facts to be proved by applicant.*

An applicant under S. 146, C. P. Land Revenue Act, must prove to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by some mistake or irregularity in the proceedings. More is required of the applicant than under R 90 of O. 21, C. P. Code. (*Binney, F. C.*) GANPATRAO DESHMUKH *v.* PARMANAND DUBEY. **1942 N.L.J. 613.**

——**S. 146**—*Sale under proclamation issued without authority—Receipt of sanction prior to sale—Sale if can be impugned.*

There is no jusitification for holding that a sale by public auction properly advertised is void because the officer signing the proclamation had not at the time of the issue of the proclamation authority to insert a condition that it was subject to encumbrances, which condition was subsequently approved by the proper officer prior to the actual date of sale. (*Binney, F. C.*) SADASHIV *v.* P. P. DEO. **1942 N.L.J. 70.**

——**S. 157**—*Bid by superior proprietor at whose instance sale is held—Right to set off.*

It is only in rare cases, such as in proceedings under S. 157 of the C. P. Land Revenue Act, and in recovery of instalments under the Debt Conciliation Act and the Relief of Indebtedness Act, that recoveries are made on behalf of individuals. There is nothing objectionable in permitting such individuals, if the property is purchased by them, to set off the amount due to them in the proceedings. Hence a superior proprietor who has obtained an order under S. 157 can be allowed, if he bids at the sale, to set off the amount due to him. (*Binney, F.C.*) DAYA SHANKAR *v.* RAJA DOLAN SINGH. **1942 N. L.J. 545.**

——**Ss. 160 and 188 (2) (c)**—*Suit for account of village profits and payment—Starting point.*

Where a suit is essentially one for an account of village profits and payment the remedy is founded on the statutory duty imposed by S. 188 (2) (*c*) of the C. P. Land Revenue Act which duty arises in the year following the year in which the profits arise. Such a suit is not for profits but for payment of sum found due on taking account. The caase of action arises in the year following the year in which the profits arise. (*Stone, C. J.*) GAJADHAR PRASAD *v.* GOVIND. **I.L.R. (1942) Nag. 320=200 I.C. 591=15 R.N. 2=1942 N.L.J. 111=A.I.R. 1942 Nag. 95.**

——**Ss. 174 and 203**—*Imperfect partition between two brothers—Each allowed to retain house in the patti of the other—Retention if as licensee.*

Where there is an imperfect partition of a village between two brothers and each is allowed to retain the house occupied by him in the patti of the other, their position regarding the houses is not as that of licencees. To such a case S. 203 of the C. P. Land Revenue Act cannot apply for the person in occupation was originally a proprietor of the mahal. The retention of the house must be held to be under the conditions contemplated by S. 174 of the Act. (*Stone, C. J. and Bose, J.*) BEHARI LAL ASARAMSAO *v.* GYANIRAM NARAYAN. **203 I C. 67=13 R.N. 106=1942 N.L.J. 506=A.I.R. 1943 Nag. 23.**

——**S. 187**—Minor lambardar—Exercise of powers—Procedure. *See* 1940 Dig., Col. 157. BRIJ MOHAN SINGH *v.* TULSIRAM. **I.L.R. (1942) Nag. 53.**

——**S. 187 (3)**—Interpretation—'The duties of the office'. *See* **1940** Dig., Col. 157. BRIJ MOHAN SINGH *v.* TULSIRAM. **I.L.R. (1942) Nag. 53.**

——**S. 188**—*Lambardar's liability to account—Nature and extent—Joint management with a co-sharer—Liability, how affected.*

C. P. LOCAL SELF-GOVT. ACT (1920), S. 73.

The lambardar is under S. 188, Land Revenue Act, under a statutory liability to account. He is the person entitled and bound to recover the village profits and he is bound to account for them to his co-sharers. If he allows another person to recover some portion of the profits, then that person must be regarded as his agent and that in no way relieves the lambardar of his responsibility. (*Stone, C.J. and Bose, J.*) RADHIKA PRASAD *v.* NANDKUMAR. **1942 N.L.J. 355.**

——**S. 188**—*Village profits—Right to interest on—Plea of non-realisation of rent—Onus.*

Interest can be allowed on village profits which are unreasonably withheld. Where parties are members of the same family and one or other is associated in the management of the property it is not right to allow interest until such time as relations became strained and one side demanded profits and interest from the other. When the lambardar pleads non-realisation of certain rents, the onus is on him to prove that they were not in fact realised. (*Stone, C.J. and Bose, J.*) RADHIKA PRASAD *v.* NANDKUMAR. **1942 N.L.J. 355.**

——**S. 188 (2)**—*Calculation of profits payable to co-sharers—Rent of ex-proprietary holding—If to be taken into account.*

When a person in exclusive ownership of *sir* land transfers it to another, he becomes the tenant of his vendee and not of the entire proprietary body and pays the rent only to the vendee. Hence the rent fixed for such a holding has to be taken into account in calculating the village profits payable to the co-sharers. (*Pollock, J.*) DAU PARMANAND *v.* DAU KANHAIYALAL. **I.L.R. (1942) Nag. 599=1942 N.L.J. 475=202 I.C 427=15 R.N. 81=A.I.R. 1943 Nag. 5.**

——**S. 188 (2) (c)**—Duty to account—When arises. *See* C. P. LAND REVENUE ACT, SS. 160 AND 188. **1942 N.L.J. 111.**

——**S. 189**—Removal from office of persons mentioned in—Grounds. *See* 1940 Dig., Col. 158. BRIJ MOHAN SINGH *v.* TULSIRAM. **I.L.R. (1942) Nag. 53.**

——**S. 192 (1)**—*Order fixing remuneration under—When takes effect—Retrospective operation in respect of suit for rendition of account.*

An order fixing the remuneration of a lambardar under S. 192 (1), Central Provinces Land Revenue Act relates back to the date of the appointment as it is an order which ought to have been passed on that date. Hence though a suit for rendition of accounts is filed before the date of the order, it could be given retrospective effect and the amount due as remuneration can be set off as against the profits found due. (*Niyogi, J.*) VITHAL *v.* JAGANNATH. **1942 N.L.J. 30.**

CENTRAL PROVINCES LOCAL SELF-GOVERNMENT ACT (IV OF 1920), Ss. 65 and 79 (1) (vi)—*Effect of rules framed in regard to election disputes—Powers of Court under S. 65*

From the rules framed under S. 79 (1) (*vi*) of the C. P. Local Self Government Act it must be inferred that it was never intended to depart from the principle that there should be no interference with decisions of petition Courts in election cases and that the powers under S. 65 should only be exercised in very exceptional circumstances. (*Binney, F.C.*) KUNJ BIHARILAL *v.* PANDIT PREMSHANKAR. **1942 N.L.J. 88.**

——**S. 73**—*Applicability—Suit for difference between amount paid to employee and amount payable.*

When a District Council wrongfully withholds part of the pay it has assigned to its employees, then the suit may be on a contract and not for something done or purported to be done under the statute. Where the complaint is that the District Council did not under the C. P. Local Self-Government Act assign to the plaintiff

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Rs. 60 instead of Rs. 50, the suit falls within S. 73 of the Act. (*Pollock, J.*) DISTRICT COUNCIL, BILASPUR *v.* BINDRABEN. **1942 N.L.J. 332.**

——**S. 73 (1) and (2)**—Applicability—Suit for rent due by the council in respect of school premises. *See* 1941 Dig., Col. 180. DISTRICT COUNCIL, WARDHA *v.* ANNA. **I.L.R. (1942) Nag. 294.**

——**S. 75**—Interpretation. *See* 1941 Dig., Col. 181. DISTRICT COUNCIL, WARDHA *v.* ANNA. **I.L.R. (1942) Nag. 294.**

——**S. 79**—*Election rules—Voting by ballot—Right of candidates to demand showing of ballot papers.*

Where the rules for the election of office bearers of the District Council provide that if the ballot paper is signed by a voter or marked by him in any other way that would reveal his identity the vote should be void, the implication is that the candidates can see the ballot papers as otherwise they could not raise objections. (*Binney, F.C.*) KUNJ BEHARI LAL *v.* PANDIT PREMSHANKAR. **1942 N.L.J. 88.**

CENTRAL PROVINCES MONEY-LENDERS ACT (XIII OF 1934)—Applicability—Onus—Money-lender, who is. *See* 1941 Dig., Col. 181. SITARAM *v.* BAJYA. **I.L.R. (1942) Nag. 456.**

——**Ss. 3 (2) and 7 Expl.**—*Account not showing principal and interest separately—Explanation to S. 7, if would apply.*

Where in an account maintained in the *mahajan* system there is no attempt to show principal and interest separately, it cannot be held that such account has been kept in good faith and with the intention of complying with the provisions of S. 3 (2) of Central Provinces Money-Lenders Act and hence the Explanation to S. 7 cannot be relied on in such case a to cure the defects in the account. (*Pollock, J.*) GULABRAO *v.* MT. BASANTIBAI. **1942 N.L.J. 25.**

——**S. 7**—*Applicability—Loan in name of minor son of money-lender—Father money-lender, real lender—Failure to comply with statutory duties—Penalty.*

Where in a suit on a bond executed in favour of a minor filed in the name of the son by the father as the next friend, it is found that the father was for a long time past a money-lender, it is a fair inference that the real lender, the real carrier on of business, is the next friend. Where such a lender has not complied with the statutory duties of maintaining account and furnishing copies of it to the borrower, S. 7 enables the Court to disallow the whole or any portion of interest found due and costs. (*Stone, C.J. and Bose, J.*) SUNDERLAL *v.* SITARAM SANTARAM. **1942 N.L.J. 130.**

——**S. 7, Expl.**—Applicability. *See* CENTRAL PROVINCES MONEY-LENDERS ACT, SS. 3 (2) AND 7 EXPL. **1942 N.L.R. 25.**

——**S. 11**—*Applicability—Final decree for sale in mortgage suit passed.*

S. 11 of the C. P. Money-Lenders Act has no application once a final decree for sale on a mortgage has been passed because once such a decree is passed, the decree ceases to be a decree for payment of a sum of money, or for the payment of an amount found due. (*Stone, C.J. and Bose, J.*) PRATAPSINGH *v.* GOPALDAS. **1942 N.L.J. 150.**

——**S. 11**—*Application under—Forum.*

The proper Court for exercising powers under S. 11 of the C. P. Money-Lenders Act is the decree Court and not the executing Court. (*Stone, C. J. and Clarke, J.*) HARI GOVIND *v.* INDIAN COTTON CO., LTD., BOMBAY. **I.L.R. (1942) Nag. 777.**

——**S. 11**—*Order on application for instalments—Appeal.*

C. P. MUNICIPAL ACT (1922), S. 32.

An order passed on an application for instalments under S. 11 of C. P. Money-lenders Act is appealable. (*Stone, C.J.*) KHWAJA GULAM *v.* ABDUL KADIR. **I.L.R. (1942) Nag. 772=202 I.C. 480=15 R.N. 90=1942 N.L.J. 398=A.I.R. 1942 Nag 140.**

——**S 11**—*Powers under—Nature of—Interference by appellate Court.*

S. 11 of the Money-Lenders Act confers upon the Court discretionary powers and where the discretion is exercised judicially it is not proper for an appellate Court to interfere with it. (*Stone, C.J. and Clarke, J.*) HARI GOVIND *v* INDIAN COTTON CO., LTD., BOMBAY. **I.L.R. (1942) Nag. 777.**

——**S. 13**—*Applicability—Moneylender advancing money for agricultural operations.*

S. 13, C. P. Money-Lenders Act applies only to proprietors who make advances only to their tenants. Where plaintiff describing himself as a money-lender sues to recover money advanced for agricultural purposes, S. 13 does not apply, and he is not entitled to interest claimed where he has admittedly not complied with the provisions of Cl. (*b*) of S. 3 (1) of the C. P. Money-Lenders Act. (*Pollock, J.*) BALKRISHNA SAO *v.* DHANYA. **1942 N.L.J. 339.**

CENTRAL PROVINCES (AND BERAR) MOTOR VEHICLES TAXATION ACT (1940), S. 3 (1)—*Taxation—Liability for, if depends on ownership or use of the motor vehicle.*

The ordinary principle in construing a fiscal statute is that it must be considered in favour of the subject. S. 3 (1) of the C. P. and Berar Motor Vehicles Act provides that tax shall be payable on every motor vehicle used or kept for use in C. P. and Berar. There can be no presumption that a motor vehicle is necessarily kept for use. Whether it was used or not is a matter to be proved. Hence tax is not leviable where a motor vehicle is merely kept. (*Pollock, J.*) BAPU RAO *v.* EMPEROR. **1942 N.L.J. 419.**

CENTRAL PROVINCES MUNICIPALITIES ACT (II OF 1922)—*Rules for assessment of conservancy and water rate—Rr. 9 (a) and 12 (a)—Scope and meaning of—Residential quarters attached to police stations—If can be assessed separately.*

The plain and natural meaning of Rr. 9 (*a*) and 12 (*a*) of the Rules and bye-laws framed by the Local Government for the assessment of conservancy and water rates is that when a portion of the same building or a range of buildings is occupied separately by a family having a separate source of income that portion should be deemed to be an independent and separate building notwithstanding that the portion forms an integral part of a larger structure. It was held that the residential quarters which are attached to a police station could be assessed separately as if they were distinct and independent buildings. (*Niyogi, J.*) DEPUTY COMMISSIONER, NAGPUR *v.* MUNICIPAL COMMITTEE, NAGPUR. **1942 N.L.J. 184.**

——**S. 32 (2), Proviso**—*'Such other day'—Construction—If can mean the same day.*

The words 'such other day' in the proviso to Sub-S. (2) to S. 32 of the C. P. Municipalities Act cannot mean the same day. The word 'other' is used in contrast to the 'same day'—when the statute expressly uses the word 'other' it must, by necessary implication, exclude that day which is not 'other day'. Hence an adjournment of a meeting to some later hour of the same day would not be in accordance with law and any business transacted by the meeting would not be at a properly constituted meeting. (*Niyogi, J.*) NOTIFIED AREA COMMITTEE, KOTA *v.* GOKUL BHAI. **1942 N.L.J. 329.**

C. P. MUNICIPAL ACT (1922), S. 48.

——**S. 48 (2)**—*Applicability—Disconnection of water supply—If continuing wrong—Suit to direct reconnection—Limitation.*

Under the C. P. Municipal Act, the Municipal Committee is under no statutory duty to provide or supply water to a private house. Hence where they disconnect a private waterpipe which they in their discretion had formerly allowed, the doctrine of continuing wrong giving rise to a cause of action from day to day can have no application. A person aggrieved by such an act must seek his remedy within the period prescribed by S. 48 (2) of the C. P. Municipalities Act. (*Grille and Pollock, JJ.*) DHONDBA LAXMAN KALAR *v.* SECRETARY, MUNICIPAL COMMITTEE, NAGPUR. **203 I.C. 400=1942 N.L.J. 526.**

——**S. 66 (1) (c)**—*Bicycle not kept though used within limits of Municipality—Liability to be taxed.*

A bicycle not kept within the limits of the C. P. Municipality though used within such limits is not liable to be taxed because the tax on bicycles can only be levied under S. 66 (1) of the C.P. Municipalitics Act on bicycles 'kept within the limits of the Municipality'—and no question of tax could arise in such a case. (*Bose, J.*) SHEOCHARANLAL *v.* THE SECRETARY, M. C. MANDLA. **1942 N.L.J. 310.**

—— **S. 83 (1) as applied to Berar,**—*Appellate order of Deputy Commissioner—Appeal or revision, if lies against.*

No appeal or application for revision lies to the Commissioner or the Provincial Government against an appellate order of the Deputy Commissioner under S. 83 (1) of the C. P. and Berar Municipal Act: (*Binney, F. C.*) MUNICIPAL COMMITTEE, AKOLA *v.* DHARSI GIGA BHAI. **1942 N.L.J. 221.**

——**Ss. 97 and 98**—Building bye-laws under, framed by Nagpur Civil Station Sub-Committee, bye-law 10—Sub-Committee by resolution interpreting bye-law—Requisition if binding on subsequent meeting of Sub-Committee. *See* 1941 Dig., Col, 182. CAWASHAH BOMANJI *v.* PRAFULLA NATH. **197 I C. 570=14 R.N. 175.**

——**Ss. 97 and 98**—Buiding bye-laws under, framed by Nagpur Civil Station Sub-Committee, bye-law 10 and bye-law 10, proviso 1—Construction of proviso 1—Word "area" in proviso 1—Meaning—Resolution making bye-law 10 (*a*) and (*b*) applicable to bungalow area excepting basti area and new settlements and bye-law 10, proviso 1 to settlements other than bungalow area—If *ultra vires*. *See* 1941 Dig., Col. 183. CAWASHAH BOMANJI *v.* PRAFULLA NATH. **197 I C 570=14 R.N. 175.**

——**S. 133 (1) (c)**—Licence—When necessary—Interpretation—Flour mill worked by electric motor. *See* 1941 Dig., Col. 183. MUNICIPAL COMMITTEE, BILASPUR *v.* WAMANRAO. **I.L.R. (1942) Nag. 269=197 I.C. 300=14 R.N. 157.**

CENTRAL PROVINCES (AND BERAR) PROHIBITION ACT (1938), S. 3 (h)—*Liquor—If includes methylated spirit.*

The definition of liquor in S. 3 (*h*) of the Central Provinces and Berar Prohibition Act as including all liquid containing alcohol is clearly wide enough to include methylated spirit. (*Pollock, J.*) FIDA HUSSAIN *v.* EMPEROR, **1942 N.L.J. 81.**

——**S. 7**—*Scope of.*

S. 7 of the Central Provinces and Berar Prohibition Act merely provides punishment for altering or attempting to alter denatured spirit, and this offence may be committed in addition to possessing such spirit. (*Pollock, J.*) FIDA HUSSAIN *v.* EMPEROR. **1942 N.L.J 81.**

C. P. RELIEF OF INDEBT. ACT (1939), S. 5.

CENTRAL PROVINCES REDUCTION OF INTEREST ACT (XXII OF 1936)—Applicability—Loan, prior to the Act—Judgment in suit on the loan, after the withdrawal of the Act. *See* 1941 Dig., Col. 184. SITARAM *v.* BAJYA. **I.L.R. (1942) Nag. 456.**

——*Applicability—Proceedings pending at the time of expiry of the Act.*

The effect of expiry of a statute is that it is no longer in force and in the absence of a provision to the contrary, no proceedings can be taken on it, and proceedings already commenced determine *ipso facto*. Hence an applicant for relief under C. P. Reduction of Interest Act though he had filed his application when the Act was in force could not be given any relief if the application is decided after the expiry of the Act. (*Bose, J.*) JASRUP BAIJNATH *v.* SETH PARAMANAND DAS. **I.L.R. (1942) Nag. 764=202 I.C. 465=15 R.N. 83=1942 N.L.J. 400=A.I.R. 1942 Nag. 122.**

——**S. 3 (1)**—*Nature of interest if intended to be affected by the Act—Agreement of parties, if the deciding factor.*

The Central Provinces Reduction of Interest Act only contemplates a reduction in the rate of interest and not any change in the nature of interest. Hence, when parties have agreed to compound interest, the rate allowed in the schedule for compound interest can be awarded, while in cases where parties have agreed to simple interest, the rate allowed in the schedule for simple interest can be awarded, but it is not permissible to change from one side of the schedule to the other because one works out at a higher amount than the other. (*Stone, C.J. and Clarke, J.*) ABDUL HUSSAIN *v.* RATANLAL. **1942 N.L.J. 42.**

——**S. 3 (1)**—*Time during which the Act applies.*

It is clear from the wording of S. 3 (1) of the Central Provinces Reduction of Interest Act that the courts have no power to reduce interest beyond the period between 1st January, 1932 and the date fixed by notification (*i.e.*) 31st December, 1939. (*Stone, C.J. and Bose, J.*) DAU BALWANT SINGH *v.* CHHATAR SINGH. **1942 N.L.J. 47.**

——**S. 3 (1) and (3)**—*Limits to power of appellate Court to grant relief.*

An appellate Court is a Court which is intended to put right decrees which were wrong at the date when they were passed. Where a decree was right when it was passed it is sub-S. (3) of S. 3 that applies and not sub-S. (1) of S. 3 of the C. P. Reduction of Interest Act. According to that sub-section the application would have to be made to the lower Court and when the Act has expired such a course is useless. The appellate Court can correct the decree and give relief only when the decree appealed against was wrong. (*Stone, C.J. and Clarke, J.*) ABDUL HUSSEIN *v.* RATANLAL. **1942 N.L.J. 42.**

CENTRAL PROVINCES RELIEF OF INDEBTEDNESS ACT (XIV OF 1939), Ss. 5 (1) and 6—*—Suit for specific performance of contract to sell land—If can be stayed on defendant's application for relief under Relief of Indebtedness Act—Liability of defendant if a debt.*

A relief for specific performance of a contract to sell is not in respect of any liability that can be said to be 'owing' and the prayer that a defendant may be compelled to execute a sale deed can in no sense of the term be described as a 'debt' within the meaning of definition of the word in the Relief of Indebtedness Act. As regards the alternative relief of compensation that is not yet 'owing'. It may never become due, because the Court may decree specific performance itself. Hence there is no 'debt' in respect of that relief also. It follows that a

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suit for specific performance of an agreement to sell land cannot be stayed under the Act because the defendant is not a 'debtor' under that Act. (*Bose, J.*) DEBI PRASAD *v.* LAKHMICHAND. **1942 N.L.J. 460.**

——**Ss. 6 and 23**—*Scope of—Stay of pending proceedings in Civil Court—Necessity of notice under S. 6 (3)—Mere filing of application to Debt Relief Court, not sufficient.*

Ss. 6 and 23 of C. P. and Berar Relief of Indebtedness Act appear to overlap somewhat and the two sections must be read so as to be consistent with each other. Pending proceedings in a Civil Court will not be stayed merely because an application has been made to a Debt Relief Court. There must be a notice issued to the Civil Court announcing the filing of such an application. (*Pollock, J.*) DAMROOLAL *v.* GOKULPRASAD. **I.L.R. (1942) Nag. 675.**

——**S. 6 (1) and (3)**—*Notice of application under the Act served after sale—Stay of confirmation—Proceedings for confirmation if proceedings for the recovery of the debt.*

A notice of application made under sub-S. (1) of S. 6 of the Central Provinces and Berar Relief of Indebtedness Act does not operate to stay the confirmation of a sale of the judgment-debtor's property in which the bid was accepted before the notice of the application was given for this reason that proceedings for confirmation cannot be said to be proceedings for the recovery of the debt. (*Burton, F.C.*) RAMCHANDRA *v.* PANDURANG. **1942 N.L.J. 59.**

——**S. 6 (3)**—*Construction—Proceedings meaning—Sale of joint family property on father's insolvency—Son's application under the Act—Sale in spite of notice under S. 6 (3)—Validity.*

S. 6 (3) of the C. P. Relief of Indebtedness Act is an enactment that takes away jurisdiction from the ordinary Courts and must be construed strictly. The proceedings referred to therein must mean proceedings against a person who has applied to the Debt Relief Court as made clear in the amendment. Hence where an Insolvency Court sells the joint family property on the insolvency of the father, though the sons applied to the Debt Relief Court, and notice of it was given to the Insolvency Court, the latter Court was not obliged to stay proceedings and the sale in spite of the notice is quite valid. (*Pollock, J.*) VINAYAK *v.* DHONDO. **1942 N.L.J. 36.**

——**S. 6 (3)**—*Duty of civil Court on receipt of notice—Question as to maintainability of application for relief if can be gone into.*

When notice is received by a Civil Court under S. 6 (3) of the C. P. Relief of Indebtedness Act the civil Court must stay proceedings and leave it to the parties to raise the question whether the application lies to the Debt Relief Court. It is not for the civil Court to decide whether the application lies and its jurisdiction to do so is barred by S. 23 of that Act. (*Pollock, J.*) GULAM ALI *v.* ABDUL HUSSAIN. **1942 N.L.J. 52.**

——**Ss. 6 (3) and 17**—*Jurisdiction of Debt Relief Courts in case of mortgage claims—Proceedings for passing final decree for foreclosure, if can be stayed under S. 6 (3).*

Reading the relevant provisions of the C. P. Relief of Indebtedness Act as a whole it is clear that mortgages were intended to fall within the purview of the Act and are intended to be included in the definition of 'debt'. But though such claims are so included, a distinction is drawn between the position before decree and after decree. S. 17 of the Act which deals with mortgage decrees, restricts the jurisdiction of the Debt Relief Court after decree in a mort-

C. P. RELIEF OF INDEBT. ACT (1939), S. 20.

gage suit to cases in which a decree 'for payment of money on the mortgage has been passed'. Hence, where a preliminary decree for foreclosure has been passed, there is no decree as contemplated by S. 17 and it follows that proceedings in the Civil Court for making such a decree final cannot be stayed under S. 6 (3) of the C. P. Relief of Indebtedness Act. (*Stone, C.J. and Bose, J.*) DAN BALWANT SINGH *v.* MT. BINDABAI. **I.L.R. (1942) Nag. 357 = 200 I.C. 709 = 15 R.N. 13 = 1942 N.L.J. 113 = A.I.R. 1942 Nag. 88.**

——**Ss. 6 (3) and 23**—*Position of Collector to whom decree is transferred for execution—Receipt of notice from Debt Relief Court—Proper procedure to be followed—Relative scope of Ss. 6 (3) and 23 of the Act.*

The legal position, when a decree is transferred to a Collector for execution is that he is acting under the orders of the Civil Court and is only bound to comply with an order from that Court. If he receives intimation of an application to a Debt Relief Court which is likely to lead to a stay order from the Civil Court, he should grant a suitable adjournment to enable the judgment-debtor to obtain a stay order. But the Collector would not be acting beyond his jurisdiction in refusing to grant such an adjournment. Ss. 6 (3) and 23 do not overlap and S. 23 only bars the assumption of jurisdiction regarding a matter which is being dealt with or has already been dealt with by a Debt Relief Court. But in any case S. 23 only applies to Civil Courts and the Collector is not a Court. (*Binney, F.C.*) CHINTAMAN RAMJI *v.* BALKRISHNA. **1942 N.L.J. 167.**

——**S. 6 (3)**—*Stay of execution— Scope—Decree against agriculturist principal debtors and non-agriculturist surety—Agriculturist debtors seeking debt relief—Decree against surety also, if should be stayed.*

Where a money decree is passed against certain agriculturist principal debtors and against a non-agriculturist surety and all the former only apply for relief to the Debt Relief Court, when notice under S 6 (3) of the Relief of Indebtedness Act is sent to the executing Court the decree against the non-applying surety also should be stayed. The scheme of the Act is not to allow a man not entitled by law to recover the full amount of his debt from his debtors to nevertheless evade the law by being able to execute a decree for the full amount against the surety. (*Grille, J.*) RAJESHWAR VISVANATH *v.* MADHO MORESHWAR. **1942 N.L.J. 391.**

——**Ss. 6 (3) and 23**—*Stay of proceeding in civil Court—Notice under S. 6 (3), necessity of.*

According to S. 6 (3) of the C. P. Relief of Indebtedness Act, proceedings before the civil Court are not to be stayed until the civil Court has received notice under that section—Pending proceedings in a Civil Court will not be stayed merely because an application has been made to a Debt Relief Court. Where though a defendant in a mortgage suit had applied under the Act during the pendency of the suit but no notice was issued under S. 6 (3) to the Civil Court and a final decree was passed it was *held*, that it could not be set aside on the ground of the pendency of proceedings under the C. P. Relief of Indebtedness Act. (*Pollock, J.*) DAMODAR *v.* GOKUL PRASAD. **200 I.C. 14 = 14 R.N. 324 = 1942 N.L.J. 12 = A.I.R. 1942 Nag. 78.**

——**S. 9 (3)**—Application under the Act by some only of defendants in mortgage suit—Stay as against them only—Legality. *See* 1941 Dig., Col. 184. KULESHWAR PRASAD *v.* DWARKA NATH. **I.L.R. (1942) Nag. 577 = 14 R.N. 280 = 199 I.C. 453.**

——**S. 20**—Order of District Court under—Revision by High Court—Competency. *See* 1941 Dig., Col. 184.

C. P. RELIEF OF INDEBT. ACT (1939), S. 23.

HIRALAL v. PARASRAMSAO. 198 I.C. 155=14 R.N. 206=A.I.R. 1942 Nag. 5.

——S. 23—*Applicability — Jurisdiction of civil Court to execute award under Co-operative Societies Act—If barred.*

The jurisdiction of the Civil Courts in the matter of executing an award (having the force of a decree under the provisions of the Co-operative Societies Act) where by a liability is created and the sum becomes due to a society registered under the Co-operative Societies Act is not barred by S. 23 of C. P. Relief of Indebtedness Act. The reason is this. Owing to the operation of Ss. 4, 4 (*b*) of that Act, S. 26 of the Act has no application to such a liability. Unless a matter is transferred to the Debt Relief Court under S. 26 the matter is not "pending before a Debt Relief Court". (*Stone, C.J. and Bose, J.*) CO-OPERATIVE SOCIETY NO. 2, JAIPUR *v.* LAXMANRAO. **1942 N.L.J. 38.**

——S. 23—*Construction—Bar of jurisdiction of Civil Court.*

The provision in S. 23 of the C. P. Relief of Indebtedness Act which bars the jurisdiction of the Civil Courts 'in respect of any matter pending before a Debt Relief Court' must be construed to mean any matter lawfully pending before a Debt Relief Court. (*Stone, C.J. and Bose, J.*) DAU BALWANT SINGH *v.* MT. BINDABAI. **I.L.R. (1942) Nag. 357=200 I.C. 709=15 R.N. 13=1942 N.L.J. 113=A.I.R. 1942 Nag 88.**

——S. 23—Scope and applicability of. *See* C. P. RELIEF OF INDEBTEDNESS ACT, SS. 6 (3) AND 23. **1942 N.L.J. 167.**

CENTRAL PROVINCES TENANCY ACT (I OF 1920), S. 11 (amendment of 1940)—*Applicability—Retrospective operation—Principle as to—Rights of succession—Crucial date.*

An act which affects vested rights and is not merely procedural, that is to say, one that affects merely the method of the enforcement of the rights, cannot be presumed to have retrospective operation. The amendment of 1940 deleted the proviso contained in S. 11 of the C. P. Tenancy Act and is silent as regards its retrospective operation. Hence rights of succession to tenant who died prior to the amendment would be governed by the Act as it stood prior to its amendment. (*Niyogi, J.*) TULARAM *v.* TEJIRAM **I.L.R. (1942) Nag. 205=200 I.C. 54=14 R.N. 316=1942 N.L.J. 72=A.I.R. 1942 Nag. 49.**

——Ss. 12, 13 and 14—*Object of legislature in enacting—Interpretation of Act in consonance with—Duty of Court.*

Ss. 12, 13 and 14 of the C. P. Tenancy Act are designed to protect the heirs of a tenant and to preserve to them, as far as that can be done, the very special estate of inheritance which the tenancy Act and its predecessors have created. That is the broad aim of the legislature. It therefore behoves Courts when interpreting the Act to give effect to that object as far as they can, bearing in mind of course all the usual rules of interpretation. Whenever there is doubt or room for reaching a decision either one way or the other, the endeavour should be to further, as far as that is practicable, the aims of the legislature as gathered from the Act itself. (*Bose, J.*) GANPAT GOVIND *v.* NATHA BAI. **203 I.C. 439=1942 N.L.J. 531=A.I.R. 1942 Nag. 136.**

——Ss. 12, 13 and 14—*Scope and effect of—Transfer in violation of S. 12—Effect—Proceedings under Ss. 13 and 14—Liability of the person put in possession, for arrears of transferor.*

C. P. TENANCY ACT (1920), S. 24.

S. 12 of the C. P. Tenancy Act does not render transfers in contravention of its provisions void. They are only voidable, and that by a limited class of persons and in a very special and limited way. Hence there is no determination of tenancy on such a transfer. Now by virtue of Ss. 13 and 14 the heirs of the transfering tenant steps into the shoes of the transferee and thus acquires the tenancy subject to all its liabilities, just as much as he would have done had he succeeded as an heir on death. The usual rule that the assignee of a tenant's rights is liable for arrears in the same way as the original tenant because of the privity of estate between the landlord and himself, would apply. (*Bose, J.*) GANPAT GOVIND *v.* NATHA BAI. **203 I.C. 439=1942 N.L.J. 531=A.I.R. 1942 Nag. 136.**

——Ss. 12, 13 and 35—Surrender in favour of one, not a lambardar—Remedy of lambardar. *See* 1941 Dig., Col. 185. MAHOMED KHUDABUX *v.* RAMCHANDRA RAO. **198 I.C. 449=14 R.N. 224.**

——S. 12 (2)—*Effect of sale of proprietary interest reserving* khudkasht—*Transferor if becomes occupancy tenant who can claim exemption from attachment and sale.*

When a proprietor's entire interests in a village is sold excluding *khudkasht*, it is doing that which is legally impossible so far as *khudkasht* is concerned. The *khudkasht* is not his to be so reserved or excluded. The sale of the share would be good and would stand. The reservation or exclusion would be bad in the sense that no right, title or interest in the land would remain in the proprietor or transferor. It may well be that it would not be altogether ineffective as between the transferor and transferee, It may be that an estoppel would arise as between them but it would not affect the rights of third parties and it would not make the transferor a tenant of some sort so as to claim exemption from attachment and sale so far as the *khudkasht* is concerned. (*Stone, C.J. and Bose, J.*) UMABAI DESHPANDE *v.* DATTATRAYA. **1942 N.L.J. 177.**

——Ss. 13 and 12—*Acceptance of surrender by co-sharer working as joint lambardar—Surrender if in contravention of S. 12—Right of acquiescing lambardar to challenge.*

Where a surrender of an occupancy holding is accepted by a co-sharer who was for long working as joint lambardar and taken to be such by all including the lambardar appointed it is not open to the latter to seek to set aside the surrender as being in contravention of S. 12 of the C. P. Tenancy Act inasmuch as he himself had acquiesced in treating the other as joint lambardar, though not really appointed as such. The latter must be taken to have acted as a co-sharer on behalf of the proprietary body and with the implied consent of the lambardar. (*Binney, F.C.*) SAMIULLAH KHAN *v.* KEDARNATH. **1942 N.L.J. 69.**

——S. 14 (2)—*Application putting forth claim—If can be made after date fixed.*

S. 14 (2) of the C. P. Tenancy Act prescribes for a notice to all known heirs and a proclamation inviting all persons claiming to be heirs to appear on a particular date fixed. The section does not bar the consideration of a claim made even after the date so fixed. (*Binney, F.C.*) CHANDRABAI KALAR *v.* RATANLAL BALGOVIND. **1942 N.L.J. 598.**

——S. 24—Prior to amendment—*Notice of ejectment not mentioning amount of arrears—If can affect ejectment.*

If a notice under S. 24, C. P. Tenancy Act in fact is served on the tenant and he is not so misled by it that he suffers substantial injury, then no plea based upon an

C. P. TENANCY ACT (1920), S. 24.

omission to state the amount of arrears in the notice or such other error or omissions is of any avail. Ejectment could not be set aside on account of the omission in the notice. (*Binney, F. C.*) GANPATRAO *v.* SANTOSH RAO. 1942 N.L J. 513.

——— S. 24—*Transfer of order of ejectment—Powers of Revenue Officer in dealing with—Question of discharge of decree, if can be adjudicated upon.*

Although the Revenue Officer to whom the 'order for the ejectment' has to be transferred under S. 24 of the C. P. Tenancy Act is not empowered to adjudicate on any such matter as the discharge of the decree, yet if such a point is raised, should return the matter to the Court for determination. The Court which passed the decree on the executing side or any Court to which it transferred the decree could in execution entertain this question as to the 'discharge' of the decree. (*Stone, C. J.*) MAKHANLAL *v.* BODHIRAM. 1942 N.L J. 348.

——— S. 35—Abandonment — Meaning — Right of reversioners, when abandonment is by life holder of occupancy tenancy. *See* 1941 Dig., Col. 186. MURLI DHAR *v.* HAZARILAL. I.L R (1942) Nag. 703=202 I.C. 25=15 R.N. 61=A.I.R. 1942 Nag. 108.

——— S. 50—*Sanction to transfer* sir—*Discretion if can be directed to be exercised—Proper order to be passed by Civil Court.*

No Civil Court can dictate to a Revenue Officer as to the granting or withholding of sanction to transfer *sir*. It can only dictate to the party concerned what he is to do. The proper order would be that the party should take all necessary steps to obtain sanction, the other party being given liberty to apply to Court for further directions should it appear that steps are not being taken to carry out Court's orders. It is for the Revenue Court to decide whether sanction should or should not be given. (*Stone, C. J.*) HIRALAL *v.* MUNSHI RAHMANLAL. 1942 N.L.J. 340.

——— S. 93 and Partition Act (1893), S. 2—*Partition not possible in view of S. 93—Power of Court to apply S 2, Partition Act.*

Where in view of S. 93 of the C P. Tenancy Act read with R. 2 of the rules framed by the Financial Commissioner in exercise of powers conferred on him by S 109, partition of an occupancy holding is not possible the Court can order sale under S. 2 Partition Act and distribution of the proceeds. (*Nivogi, J.*) CAPUR CHAND *v.* SHANKARRAO. 1942 N.L J. 134.

——— S. 106—*Arrears of rent—Decree obtained by lambardar—Court and person competent to execute it.*

When a Court presided over by a Revenue Officer passes a decree for arrears of rent it creates a debt of record and it can be executed as an ordinary decree by any Court. It is not necessary that the officer presiding over the executing Court should be a Revenue Officer. When the decree is obtained by a lambardar who is no longer the lambardar when it is executed, he can nevertheless execute it and it is no concern of the judgment-debtor that a new lambardar has been appointed. The money collected will be held in trust by the decree-holder lambardar. (*Stone, C.J.*) CHINTAMAN *v.* SHRIKISAN. 1942 N.L.J. 344.

——— S. 106 and C. P. Code (1908). S. 9—*Court trying rent suit—Nature of.*

Under S. 106, C. P. Tenancy Act, the Court before which a rent suit is brought is a Civil Court having, of necessity, as its presiding officer a Judge who is also a Revenue Officer. Such a Court is not a Revenue Court but it is a Civil Court having as its presiding officer a Judge with certain qualifications. He must be both a Judge and a Revenue Officer. (*Stone, C. J.*) MAKHANLAL *v.* BODHIRAM. 1942 N.L.J. 348.

CHARGE.

——— Sch II, Art. 1—Abandonment by life tenant—Reversioner's right to sue for declaration—Starting point of limitation. *See* 1941 Dig, Col. 187. MURLIDHAR *v.* HAZARILAL. I.L R. (1942) Nag. 703=15 R.N. 61 =202 I.C. 25=A.I R. 1942 Nag. 108.

CENTRAL PROVINCES USURIOUS LOANS (AMENDMENT) ACT (1934)—*If retrospective.*

The C. P. Usurious Loans (Amendment) Act which amended the Usurious Loans Act of 1918 has no retrospective operation. The result is that in transactions prior to 15—6—1934 the date on which the Amending Act came into force recourse cannot be had to that Act. (*Grille and Pollock, JJ*) KALUSINGH *v.* CHHITTU SINGH. 1942 N.L.J. 455.

CENTRAL PROVINCES VILLAGE SANITATION AND PUBLIC MANAGEMENT ACT (1920)—*Village Sanitation Panchayat constituted under powers given by—If a juristic person.*

A Village Sanitation Panchayat brought into existence under the powers conferred by the C. P. Village Sanitation and Public Management Act is not a juristic person and hence cannot sue. (*Stone, C.J. and Bose, J.*) CHAIRMAN, VILLAGE SANITATION PANCHAYAT *v.* ABDUL KADAR. I.L.R. (1942) Nag. 717=202 I C. 621=15 R.N. 94=1942 N.L.J. 438=A.I.R. 1942 Nag. 114.

——— S. 5 (1)(d) and R 23—*Right to collect dues—If can be sold.*

The sale of the right to collect the dues which a Village Sanitation Panchayat is authorised to collect by the C. P. Village Sanitation and Public Management Act is wholly illegal and outside the powers created by the Act or the rules made thereunder. (*Stone, C.J. and Bose, J.*) CHAIRMAN, VILLAGE SANITATION PANCHAYET *v.* ABDUL KADAR I L.R. 1942 Nag. 717=202 I C. 621=15 R.N. 94=1942 N.L.J. 437=A.I.R. 1942 Nag. 114.

CENTRAL PROVINCES (AND BERAR) MOTOR VEHICLES TAXATION ACT (1940).

See C. P. MOTOR VEHICLES TAXATION ACT (1940).

CENTRAL PROVINCES (AND BERAR) PROHIBITION ACT (1938).

See C. P. PROHIBITION ACT (1938).

CENTRAL PROVINCES AND BERAR RELIEF OF INDEBTEDNESS ACT (1939).

See C. P. RELIEF OF INDEBTEDNESS ACT.

CERTIORARI—Writ of. *See* PRACTICE—CERTIORARI.

CESS—*Gao-sumari and ginti—If recoverable in village Tilana—Nature of cess.*

The gao sumari or ginti cess is not now recoverable in law in the Tilana village. Gao-sumari and ginti both have the same signification. This cess was originally levied not as a grazing cess but as a tax on the number of heads of cattle possessed by individuals. (*M.R. Davies.*) BHOLA *v.* KAJJA. 1941 A.M.L.J. 120.

CHAMPERTY—*Sale of property to finance litigation—If amounts to.*

Where *A* contracts with *B* that *B* will finance a litigation and that if *A* wins that litigation so as to be in a position to complete a transfer agreed to between *A* and *B*, *A* will complete the transfer, it is not champertous, It is a case in which *A* is selling property in order to raise money to finance litigation and the agreement is enforceable. (*Stone, C.J.*) HIRALAL *v* MUNSHI RAHMANALI. 1942 N.L.J. 340.

CHARGE. *See* T. P. ACT, S. 100.

CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV OF 1920), S. 3—Applicability—Requirements—Dedication to idol—Nature of trust. *See* 1941 Dig., Col. 187. BYANKAT PAIKAJI LONARI *v.* RAMCHANDRA MAHADEO. **197 I.C. 602=14 R.N. 179=I.L.R. (1942) Nag. 468.**

——**S. 5**—*Jurisdiction of District Judge to decide if a trust was a trust to which the Act applied.*

S. 5 of the Charitable and Religious Trusts Act confers powers on the Court to arrive at a decision on the question whether the trust was a trust to which the Act applied, upon a summary enquiry and it is clearly necessary where objection is taken to the applicability of the Act, that the Court shall decide this question. But this is subject to the provision in S. 5 (3) which provides for stay of proceeding to enable the contesting party to file a suit for a declaration. Where a party fails to file a suit within the time allowed the District Judge is perfectly justified in making a summary enquiry and coming to a finding that the Act was applicable. (*Bennett, J.*) NAGESHWAR DASS *v.* HARNAM DASS. **200 I.C. 611=15 R.O. 29=1942 O.W.N. 337=1942 A.W.R. (C.C.) 225=1942 O. A. 246=A.I.R. 1942 Oudh 387.**

CHIN HILLS REGULATION OF 1869, Ss. 4 (1) and (4) and 34-A—Offence of illicit manufacture and possession of spirit in Chin Hills—Accused not a 'Chin'—Law applicable. *See* 1941 Dig., Col. 188. THE KING *v.* YOO NGOON. **197 I.C. 734=14 R.R. 145=43 Cr.L.J. 258.**

——**Ss. 10 and 41**—High Court—Powers of revision—Proper Court to revise. *See* 1941 Dig., Col. 188. THE KING *v.* YOO NGOON. **197 I.C. 734=14 R.R. 145=43 Cr.L.J. 258.**

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876), S. 12-A—Scope—Objection to sale in execution of property inalienable—Dismissal—Suit after sale to declare same void and for possession—Competency. *See* C. P. CODE, S. 47, **23 Pat. L.T. 56.**

——**S. 12-A**—*Scope—Sanction—If condition precedent—Subsequent sanction — Sufficiency to validate transaction effected without sanction.*

Under S. 12-A of the Chota Nagpur Encumbered Estates Act, the sanction of the Deputy Commissioner must precede the alienation or charge. If an alienation or charge is made without such previous sanction, by a person not competent to make it, the alienation or charge is void in view of S. 12-A (3). It is not cured by sanction given subsequently. Subsequent sanction cannot transform what was a nullity into a valid transaction. (*Harries, C.J. and Chatterji, J.*) SHYAM BEHARI SINGH *v.* RAMESHWAR PRASAD SAHU. **20 Pat. 904=198 I.C. 208=8 B.R. 337=14 R.P. 393=A.I.R. 1942 Pat. 213.**

CHOTA NAGPUR TENANCY ACT (VI OF 1908), *—Revision—Powers of Commissioner—Rent reduction case—Application by landlord for revision—Further reduction of rent by Commissioner—Legality.*

Under the law the Commissioner has wide powers of supervision, including the power of correcting mistakes even when such correction is against the interests of the party applying in revision. In an application by the landlord against an order reducing the rent, the commissioner has therefore the power to further reduce the rent though no appeal or revision petition has been filed by the tenant. (*Swanzy.*) CHOTA NAGPUR BANKING ASSOCIATION LTD., *v.* ASHUTOSH PATHAK. **8 B.R. 830.**

——**S. 17**—*Settled* raiyat—*Continuous holding of same land for 12 years—If necessary.*

Under S. 17 of the Chota Nagpur Tenancy Act, a settled *raiyat* is a *raiyat* who has continuously held as a *raiyat* land in the village; it is not necessary that a *raiyat* to become a settled *raiyat* should hold the same land continuously for 12 years. (*Swanzy*) KAMAKHYA NARAIN SINGH *v.* DHUPLAL RAM. **8 B.R. 828.**

CHOTA NAG. TENANCY ACT (1908), S. 49.

——**Ss. 26 and 33-A**—*Rent, when first became payable—Rent payable and rent paid—Distinction—Proceedings under Chapters XII and XIII—Finding that rent was Rs.* 14-4-0 *from* 1954 *to* 1961, *Sambat and thence Rs.* 15 *up to* 1913, *A. D—Restoration to Rs.* 14—4—0 *—Material date*—1954 *Sambat or* 1913, *A. D.*

S. 26 of the Chota Nagpur Tenancy Act was designed to legalise in certain circumstances enhancements which under the old law had been illegal. There is further a distinction between the rent payable and the rent paid. Where in a proceeding under Chapters XII and XIII of the Chota Nagpur Tenancy Act, the finding was that from 1954—1961 *Sambat*, the prevailing rent was Rs. 14—4—0, that from 1961 to the time of inquiry in 1913 A. D. the prevailing rent was Rs. 15, and Assistant Settlement Officer in those proceedings re-established Rs. 14—4—0.

Held, that the Rent Reduction Officer was clearly justified in acting on this finding and in taking 1954 *Sambat* as the year in which the rent first became payable, and it was wrong to take 1913, *A. D.* as the year when the rent first became payable for purposes of reduction. (*Swanzy.*) CHOTA NAGPUR BANKING ASSOCIATION LTD. *v.* ASHUTOSH PATHAK. **8 B.R. 830.**

——**S. 47**—*Scope—Occupancy raiyat—Money decree against—Appointment of receiver in execution—Jurisdiction of Court.*

S. 47 of the Chota Nagpur Tenancy Act only prohibits the sale of a holding of an occupancy raiyat in execution of a decree against him; it does, however, prevent execution of a decree, against an agriculturist in any other way open to the decree-holder, such as, by the appointment of a receiver, which is one of the modes permitted by S. 51, C. P. Code. The Court has therefore jurisdiction to appoint a receiver in execution of a money decree against an occupancy raiyat, although sale of his holding in execution is prohibited by S. 47 of the Chota Nagpur Tenancy Act. (*Agarwala, J.*) BANWARILAL SAHU *v.* BALDEO SAH. **200 I. C. 649=14 R. P. 670=8 B.R. 710=23 Pat. L. T. 91=A.I.R. 1942 Pat. 240.**

——**S. 48-A (2) (as amended in 1938)**—Scope—Rent decree—Attachment and sale of crops on land of judgment-debtor—Objection on ground that crops were raised by under-tenants—Sustainability. *See* 1941 Dig., Col. 190. RAMDAS SAHU *v.* KAPIL SAHU. **A. I.R. 1942 Pat. 37.**

——**S. 49**—*Scope*—Bhuinbari *tenure—If includes* pahnai *lands.*

Bhuinbari lands, which are referred to in S. 48 of the Chota Nagpur Tenancy Act include *Pahnai* lands; hence it has to be held that the provision in S. 49 for the transfer of *Bhuinbari* tenures includes transfer of *Pahnai* lands. (*Middleton.*) ZAHOOR ALI *v.* NANDU PAHAN. **1941 P.W.N. 744=8 B.R. 223.**

——**S. 49 (2) and (a)**—"*Reasonable and sufficient purpose*"—*Meaning of—Transfer of part of encumbered tenure—If can be sanctioned.*

It cannot be said that the examples of "reasonable and sufficient purpose" given in S. 49 (2) of the Chota Nagpur Tenancy Act are solely for the benefit of the tenure itself, and not for the benefit of the tenure-holder as well. It is difficult to make an abstraction of what benefits the tenure but does not benefit the tenure-holder. It is not unreasonable to say that as only a part of the tenure is being transferred, the transaction is to the benefit of the remainder which will be the unencumbered property of the proprietors, whereas other-

CHOTA NAG. TENANCY ACT (1908), S. 62.

wise the whole tenure would be encumbered. (*Middleton.*) ZAHOOR ALI *v.* NANDU PAHAN. **1941 P. W.N. 744=8 B.R. 223.**

——**S. 62**—*Scope—Rent of holding commuted in 1926—Reduction of—If barred.*

S. 62 of the amended Chota Nagpur Tenancy Act is a bar to reduction of rent of a holding which was commuted in 1926, as S. 33-A (*e*) is not included in S. 62 (2) (*i*). (*Swanzy.*) KAMAKHYA NARAYAN SINGH *v.* DHUPLAL RAM. **8 B.R. 828.**

——**S. 74-A**—*Applicability—Purchase of tenure at sale in execution—Right of raiyat to apply for Pradhan service.*

There is no warrant for holding that when a tenure is extinguished the rights which existed under it, including the right of the raiyat to apply for a Pradhan service, still survive. S. 74-A of the Chota Nagpur Tenancy Act is concerned with a case in which a Pradhan has been evicted by a landlord; a case of purchase of a tenure at an execution sale does not come within the terms of S. 74-A. (*Middleton.*) DALU GAUR *v.* RADHA GOBIND SINGH. **8 B.R 530.**

——**S. 84**—*Record of rights—Presumption of correctness.*

The record of rights relating to a particular plot though it may not be a record under S. 132 of the Act is entitled to the presumption of correctness under S. 84 of the Act and should not be overlooked. (*Dhavle, J.*) GOBARDHAN DAS *v.* SURESH CHANDRA. **203 I.C. 521=9 B R. 91=A.I R. 1942 Pat. 489.**

——**S. 84 (3)**—Survey record of right—Entry in—Value of Entry based on known patta—Effect. *See* 1941 Dig., Col. 191. HARAKHNATH OHDAR *v.* GANPAT RAI. **198 I C 680=8 B.R. 449=14 R.P. 488.**

——**S. 177, proviso**—*Mere declaratory suit—If maintainable.*

S. 177 of the Chota Nagpur Tenancy Act does not suggest that the suit which may be brought under the proviso should not be merely a declaratory suit, but there should also be a prayer in such a suit for some kind of consequential relief, (*Fazl Ali, J.*) SHYAM PRATAP RAM MISSIR *v.* BENI NATH DUBEY. **198 I. C. 711=8 B.R. 459=14 R.P. 498=A.I.R. 1942 Pat. 449.**

——**S. 184, proviso (a)**—*Applicability—Arrest of debtor—When barred.*

Proviso (*a*) to S. 184 of the Chota Nagpur Tenancy Act prohibits the arrest of a judgment-debtor in satisfaction of a decree for arrears of rent only when such rent is due in respect of a holding or a Bhunihari tenure. If the interest of a certificate debtor is not a tenure, S. 210 (2) will not apply; and if the interest of a certificate debtor is not a holding or Bhunihari tenure, S. 184 proviso (*a*) is not a bar to the arrest of the certificate debtor. (*Middleton.*) BRAJDEO NARAIN SINGH *v.* BHANNATH SINGH. **8 B.R. 305.**

——**S. 184, proviso (b)**—*Scope of—If bars arrest of debtor.*

Proviso (*b*) to S. 184 of the Chota Nagpur Tenancy Act has nothing to do with the arrest of a certificate debtor, it merely restricts the attachment or sale of movable property. (*Middleton.*) BRAJDEO NARAIN SINGH *v.* BHANNATH SINGH. **8 B.R. 305.**

——**Ss. 198 and 210 (2) (as amended)**—Relative scope and application of—Decree for money—Execution against property other than tennre—Right of decree-holder—"Any immovable property"—Meaning of. *See* 1941 Dig., Col. 191. LAL INDERJIT NATH SAHI DEO *v.* PRATAP UDAI NATH SAHI DEO. **199 I.C. 83=8 B.R. 488=14 R.P. 532=A.I.R. 1942 Pat. 84.**

C. P. CODE (1882), S. 257-A.

——**S. 208**—Sale for arrears of rent—Effect of—Underraiyat with occupancy right—If liable to be evicted by purchaser. *See* BENGAL RENT RECOVERY (UNDERTENURES) ACT, S. 16. **20 Pat. 870.**

——**Ss. 217 and 270**—*Scope—Order of Commissioner under S. 208 (1)—Revision—Interference by Board of Revenue.*

S. 208 (1) of the Chota Nagpnr Tenancy Act gives the Commissioner ample discretion to exempt or refuse to exempt a portion of the tenure from sale; and an order of the Commissioner on an application for exemption under S. 208 (1) is ordinarily subject to revision by the Board of Revenue. The Board will not interfere unless extremely strong grounds are made out. (*Middleton.*) GOKUL SAHU *v.* PRATAP UDAI NATH SHAH DEO, **8 B. R, 294.**

——**Ss. 217 and 218**—Scope—Suit for arrears of rent—Decree by Deputy Commissioner—Revision—Competency. *See* 1941 Dig., Col. 192. MADHIM GHASI *v.* NARKU SAHU. **1941 P.W.N. 743 (1).**

CIVIL PROCEDURE CODE (1882), S. 257-A—*Applicability—Agreement providing for termination of execution proceedings—If falls under first part.*

The first part of S. 257 A of the Civil Procedure Code of 1882 refers to agreements which suspend the operation of a decree, not to those which put an end to the execution of a decree altogather. An agreement which provides expressly that no further steps ara to be taken with the execution proceedings is not within the mischief of the first part of the section. (*Broomfield and Sen, JJ.*) GOVIND NARAYAN *v.* BHIKU GOPAL. **201 I.C. 788=15 R.B. 117=44 Bom. L.R. 409=A.I.R. 1942 Bom. 221.**

——**S. 257 A**—*Operation of—If in force after* 1908 *—If kept alive by S.* 13 (c), *Dekkhan Agriculturists Relief Act.*

There is no warrant for holding that S. 257-A of the Code of Civil Procedure (1882) is kept alive by S. 13 (*c*) of the Dekkhan Agriculturists' Relief Act before it was amended in 1932. S. 257-A was repealed by the C. P. Code of 1908 and cannot be regarded as being in force after that for the purposes of S. 13 (*c*) of the Dekkhan Agriculturists' Relief Act. (*Broomfield and Sen, JJ.*) GOVIND NARAYAN *v.* BHIKU GOPAL. **201 I.C. 788=15 R.B. 117=44 Bom. L.R. 409=A.I.R. 1942 Bom 221.**

——**S 257-A**—*Sanction—What amounts to—Application "granted subject to the usual conditions"—If amounts to sanction.*

Where application is made to the executing Court under S. 257 A, C. P. Code (1882) for permission to execute a mortgage of property belonging to the judgment-debtor in satisfaction of the decree, and the Court makes an order on it, "granted subject to the usual conditions", the order of the executing Court cannot be regarded as equivalent to the sanction required by S. 257-A. (*Broomfield and Sen, JJ.*) GOVIND NARAYAN *v.* BHIKU GOPAL. **201 I.C. 788=15 R.B. 117=44 Bom L.R. 409=A.I.R. 1942 Bom. 221.**

——**S. 257-A**—*Scope—Agreement to execute mortgage in course of execution—Mortgage providing for instalments and for advance interest—Further provisions for further interest in case of default in payment of instalments—Mortgage—If void as a whole.*

Where a mortgage deed executed by a judgment-debtor in pursuance of an agreement made under S. 257-A, C. P. Code (1882) in the course of execution providing for payment by instalments and for a sum of money as interest in advance further stipulates for payment of further interest in case of default in the payment of the instalments the stipulation for such further

C. P. CODE (1882), S. 257-A.

interest on default is by way of penalty and can be regarded as a separable part of the agreement. The mortgage as a whole would not therefore be renderd void. (*Broomfield and Sen, JJ.*) GOVIND NARAYAN *v.* BHIKU GOPAL. **201 I.C. 788=15 R.B. 117=44 Bom.L.R. 409=A.I.R. 1942 Bom. 221.**

——**S. 257-A**—*Scope—Agreement to pay advance interest—If void under 2nd part of section.*

Where an agreement provides for payment bo the judgment debtor of a sum of money as advance interest, if the amount added as interest in advance to the amount claimable in the darkhast is less than the interest which would have eccrued due under the decree, there is no question of excess payment, and there is no contravention of the second part of S. 257-A, C. P. Code (1882). (*Broomfield and Sen, JJ.*) GOVIND NARAYAN *v.* BHIKU GOPAL. **201 I.C. 788=15 R.B. 117=44 Bom.L.R. 409=A.I.R. 1942 Bom. 221.**

——**(V OF 1908), Ss. 2 (2) and 47**—*Appeal Execution sale — Excess delivery — Application for re-delivery of part delivered in excess—Order on—If decree—Appealability.*

Where in execution of a decree a property is sold, and the judgment-debtor, after dellvery of possession, applies for re-delivery of a part of the property delivered on the ground that more than the extent of property sold has been delivered to the purchaser, the question is one falling under S. 47, C. P. Code, and the order on such an application is therefore a decree within the meauing of S. 2 (2), C. P. Code and is appealable. (*King and Happell, JJ.*) SREE KANTA GOUNDAN *v.* JAVANI. **1942 M.W.N 190=55 L.W. 159=A.I.R. 1942 Mad. 406 (1)=(1942) 1 M.L.J. 386.**

——**Ss 2 (2) and 47**—*Applicability—Proceeding under O. 20 R. 12—Direction as to mesne profits in preliminary decree for partition—Final decree not passed—Appeal — Competency—Proceeding if one in execution.*

In a case where the special provisions of O. 20, R. 12, C. P. Code, can be properly applied, S. 2 (2), C. P. Code, cannot be invoked. Nor would S. 47 apply for a proceeding under O. 20, R. 12, C. P. Code, *i.e.*, an inquiry into mesne profits, is not a proceeding in execution but one in the suit itself. An order for an enquiry as to mesne profits must necessarily be embodied in a preliminary decree which must ordinarily be followed by a final decree. Where a preliminary decree awards mesne profits from a specified date and gives a direction under R. 12 of O. 20, there has to be a final decree drawn up in accordance with R. 12 (3). Until that final decree is drawn up there is no right of appeal against the order for mesne profits. (*Davis, C.J. and Weston, J.*) SAHIJRAM RUPCHAND *v.* ALU TUNDU. **I.L.R. (1941) Kar, 563=200 I.C. 74=14 R.S. 205=A.I.R. 1942 Sind 60.**

——**S. 2 (2) and C. P. Land Revenue Act (1917), S. 75 (3)**—*Decision to make a reference under S. 75 (3) of C. P. Land Revenue Act, if a decree—Applicability.*

The decision of a Civil Court to make a reference under S. 75 (3), C. P. Land Revenue Act, to the Settlement Officer is not a decree and hence not appealable as such. (*Digby, J.*) RAGHUNATH BHUJRAM *v.* SETH PAHLADDAS. **1942 N.L.J. 574.**

——**S. 2 (2)**—*Decree—Order dismissing appeal for non-payment of additional Court-fees demanded—Appeal.*

An order dismissing an appeal for non-payment of the additional Court-fee demanded of the appellant following upon an adjudication on a question of the classification of the suit comes within the definition of a decree under sub-S. (2) of S. 2, C. P. Code,

C. P. CODE (1908), S. 3.

and is hence appealable. The order cannot be regarded as an "order of dismissal for default" within the meaning of Cl. (*b*) of the said sub-section. It is wholly immaterial that the appeal is directed, not against the the adjudication itself, but against the consequent order of dismissal. (*Biswas, J.*) ABDUL MAJID *v.* AMINA KHATUN. **I.L.R. (1942) 2 Cal. 253=201 I.C. 683 =15 R.C. 269=75 C.L.J. 393=46 C.W.N. 697= A.I.R. 1942 Cal. 539.**

——**S. 2 (2)**—Decree—Order modifying scheme framed under S. 92. *See* 1941 Dig., Col. 193. SRIJIB NYAYATIRTHA *v.* DANDY SAMI JAGANNATH ASHRAM. **199 I.C. 841=14 R.C. 648.**

——**S. 2 (2)**—Decree preliminary or final—Executablity. *See* 1941 Dig., Col. 193. LAL BHAGWAT SINGH *v.* HARI KESHEN DAS. **17 Luck. 249=A.I.R. 1942 Oudh 1.**

——**S. 2 (2) and O. 7, R. 11 (a)**—Failure to furnish particulars—Order discharging defendants, if appealable. *See* 1941 Dig., Col. 193. NAZIR ABBAS *v.* RAJA AZAMSHAH. **I.L.R. (1942) Nag. 428=197 I.C. 520=14 R.N. 173.**

——**S. 2 (2)**—*Order dismissing appeal for non-payment of Court-fee—Appeal—Revision.*

An order of the appellate Court dismissiug a memorandum of appeal for non-payment of deficit Court-fee is a decree and is appealable as such. A petition for revision from that order is, therefore, not competent. (*Tek Chand, J.*) BARKAT BIBI *v.* NAZIR *alias* NADIR. **199 I.C. 298=14 R.L. 383=43 P.L.R. 710=A.I.R. 1942 Lah. 64.**

——**S. 2 (5)**—Foreign Court—Courts in Berar, if. *See* 1941 Dig., Col. 194. JAGNIRAM PREMSUKH *v* GANPATI. **198 I.C. 873=14 R.N. 251 (F.B.).**

——**S. 2 (12)**—*Mesne profits—Ascertainment—Test.*

On the terms of the definition of mesne profits what the plaintiffs have to show is that with reasonable diligence more might have been realised than was actully realised by the revenue authorities in the way of profits which term includes both rents and premiums, if any. The true test is clearly not what the plaintiff has lost by his exclusion but what the defendant has or might reasonably have made by his wrongful possession. What the plaintiff in such a case might or would have made can only be relevant as evidence of what the defendant might with reasonable diligence have received. (*Derbyshire C. J and Nasim Ali, J.*) PROVINCE OF BENGAL *v.* PURNA SASHI CHAUDHURANI. **75 C.L.J. 479.**

——**S. 2 (17) (d) and (h)**—*Liquidator appointed by Registrar of Co-operative Societies—If public officer—Co-operative Socities Act, Ss. 42 and 43.*

A liquidator who has been appointed by the Registrar under S. 42 and the terms of whose appointment are regulated by tne rules framed by the Punjab Government under S. 43 is a public officer within the meaning of S. 2 (17) (*h*), C. P. Code, and hence in a suit against him notice under S. 80, C. P. Code, is necessary. The appointing authority being not a Court of justice but the Registrar of Co-operative Societies, the liquidator is not an officer of a Court of justice and therefore S. 2 (17) (*d*) C. P. Code, is not applicable to him. (*Young, C.J. and Munir, J.*) ABDUL GHANI *v.* ANJUMAN DEHI IMDAD BAHMI. **203 I.C. 363=44 P.L.R. 540=A.I.R. 1942 Lah. 287.**

——**Ss. 3 and 5**—*Collector and Deputy Collector under Orissa Tenancy Act—If Civil Courts.*

Per *Dhavle and Manohar Lall, JJ. Meredith, J.*, eontra.—The Court of the Deputy Collector and the Collector while trying cases or hearing appeals under the Orissa Tenancy Act are Revenue Courts and not Civil Courts even though they may be tryiug suits or procee-

C. P. CODE (1908), **S. 8.**

dings of a civil nature. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA. **21 Pat. 1=198 I C. 353=14 R.P. 420=8 B.R. 361=8 Cut. L.T. 53=A.I.R. 1942 Pat. 1 (F.B.).**

——**S. 8**—Construction—"To any suit"—Meaning—If includes also decree in such suit. *See* 1941 Dig., Col. 194. RANGANADHAM *v.* PONNACHARAMMA. **197 I.C. 627=14 R.P 322=23 Pat.L.T. 87=8 B.R. 256=A.I.R. 1942 Pat. 128.**

——**S. 9**—Civil Court—C. P. Debt Relief Courts. *See* 1941 Dig., Col. 195. DISTRICT JUDGE, HOSHANGABAD *v.* SHRIKISAN DAS. **198 I.C. 824=14 R.N. 247=A.I.R. 1942 Nag. 8.**

——**S. 9**—*Suit by one priest to recover fees received by an unauthorised priest—Maintainability.*

A suit by one priest against another to recover the fees received by the latter in connection with a ceremony at which he officiated in an area which was alleged to be exclusively allotted to the plaintiff is maintainable in a Civil Court and could be decreed if the facts alleged are proved. (*Grille, C. J.*) GANPAT *v.* BABU. **1942 N. L.J. 443.**

——**S. 9**—*Suit for declaration that Village Council had no jurisdiction to entertain suit—Jurisdiction of Civil Court—North West Frontier Province Village Council Act, S. 23.*

By virtue of S. 9, C. P. Code, a Civil Court is fully competent to entertain and decide a suit for a declaration that the Village Council had no jurisdiction to entertain the suit filed before it and that the decree in that suit was obtained by fraud and did not bind the plaintiff. (*Almond, J.C. and Mahomed Ibrahim, J.*) ALI ASGHAR *v.* WALAYAT SHAH. **201 I.C. 564=15 R. Pesh. 24=A.I.R. 1942 Pesh. 55.**

——**S. 9**—*Suit of a civil nature—Declaration of right to inherit* Birt Jijmani *right—Entertainability by Civil Courts.*

An action by a legal heir of a gangaputra or a panda at Benares for a declaration of his right to inherit *Birt Jijmani* right (which is heritable property and in some cases transferable) and for an injunction restraining the defendants from interfering with the plaintiff's rights and for recovery of possession of the pilgrims' Bahis, is a suit of a civil nature as the right claimed is a right in property and is cognisable by Civil Courts. (*Iqbal Ahmad C.J. and Dar, J.*) SARADA KUNWAR *v.* AJANAND. **202 I.C 653=15 R.A. 181=1942 A L.J. 346=1942 A L.W. 444=1942 A.W R. (H.C.) 185=A.I.R. 1942 All. 320.**

——**S. 10**—*Applicability—Application for letters of administration filed in High Court while similar application pending in District Court—Property outside limits of latter Court exceeding Rs.* 10,000 *in value—Application in High Court—If can be stayed—Succession Act, S. 273.*

S. 10, C. P. Code, is not limited to suits. It applies to an application for letters of administration by reason of the provisions of S. 141, C. P. Code. An application for letters of administration filed in the High Court while a similar application in respect of the same estate previously filed in the Court of the District Judge is pending, cannot be stayed under S. 10, C. P. Code, when the property situate outside the province of the District Judge exceeds Rs. 10,000 in value. The Court of the District Judge not having jurisdiction to grant the relief claimed in the application before the High Court, the section can have no application. (*Sen, J.*) LILIAN SINGH, *In the goods of.* **I.L.R. (1942) 2 Cal. 194.**

C. P. CODE (1908), **S. 11.**

——**S. 10**—*Applicability—Cause of action different though question of law same.*

Though the questions of law involved in the new suit are the same as those involved in certain pending appeals but the cause of action is an entirely new one, S. 10 of the C. P. Code has no direct reference to the matter and the new suit cannot be stayed. (*Braund and Yorke, JJ.*) KAILASH CHANDRA JAIN *v.* JHAMOLA KUNWAR. **1942 A.L.W. 291.**

——**S. 10**—*Applicability and scope—Directly and substantially in issue—Test to decide—Delay in applying for stay—If ground for refusing stay—Mandatory nature of section.*

The words of S. 10, C.P. Code, are mandatory and enjotn the Court not to proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit. The fact that an application for stay is delayed is no ground for refusing stay. But before a stay can be ordered it must be made out that the matter in issue in both the suits is the same, although the reliefs asked for in the one is not of the same character as in the other. The real test whether the two suits are parallel is that if the first was determined, the matters raised in the second suit would be *res judicata* by reason of the decision of the first suit. (*Blackwell, J.*) TRIKAMDAS JETHABAI *v.* IIVRAJ KALIANJI. **203 I.C. 359=44 Bom.L.R. 699=A.I.R. 1942 Bom. 314.**

——**Ss. 10 and 151**—Jurisdiction of High Court—Injunction restraining defendant from litigating in another Court—Power to grant. *See* 1941 Dig., Col. 196. BHAGAT SINGH BUGGA *v.* DEWAN JAGBIR SAWHNEY. **199 I.C. 32=14 R.C. 514.**

——**S. 10**—*Stay of claim for theka money under Stay of Proceedings Act—Rejection of application to reopen—Fresh suit, if barred—Proper remedy.*

Where a claim for theka money is stayed under Stay of Proceedings Act and an application for its reopening after the passing of Amending Act IX of 1937 is rejected and a fresh suit is brought for the same relief, it is barred by S. 10, C. P. Code, for as long as the order staying the previous suit remains in force another suit in respect of the same cause of action and between the same parties cannot be entertained. The proper remedy is to appeal against the refusal to reopen the suit. (*Shirreff, S. M. and Sathe, J.M.*) MOHD. SAFAR *v.* MST. HAJIRA BIBI. **1942 O.A. (Supp.) 368=1942 A.W.R. (Rev.) 342=1942 O W.N. (B R.) 552.**

——**S. 11**—*Applicability—Dismissal of suit under S. 44, Agra Tenancy Act as premature—If operates as* res judicata *as regards fresh suit.*

S. 11, C. P. Code, has no application unless an issue has been heard and finally disposed of on merits. Where a suit under S. 44, Agra Tenancy Act, is dismissed as being premature it does not operate as *res judicata* to bar the institution of a fresh suit under same S. 44 of the same Act. (*Sathe, A.M.*) BASHIR AHMAD KHAN *v.* KUNDAN LAL. **1941 O A. (Supp.) 933=1941 A.W.R. (Rev.) 1164=1942 O.W.N. (B.R.) 17=1942 R.D. 33.**

——**S. 11**—Applicability—Execution proceedings—Execution against surety "struck off" after enquiry into merits—Effect. *See* 1941 Dig., Col 197. RAM GOPAL *v.* BANSIDHAR. **17 Luck. 366=197 I C. 305=14 R. O. 295=A.I.R. 1942 Oudh 183.**

——**S. 11**—*Cause of action—Decision in suit for arrears of rent for one year—If* res judicata *in later suit for arrears of rent for several years filed in a Court of higher grade—Competency to try later suit—Test.*

Though in view of the Explanation appended to R. 2 of O. 2, C. P. Code, successive claims in respect of rent for several years arising out of the same obligation are

C. P. CODE (1908), S. 11.

deemed to constitute one cause of action, it cannot be said that a composite cause of action relating to arrears of more than one year is a different one from that relating to one year. If it is possible to treat the entire cause of action upon which the later suit is founded as divisible and if in the earlier suit one of the component parts of the cause of action was relied on then the previous decision will stand as a bar to the extent of the matter involved in the previous suit. If an earlies decision bars a suit to recover arrears of rent for one year, it must logically bar a suit in respect of any other year. Hence, a decision in a suit for arrears of rent for one year would operate as *res judicata* in a later suit between the same parties for the recovery of arrears of rent for a number of years filed in a Court of a grade higher than that in which the earlier suit was filed. The competency of the Court to try the subsequent suit refers to its competency at the time when the first suit was broughf. (*Niyogi, J.*) TEKCHAND KAPURCHAND *v.* BIRZABAI. **I.L.R. (1942) Nag. 721=202 I.C. 317=15 R.N. 77=1942 N.L.J. 423=A.I.R. 1942 Nag. 119.**

——**S. 11**—Co defendants— Conditions necessary. *See* 1941 Dig., Col. 197. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal 169=200 I.C. 216=14 R.C. 685=46 C.W.N. 245=A.I.R. 1942 Cal. 92.**

——**S. 11**—*Co-defendants*—Res judicata *between*—*Conditions.*

In order that a decision may operate as *res judicata* between the co-defendants, three conditions must be fulfilled, namely, there must be (1) a oonflict of interest between the co-defendants, (2) the necessity to decide that conflict in order to give the plaintiff appropriate relief, and (3) a decision of the question between the co-defendants. The first condition will be satisfied if the pleadings on record raise the conflict of interest as between the defendants no matter whether the co-defendants pleaded anything *inter se* or not. (*Nasim Ali and Pal, JJ.*) CHANDULAL AGARWAILA *v.* KHALILAR RAHAMAN. **I.L.R (1942) 2 Cal. 299=46 C.W.N. 729.**

——**S. 11**—*Co-defendants*—Res judicata *between*—*Conditions—Absentee defendant not having notice of conflict—Effect of.*

In order that a decision may operate as *res judicata* between the co-defendants, three conditions must be fulfilled, namely, there must be (1) a conflict of interest between the co-defendants; (2) the necessity to deciee that conflict in crder to give the plaintiff appropriate relief; and (3) a decision of the question between the co defendants. The doctrine of *res judicata* as between co-defendants must, however, be applied with great caution. Where the plaint itself in a prior suit did not raisc any conflict between the defendant and the co-defendant and the defendant did not appear, but the co-defendant appeared and claimed an interest conflicting with the interest of the absentee defendant, the decision if any, on the point cannot operate as *res judicata* unless the absentee defendant gets notice of the conflict. In such circumstances the matter cannot be said to have been heard and finally decided so as to bind the parties. (*Nasim Ali and Pal, JJ.*) CHANDRALAL AGARWALA *v.* KEBAL. **75. C.L.J. 301.**

——**S. 11**—*Common judgment in appeal and cross objections—Single second appeal though two decrees*—Res judicata.

Where only a cross objection is filed but it is wrongly numbered separately as a cross appeal and is disposed of in a common and single judgment but two decrees are prepared and the unsuccessful party challenges the entire decree dismissing the suit and pays full Court fee, the appeal is in form and substance against the entire decree and is not barred by the principle of *Res judicata* on the ground that a separate appeal has not been filed against the dismissal of the cross objection. (*Bennet and Ghulam Hasan, JJ.*) BEHARI LAL *v.* RAMCHANDRA SHARMA. **200 I.C. 172=14 R.O. 570=1942 A.W.R. (C.C.) 141=1942 O.A. 120=1942 O.W.N. 184=A.I.R. 1942 O. 335.**

——**S. 11**—*Competency to try the subsequent suit—Difference in valyation.*

The decision in a former case cannot operate as *res judicata* in a subsequent suit between the same parties on the same cause of action if he valuation in the later suit is beyond the jurisdiction of the former Court. (*Ghulam Hassan and Agarwal, JJ.*) MUNICIPAL BOARD OF LUCKNOW *v.* GOVERNMENT OF THE UNITED PROVINCES. **1942 O.A. 398=1942 O.W.N. 567=1942 A.W.R. (C.C.) 318 (1).**

——**S. 11**—*Competent Court—Decision of question of title by Revenue Court in rent suit—If bars suit for declaration of title in Civil Court.*

The decision of a Revenue Court in a suit for rent that the defendant is a tenant and liable to pay rent does not bar the defendant from maintaining a suit in a Civil Court for a declaration that he is the owner. (*Agarwal, J.*) JAWAHIR *v.* NIAZ AHMED KHAN. **199 I.C. 682=14 R.O. 509=1942 R.D. 162=1942 A.W.R. (C.C.) 55=1942 O.A. 34=1942 O.W.N. 66=A.I.R. 1942 O. 301.**

——**S. 11**—Competent Court—Pecuniary jurisdiction—General principles of *res judicata*—Applicability. *See* 1941 Dig., Col. 198. MITHOOLAL *v.* JAINARAYAN. **199 I.C. 537=14 R.N. 283.**

——**S. 11**—*Conflicting decisions—Later decision to prevail over former—Application of principle—Limits to—Earlier order on claim under O. 21, R. 63—Suit not filed within one year to set aside order—Later contrary decision—If prevails over former order.*

Where there are conflicting decisions or judgmennts *inter partes* the later adjudication should be taken as superseding the earlier for purposes of *res judicata*. But this principie cannot be applied in a case where the earlier decision is an order on a claim petition which under O. 21, R. 63, C. P. Code, has become conclusive, O. 21, R. 63, is a statutory provision and the Court must apply it. The provisiou being a mandatory provision, there is no room for the application of the principle of *res judicata* as regards conflicting decisions in such a case. (*Leach C. J. and Byers, J.*) AKKAMMAL *v.* KOMARASAMI CHETTIAR. **55 L.W. 511=1942 M.W.N. 567=A.I.R. 1942 Mad. 36=(1942) 2 M.L.J. 315.**

——**S. 11**—Constructive *res judicata*—Applicability of doctrine—Cendltions. *See* 1941 Dig., Col. 199. CHANDRAYYA *v.* CHINNAPPA REDDI. **200 I.C. 492=15 R.M. 59.**

——**S. 11**—*Directly and substantially in issue—Basis of possessory title involved different in the two suits—Bar of* res judicata, *if arises.*

Where in the prior case the question for consideration was whether the piaintiff had obtained title by virtue of the *dhardura* custom and his claim to have done so was negatived and the claim in the later suit though with referer.ce to a portion of the property included in the earlier suit was on a different basis altogether it was *held* that the earlier decision did not operate as *res judicata* in the later case for the basis of the possessory title involved in both were different and the nature of title raised in the later suit did not arise for decision in the earlier suit. (*Bennett and Madeley, JJ.*) HARI SARAN

C. P. CODE (1908), **S**, 11.

DAS *v.* BHAGWAT PRASAD TEWARI. **200 I. C. 126 = 14 R O. 549 = 1942 A.L.W. 68 = 1942 A.W R. (C C) 30 = 1942 O.A. 18 = 1942 O.W.N. 34 = A I.R. 1942 O. 286.**

——**S. 11**—*Directly and substantially in issue—Decision on interpretation of law*—Res judicata.

When the cause of action is different, an earlier decision on the interpretation of the law will not operate as *res judicata*. (*Broomfield and Sen, JJ.*) MAHADEVAPPA SOMAPPA *v.* DHARMAPPA SANNA NINGAPPA. **203 I.C. 655 = 44 Bom.L.R. 710 = A .I.R. 1942 Bom. 322.**

——**S. 11**—*Directly and substantially in issue—Decision on issue not necessary for decision of case—If operates as* res judicata *in a subsequent suit.*

When a matter directly and substantially in issue in a subsequent suit has been directly and substantially in issue in a previous suit and has been finally heard and decided between the same parties the issue cannot be re-opened in a subsequent suit notwithstanding the fact that the previous suit could have been decided independently of the decision upon that issue. (*Agarwal, J.*) HUSAINI *v.* SHANKAR. **199 I.C. 509 = 14 R.O. 494 = 1942 R.D. 71 = 1942 O A 13 (2) = 1942 A.W.R. (C. C.) 25 (2) = 1942 O.W.N. 25 = A.I.R. 1942 O. 309.**

——**S. 11**—*Directly and substantially in issue—Identity of subject matter—If essential for operation of doctrine of* res judicata.

The principle of *res judicata* would apply though the subject matter of the two proceedings may be different provided the issue is the same. (*Divatia, J.*) RAMA MARUTI *v.* MALLAPPA KRISHNA, **203 I.C. 339 = 44 Bom.L.R. 678 = A.I.R. 1942 Bom. 309.**

——**S. 11**—*Directly and substantially in issue—Issue in later suit also in issue in prior suit—Finding in prior suit*—Res judicata.

Where the question involved in an issue in a suit was also directly in issue in a previous suit between the same parties and adjudicated upon and the finding on such issue was upheld in appeal, the matter is *res judicata* between the parties in the later suit. (*Lobo, J.*) HAJI ABDULLA HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **I.L.R. (1942) Kar. 306 = A.I.R. 1943 Sind. 17.**

——**S. 11**—Directly and substantially in issue—Subject-matter in prior proceeding not identical with subject matter in later proceeding—Claim in respect of attached crops on land — Dismissal — Subsequent attachment of land itself—Claim to land—If barred by *res judicata*. *See* 1941 Dig., Col. 200. PETHURAJU KONE *v.* MUTHUSWAMI AYYAR **201 I.C. 199 = 15 R.M. 273 = A.I.R. 1942 Mad. 128 = (1941) 2 M.L.J. 784.**

——**S. 11**—*Directly and substantially in issue—Subject-matter of prior and later suit—If to be identical—Decision as to one property—If* res judicata *in respect of another property claimed under same title.*

Where the decree in a suit depends on an issue as to title, the finding on that issue is binding as *res judicata* in a subsequent suit although the subsequent suit is with regard to a property different from that involved in the prior suit, when the claim is made under the same title. (*Agarwala, J.*) ABUL HASAN *v.* NANHE SHAH. **1942 P.W.N. 94.**

——**S. 11**—Doctrine of *res judicata* and of estoppel—Distinction between. *See* 1941 Dig., Col. 200. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal. 169 = 200 I.C. 216 = 14 R.C. 685 = 46 C. W.N. 245 = A.I.R. 1942 Cal. 92.**

——**S. 11**—*Execution proceedings — Constructive* res judicata—*Failure of judgment-debtor to object to saleability of property before sale—Effect of.*

C. P. CODE (1908), **S. 11.**

Per *Bhide, J.*—Where the judgment-debtor had notice of the attachment and sale but had failed to raise the objection that the property was not liable to be sold under S. 60, C. P. Code, before the sale, he is precluded from raising it after the sale on the principle of constructive *res judicata*.

Per *Tek Chand J.*—Where the order for sale is passed under O. 21, R. 64, C. P. Code, after notice had been given to the judgment-debtor and he has not objected that the property is not liable to sale, and in furtherance of that order the property has been sold, the judgment-debtor is precluded from questioning the propriety of that order and impugning the sale on the ground which he might and ought to have taken before sale. (*Tek Chand, Bhide and Beckett, JJ.*) GAURI *v.* UDE. **I.L.R. (1942) Lah. 559 = 203 I.C. 166 = 44 P.L.R. 302 = A.I.R. 1942 Lah. 153 (F.B.).**

——**S. 11**—Execution proceedings — Constructive *res judicata*—Failure to object to maintainability of application or jurisdiction of executing Court—Disposal on footing that it is a proper application—Effect—Plea that later application is barred by limitation as former one was not according to law—Maintainability. *See* 1941 Dig., Col. 201. HARBANS NARAYAN SINGH *v.* UMA SHANKAR PRASAD. **A.I.R. 1942 Pat. 68.**

——**Ss. 11 and 145**—*Execution proceedings—Decision against surety—Reagitation by separate suit—Bar of* res judicata.

It is open to a decree-holder either to proceed against a surety in execution of his decree or to bring a separate suit against the surety on the surety bond and it is open to the surety if he has not been made a party to the execution proceedings, to bring a separate suit to decide his liability under the surety bond. Where the surety has been made a party to the execution proceedings and has raised a defence that has been decided, then it is not open to him to raise again the same defence in a separate suit. The principle of *res judicata* would apply to such a case. (*Pollock, J.*) JAGNA FAGOO POWAR *v.* DHEKAL BHIKOO PATIL. **I.L.R. (1942) Nag. 779 = 201 I.C. 692 = 15 R.N. 56 = 1942 N.L.J. 413 = A.I.R. 1942 Nag. 107.**

——**S. 11**—*Execution proceedings—Dispute between heir of decree-holder and judgment-debtor—Decision that former was validly adopted son of decree-holder—If operates as* res judicata *in subsequent suit.*

A decision arrived at in execution proceedings on contest between a person claiming to be the heir of the decree-holder and the judgment debtor, that the former was the validly adopted son of the decree-holder who was the owner of the disputed property operates as *res judicata* in a subsequent suit between the same parties with reference to a part of the same estate, although the subject-matter of the later suit may not be the identical property involved in the prior proceeding. (*Divatia, J.*) RAMA MARUTI *v.* MALLAPPA KRISHNA. **203 I.C. 339 = 44 Bom.L.R. 678 = A.I.R. 1942 Bom. 309.**

——**S. 11**—*Execution proceedings—Executability of decree—Judgment-debtor's right to raise in later application for execution—Omission to raise in previous applications—Effect*—Res judicata.

There is some limit in time and opportunity as to when objections to the effect that a decree is not executable can be taken in the execution of the decree. It cannot be held that the judgment-debtor can at any time, however remote, raise for the first time objections which go to the root of the decree. He must do this at the first suitable opportunity, and if he does not, then the point must be deemed to have been raised and decided against him, by reason of the principle of *res judicata* which applies to execution proceedings as much

as to other legal proceedings. Where, however, previous execution applications are found to have never been made the subject of a proper contest and decision, but to have been settled by reference to private arbitrations, it cannot be said that the question of the executability of the decree was ever heard and decided or that it was, by necessary implication, heard and decided. In such a case, therefore, the question as to whether the decree can and to what extent, be executed, can be raised in a subsequent execution application. (*Davis, C.J. and Tyabji, J.*) GODHUMAL *v.* MT. BHAMBHO. **I.L.R. (1942) Kar. 326 = A.I.R. 1943 Sind 11.**

——**S. 11**—*Execution proceedings—Matters decided in same proceeding*—Res judicata.

Per *Bhide, J.*—The principle of *res judicata* will apply even to matters decided in the same execution proceedings. (*Tek Chand, Bhide and Beckett, JJ.*) GAUKI *v.* UDE. **I.L.R. (1942) Lah. 559 = 203 I.C. 166 = 44 P.L.R. 302 = A.I.R. 1942 Lah. 153 (F.B.)**

——**S. 11**—*Execution proceedings — Matter not decided on merits—If can be re-opened.*

The rule of *res judicata* as laid down in S. 11, C. P. Code, with reference to matters decided by a Court of competent jurisdiction in a previous suit is neither relevant nor applicable in any subsequent proceedings arising out of the same decree. If a matter has once been finally decided between the parties to those proceedings, the effect is the same as that of an interlocutory judgment in an ordinary suit and is binding upon the parties for the rest of the proceedings, if it has been allowed to become final. On this view, if a matter has once been allowed to be finally decided, there is no reason why the matter should be allowed to be re-opened whether it has been decided on the merits or not. (*Beckett, J.*) PARTAP SINGH *v.* BHAGAT RAM. **199 I.C. 160 = 14 R.L. 381 = 43 P.L.R. 727 = A.I.R. 1942 Lah. 71.**

——**S. 11**—*Execution proceedings—Plea of limitation raised and abandoned—If can be raised at later stage*—Res judicata.

It is a well established principle that a party is not entitled to raise at a later stage of a proceeding a plea in bar which was open to him at an earlier stage and which he had an opportunity of raising, or which, having been raised, has been overruled. When a plea in bar of execution is not taken or is overruled, the judgment-debtor is not at a later stage entitled to challenge the validity of the proceedings on that ground. Where a point of limitation is raised and apparently abandoned or is not pressed, it cannot be raised again at a later stage, by reason of the principal of *res judicata*. (*Harries, C. J. and Agarwalla, J.*) SITLA SAHAI *v.* GOURI NATH. **202 I.C. 264 = 8 B.R. 866 = 15 R.P. 106 = 23 Pat.L.T. 361 = A.I.R. 1942 Pat. 477.**

——**S. 11**—Execution proceedings — *Res judicata*—Application for execution by assignee—Judgment-debtor failing after notice to raise objection to execution on ground of invalidity or non-production or non-registration of assignment deed—Objection in subsequent execution—Bar of constructive *Res judicata*. *See* C. P. CODE, O. 21, R. 16. **44 Bom.L.R. 164.**

——**S. 11**—Execution proceedings—*Res judicata*—Failure of judgment-debtor to substantiate plea—Plea, if can be raised again at later stage. *See* 1941 Dig., Col. 202. MAHARAJA OF COCHIN *v.* THUPRAN. **200 I.C. 324 = 15 R.M. 76 = (1941) 2 M.L.J. 792.**

——**S. 11**—Execution proceedings—*Res judicata*—Order for execution after notice—Effect of—Sons proceeded against under pious obligation theory of Hindu Law—If barred by *res judicata* from pleading limitation. *See* 1941 Dig., Col. 202. VENKATARANGA REDDI *v.*

SITHAMMA. **200 I.C. 27 = 14 R.M. 645 = (1941) 1 M.L.J. 270.**

——**S. 11**—*Ex parte* decree. *See* 1941 Dig., Col. 202 PRIOMBADA DEBI *v.* JOHURI LAL. **198 I.C. 462 = 14 R.C. 462.**

——**S. 11**—"*Finally decided*"—*Decree in suit subject to final decision of Privy Council in another case.*

A decree in a suit expressed to be "subject to the final decision" of the Privy Council in another case is not a final decree within the meaning of S. 11 and the only proper course in such a case is to adjourn the suit without making any decree, until the final determination of the other suit. (*Lord Thankerton.*) KUMAR CHANDRA SINGH *v.* MIDNAPORE ZEMINDARY CO. **69 I.A. 51 = I.L.R. (1942) 2 Cal. 1 = 8 B.R. 627 = 14 R.P.C. 128 = 46 C.W.N. 802 = I.L.R. (1942) Kar. (P.C.) 23 = 199 I.C. 545 = A.I.R. 1942 P.C. 8 (P.C.).**

——**S. 11**—*Heard and finally decided—Application to set aside* ex parte *decree under O. 9, R. 13, C. P. Code—Dismissal—Subsequent suit to set aside on same ground*—Res judicata.

Where an application is filed under O. 9, R. 13, C. P. Code, to set aside an *ex parte* decree on the allegations that the summons had been fraudulently suppressed, that the plaintiff, though a minor at the date of the suit, was impleaded as a major, and that the claim in the suit was entirely false and supported by false evidence, but these were found against and the application was dismissed by the Court which was competent to decide the matter, the decision operates as *res judicata*, and no separate suit to set aside the decree on these grounds can be maintained. (*Harries, C.J. and Fazl Ali, J.*) LAGANMANI KUER *v.* RAM GOVIND SINGH. **199 I.C. 736 = 14 R.P. 626 = 8 B.R. 623 = 1942 P.W.N. 88 = 23 Pat.L.T. 225 = A.I.R. 1942 Pat. 357.**

——**S. 11**—Heard and finally decided—Claim not adjudicated upon in prior suit—Plaintiff not proceeding with claim—Choice to wait for a different action. *See* 1941 Dig., Col. 203. OKUSANYA *v.* AKANWO. **8 B.R. 174 = 14 R.P.C. 75.**

——**S. 11**—Heard and finally decided—Finding without issue. *See* 1941 Dig., Col. 203. NUR HOSSEIN SERANG *v.* TAMIJUDDIN. **197 I.C. 495 = 14 R.C. 366.**

——**S. 11**—Heard and finally decided—Issue raised in suit and expressly decided against plaintiff—Effect of—Right to seek relief in execution contrary to decision in suit—*Res judicata*. *See* C. P. CODE, S. 47. **8 B.R. 401.**

——**S. 11**—Heard and finally decided—Matter not in issue in previous suit. *See* 1941 Dig., Col. 204. BARODA PRASAD PAL *v.* ASUTOSHPAL. **199 I.C. 689 = 14 R.C. 617.**

——**S. 11**—Heard and finally decided—Rent suit—Tenants' defence that he held land under third person overruled—Suit by tenant for declaration that third person and not plaintiff in rent suit was his landlord—If barred. *See* 1941 Dig., Col. 204. PANCHANAN GHOSH *v.* KUMAR SARAT KUMAR ROY. **197 I.C. 316 = 14 R.C. 328.**

——**S. 11**—*Issue of law—Decision on—Operation as* res judicata—*Decision as to non-executability of a maintenance decree—Subsequent execution application*—Res judicata, *bar of*.

It is only in regard to cases where there is a decision on a pure question of law quite irrespective of the facts of the two cases involved that it may be said that such a decision does not operate as *res judicata* in a subsequent suit on a different cause of action. Where a decree for future maintenance is once held to be not executable, that decision would operate as *res judicata* when a subsequent application is made for execution of the same

C. P. CODE (1908), S. 11.

decree though in respect of later arrears. (*Allsop, J.*) DULARI *v.* SAHDEI. 1942 A.L.W. 555.

——S. 11—"*Litigating under the same title*"—*Adoption by widow in* 1927—*Decision in suit in* 1928 *that widow had no right to adopt—Change in law—Subsequent adoption by widow in* 1935 *of same person—Suit by adopted son—If barred by* res judicata.

A later suit for a declaration of the validity of the plaintiff's adoption in 1935 cannot be held to be barred by *res judicata* by reason of his adoptive mother's right having been negatived in an earlier suit of 1928 in respect of an adoption made in 1927, the adopter and adoptee being the same, when in the meanwhile there has been a change in the law. (*Broomfield and Sen, JJ.*) MAHADEVAPPA SOMAPPA *v.* DHARMAPPA SANNA NINGAPPA. 203 I.C. 655=44 Bom.L.R. 710 =A.I.R. 1942 Bom. 322.

——S. 11—*Litigating under the same title—Decision in declaration suit as to ownership of a property—Reagitation in subsequent suit of same question by creditor of defeated defendant in former suit—If barred.*

Where the plaintiff in a suit to have the estate of *D* administered by Court had already filed a suit against the heirs of *D* for a declaration that a certain property belonged to him solely and the Official Receiver in the administration suit was impleaded as a party to the declaration suit and the suit decreed against the heirs of *D* and the Official Receiver the decision would operate as *res judicata* in the administration case. The Official Liquidator of *D* & *Co.* having a claim against the estate of *D* in respect of the property in qnestion would be barred from reagitating the same questiou in the administration suit. He is only in the position of a creditor attempting to assert the title of his debtor and hence must be held to be claiming under him. (*Bennett and Agarwal, JJ.*) THE OFFICIAL LIQUIDATOR, DINSHAW & CO. *v.* ANAND BEHARI LAL. 201 I.C. 69=15 R.O. 48=1942 O.W.N. 269=1942 A.W.R. (C.C) 198=1942 O.A. 205=A.I.R. 1942 Oudh 327.

——S. 11—*Litigating under the same title—Lessor and lessee becoming Sadar lambardar and lambardar after decision in rent suit—Later suit between same parties in respect of rent for subsequent years—Bar of* res judicata.

The mere fact that the lessor and lessee had subsequent to a decision in a suit for rent between them acquired the additional capacity of sadar lambardar and lambardar would not alter their capacities in a later suit between tham, for rent In respect of later years. Nor would it bar the application of the rule of *res judicata* (*Niyogi J.*) TEKCHAND KAPURCHAND *v.* BIRZABAI. I.L.R. (1942) Nag. 721=202 I.C. 317=15 R. N. 77=1942 N.L.J. 423=A.I.R. 1942 Nag. 119.

——S. 11—Litigating under same title—Meaning of. *See* 1941 Dig., Col. 2 5. PRIOMBADA DEBI *v.* JOHUR LAL. 198 I.C. 462=14 R.C. 462.

——S. 11—*Miscellaneous proceedings—Decision in profits suit as to whether land was Khudkasht or tenancy land—If operates as* res judicata *in later declaration suit.*

Where the question whether land was khudkasht or tenancy land is raised and decided in a suit for profits. the decision would operate as *res judicata* in snbsequent suit for decleration when the same question is raised. (*Shirreff, S.M.*) JAIRAJ SINGH *v.* ASHARFI DEVI. 1942 R.D. 433 (1)=1942 O.W.N. (B.R) 344 (1)= 1942 A.W.R. (Rev.) 266=1942 O.A (Supp.) 292 (1).

——S. 11—Miscellaneous proceedings—Decision of Revenue Court as to defendants being muafidars—Later civil suit to declare that they are not muafidars—Bar

C. P. CODE (1908), S 11.

of *res judicata. See* 1941 Dig., Col. 205. AZIZ AHMAD KHAN *v.* INAYAT KHAN. 17 Luck. 215= A.I.R. 1942 Oudh 25.

——S. 11—*Miscellaneous proceedings—Finding as to amount charged under security bond in execution proceedings under* S. 386, *Cr. P. Code—Subsequent suit to enforce security bond—Bar of* res judicata *as to extent of charge created.*

Where in execution proceedings under S. 386, Cr. P. Code, on objections raised under S. 386. Cr. P. Code, read with O. 21, R. 90, C. P Code. as to the extent of the charge created by the security bond the Court determines the amount charged uuder the security bond, the finding of the Court as regards the amount would operate as *res judicata* between parties in a subsequent suit to enforce the security bond. (*Collister and Baipai, JJ.*) JAGAT SINGH *v.* BEHARI LAL. 199 I.C. 212= 14 R.A. 351=1942 A.L.J. 37=1941 A.W.R. (H.C.) 389=A.I.R. 1942 All. 104.

——S. 11 and United Provinces Tenancy Act S. 242—*Miscellaneous proceedings—Judgment in civil suit to eject defendant as trespasser—If operates as* res judicata *in subsequent ejectment suit in Revenue Court not triable by Civil Court.*

The judgment of the Civil Court in a suit to eject the defendants as trespassers cannot operate as *res judicata* in a subsequent suit to eject the defendants in the Revenue Court when such suit is not triable by Civil Court and is exclusively within the jurisdiction of the Revenue Court under S. 242 of United Provinces Tenancy Act or S. 230 of the Agra Tenancy Act. (*Sathe, J.M.*) MAULADAD KHAN *v.* SRI THAKUR RADHA KANT. 1942 O.A. (Supp.) 207 (1)=1942 O.W.N. (B.R.) 335=1942 R.D. 424=1942 A.W.R. (Rev.) 187 (1).

——S. 11—*Miscellaneous proceedings—Rent decrees—Relationship of landlord and tenant—How far* res judicata.

Rent decrees obtained in certain years do operate as *res judicata* between the parties and it is not open to the defendant to allege that in those years he was not the tenant of the plaintiff. But these decrees do not prevent the defendant from relying upon facts which show that whatever the position was in those years he was not the tenant of the plaintiff in subsequent years. (*Harries, C.J. and Fazl Ali, J.*) JAGDISH CHANDRA DEO *v.* BISESWAR LAL. 199 I.C. 341=8 B.R. 547=14 R.P. 582=23 P.L.T. 673=A.I.R. 1942 Pat 323.

——S. 11—*Plea of* res judicata—*When not open.*

Normally, *res judicata* is pleaded in bar to the hearing of the whole suit or some issue in it. When so pleaded, all the available grounds in support of it must be urged once for all. But when no issue as to *res judicata* is raised, but only a particular decision is incidentally considered as a bar by one Court and no bar by the Appellate Court. the plea is not wholly excluded thereby especially when the Appeliate Court remands the whole suit directing it to be tried on fresh evidence, (*Pal, J.*) SRISH CHANDRA NANDY *v.* KALA CHAND ROY. I.L.R. (1942) 1 Cal. 510=202 I.C. 570=15 R.C. 367=75 C.L.J. 20=46 C.W.N. 169=A.I.R. 1942 Cal. 445.

——S. 11—*Principle of* res judicata—*Applicability—Decision in later suit on the same issue becoming final during the pendency of appeal against earlier decision—Bar of* res judicata.

Where during the pendency of an appeal against the finding in a suit, the same issue had been raised and decided differently in another suit in the same Court later by a different Judge and such later decision had been allowed to become final it will operate as *res judicata* in the appeal against the earlier decision, 16

C. P. CODE (1908), S. 11.

M.L.J. 63=29 Mad. 333 (F.B.), Expl. (*Leach, C.J and Kuppuswami Ayyar, J.*) CHOCKALINGA THEVAR *v.* SANKARAPPA NAICKER. **I.L.R. (1942) Mad. 677 =201 I.C. 733=15 R.M. 385=1942 M.W.N. 178= 55 L.W. 128 (2)=A.I.R. 1942 Mad. 421=(1942) 1 M.L.J. 281.**

——**S. 11**—*Prior decision—Two suits filed one after another—Decision in later suit given earlier*—Res judicata.

If the same question is in controversy between the same parties in two different suits filed one after the other, but simultaneously pending, the final decision in the later suit, if given earlier, operates as *res judicata* in the earlier suit whose final stage is reached later. (*Edgley and Akram, JJ.*). GANGA PRASANNA *v.* KUMAR BRAHMA NIRANJAN **46 C.W. N. 702.**

——**S. 11**—Res judicata—*Lunatic's claim decreed against brother's creditors—Decision if operates as* res judicata *with respect to whole property.*

Where the lunatic's claim for a declaration of his proprietary rights and for possession of his half share is decreed against the creditors of the other brother, such decision operates as *res judicata* even in respect to the lunatic's half share in the whole of what had been the joint ancestral estate. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. **I.L.R (1942) All. 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I. R. 1942 All. 267 (2).**

——**S. 11**—Res judicata—*Tenancy cases,*

Decision in another case can only estop parties when a point in issue has been clearly defined, argued and decided in the earlier suit. In tenancy cases special care has to be exercised. (*Garbett, F. C.*) BABU *v.* SHERA. **21 Lah. L.T 4.**

——**S. 11**—Revenue Proceedings—Order in correction of patwari papers case—If operates as *res judicata* in subsequent declaration suit. *See* REVENUE PROCEEDINGS—RES JUDICATA. **1942 A.W.R. (Rev.) 84 =1942 R.D. 202.**

——**S. 11**—Scope—Mortgagor adjudged insolvent—Suit by mortgagee to enforce his mortgage making special receiver a party—Application by receiver in insolvency for setting aside mortgage as one without consideration—Both suit and application heard together—Suit decreed and application dismissed—Appeal only against order dismissing receiver's application—Decree in the suit if operates as *res judicata*. *See* 1941 Dig., Col. 206. NARAYANASWAMI AYYAR *v.* SEVADAPPA GOUNDAR. **201 I.C. 187=15 R.M. 262=A.I.R. 1942 Mad. 226=(1941) 2 M.L.J. 932.**

——**S. 11**—Subject-matter different—Finding as to jointness or otherwise of Hindu family—Crucial point of time different in the two suits. *See* 1941 Dig., Col. 207. MOHAN LAL *v.* RAM DAYAL. **16 Luck. 708.**

——**S. 11, Expl. III**—*Decree on facts admitted*—Res judicata, *if extends to facts accepted by both parties.*

Where in a prior suit there was no issue or decision on a certain point because both parties admitted it and a decree is passed on the footing of the facts admitted by all the parties, *res judicata* by reason of prior decision extends not merely to the actual decision or finding in the case but also to the common basis of facts accepted by both parties which are incorporated in and made the foundation of the judgment and decree in the case. (*Bennett and Ghulam Hasan, JJ.*) MST. SUKH RANI *v.* GAJRAJ SINGH AND OTHERS. **200 I.C. 241=14 R. O. 584=1942 O.W.N. 222=1942 O.A. 132=1942 A. W.R. (C.C.) 153=A.I.R. 1942 Oudh 354.**

C. P. CODE (1908), S. 11.

——**S. 11, Expl. IV**—*Execution proceedings—Objections to execution not filed as petition was dismissed—Raising of objections on later execution applications if barred.*

Where on an execution application being dismissed the objector does not file his objections he is not thereby precluded from filing the objections when a later execution application is filed. (*M. R. Davies.*) NORAT MAL *v.* HAR SWAROOP. **1941 A.M.L.J. 130.**

——**S. 11, Expl. IV**—Matter constituting ground of defence. *See* 1941 Dig., Col. 207. PRIOMBADA DEBI *v.* JOHURI LAL. **198 I.C. 462=14 R. C. 462.**

——**S. 11, Expl. 4**—*Might and ought—Applicability of rule where the subject matter is not identical.*

In questions of *res judicata* identity of the issues and not identity of the subject matter is relevant. Hence it cannot be held that there would be no constructive *res judicata* unless the subject matter in the two suits are identical. Where, in a suit by one brother against another for a declaration of his sole right to a property of which he was in possession, no question of any family arrangement under which the defendant was also entitled to remain in possession was raised, in a subsequent suit for possession of some other property as belonging to the plaintiff in the former suit, it was *held* that it was not open to the same defendant to raise the plea of a family arrangement as it was a plea which ought to have been raised in the former suit and that not having been raised was barred by the principle of *res judicata*. (*Ismail and Mulla, JJ.*) HAR SARUP *v.* ANAND SARUP. **203 I.C. 371=1942 A.L.J. 506=A.I.R. 1942 All. 410.**

——**S. 11, Expl. 4**—*Might and ought—Mortgage suit—Question of paramount title—Relevancy—Decision in suit—If* res judicata.

It is well-settled that as a general rule paramount title cannot be ordinarily drawn into controversy in a mortgage suit without the consent of the parties. But if there is any allegation in the plaint derogatory to the title of a prior mortgagee, and if the prior mortgagee, being a party to the suit, consents to have that title decided, then he will be bound by that decision in the suit, and the decision will operate as *res judicata* in a later suit. If, however, the question of paramount title is in conflict with the title of the mortgagor as well as of the mortgagee, that is a matter which should not ordinarily be decided in a mortgage suit. If the issue is not also raised and decided, the rule of constructive *res judicata* should not be applied.

Manohar Lall, J.—The question of priority of mortgages is a necessary issue in mortgage actions, as for instance where a subsequent encumbrancer claims priority on the doctrine of subrogation, and in such a case he must raise that issue. On the other hand where the person impleaded sets up a title adverse to the mortgagor, that question is obviously beyond the scope of the mortgage action, and unless that question is distinctly raised and decided, the decision in the suit cannot operate as *res judicata*. (*Varma and Manohar Lall, JJ.*) RAMESHWAR RAI *v.* HARAKH LAL SAHU. **199 I.C. 713=8 B.R. 616=14 R.P. 611=20 Pat. 841=A.I.R. 1942 Pat. 226.**

——**S. 11, Expl. IV**—Might and ought—*Pro forma* defendant. *See* 1941 Dig., Col. 208. BHUDEB CHANDRA ROY *v.* BHIK SHANKAR PATTANAIK. **A.I. R. 1942 Pat. 120.**

——**S. 11, Expl. IV**—"Might and ought"—Rent suit—Extent of tenancy. *See* 1941 Dig., Col. 208. PRIOMBADA DEBI *v.* JOHURI LAL. **198 I.C. 462=14 R.C. 462.**

——**S. 11, Expl. IV**—*Might and ought—Suit for arrears of rent—Title of landholder not denied—If can be denied in subsequent suit for declaration of status.*

C. P. CODE. (1908), S. 11.

Where a tenant fails to raise any plea denying the title of the landlord in a suit for arrears of rent he cannot be permitted to raise such a plea in a subseqnent suit for declaration of status for the decree in the rent suit operates as *res judicuta*. (*Shirreff, S.M. and Sathe, J.M.*) RAMPAL SINGH *v.* JOTISH CHANDER. **1942 A.W.R. (Rev.) 187 (2)=1942 O.W.N. (B.R.) 298=1942 O.A. (Supp.) 207 (2)=1942 R. D. 387.**

——**S. 11. Expl. VI**—*Applicability—Claim for oneself of a right common to others also—Principle of representation when applies.*

Expl. VI to S. 11, C. P. Code, will not appiy where a plaintiff claims a right for himself, though the right may be common to others also. The general principle is that one person will not represent others in litigation unless it is expressly stated that he is litigating in a representative capacity and that provisions of R. 8 of O. 1, C. P. Code, are observed. (*Bennet and Madeley, JJ.*) JITENDRA SINGH *v.* ALLIANCE BANK OF SIMLA. **198 I.C. 775=1941 O.W.N. 1381=1942 A.W.R.(C.C.) 39=14 R.O. 438=1941 O.A. 1074=1942 R D. 27=A.I.R. 1942 Oudh 199.**

——**S. 11, Expl. VI**—Parties and representatives—Attaching decree-holder—If claims under judgment-debtor. *See* 1941 Dig., Col. 209. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal. 169=200 I.C. 216=14 R.C. 685=46 C.W.N. 245=A.I.R. 1942 Cal. 92.**

——**S.11,Expl. VI**—Parties and their representatives—Decision as to legal representative—If *res indicata*. *See* 1940 Dig., Col. 184. SULEMAN *v.* ABDUL SHAKOOR. **I.L.R. (1941) Nag. 735.**

——**S. 11, Expl. VI**—Representative suit or proceeding—Claim to attached property—Objections to same by decree-holder—If one on behalf of all creditors. *See* 1941 Dig., Col. 209. PETHURAJU KONE *v.* MUTHUSWAMI AYYAR. **201 I C. 199=15 R.M. 273=A.I.R. 1942 Mad. 128=(1941) 2 M L.J, 784.**

——**S. 13 (a)**—Applicability—Suit in foreign Court—Defendant filing written statement attacking jurisdiction of Court—If submission to jurisdiction—Decree—Executability in British India. *See* 1941 Dig., Col. 210. SUNDARAM PILLAI *v.* KANDASWAMI PILLAI. **200 I.C. 83=14 R.M, 702=(1941) 1 M.L.J. 140.**

——**S. 13 (a)**—*Court of competent jurisdiction—Defendant resident in British India—Agent in Baroda state holding power-of-attorney to file suits in Baroda Courts on behalf of defendant—Power revoked before suit in Baroda Court*—Exparte *decree—If binds defendant—Executability in British India.*

Iu an action *in personam* the Courts of a foreign country do not acquire jurisdiction from the mere possession by the defendant at the commencement of the action of property locally situate in that country, or from the presence of the defendant in such country at the time when the obligation in respect of whlch the action is brought was incurred in that country or from the fact that the defendant was car ying on husiness in such country through a manager or agent at the time when the obligation in respect of which the action is brought was incurred. The defendant against whom an *ex parte* decree was obtained in a Court in Baroda State in 1939, was a British Indian subject and had at no time material to the litigation resided within the state of Baroda. One *R* held a power-of-attorney from the defendant and lived In Baroda when the suit transaction took place, but the power-of attorney was revoked before the suit and *R* had left Baroda and gone to British India and lived there for many months before the date of suit. At the date of the suit there was no agent of the defeudant within the jurisdiction of the Baroda Court, The business of the defendant had ceased as early as October 1936. The suit summons was served on the defendant in Bombay in January, 1939. The power-of-attorney held by *R* entitled him to appear and to file suits in the Baroda Courts and to engage pleaders, to sign vakalatnamas in the defendant's name and to exercise in his name "all the lawful rights which the had in the matter of. . . ." etc.

Held, that the Baroda Court was not a Court of competent jurisdiction within the meaning of S. 13 (*a*), C. P. Code, and hence the decree did not bind the defendant and could not be executed against him in British India. The defendant had not submitted to the jurisdiction of the Baroda Court by reason of the power-of-attorney given by him to *R*, which existed at the time of the transactlon but which was revoked before the suit. (*Kania, J.*) VITHALBHAI SHIVABHA *v.* LALBHAI BHIMBHAI. **I.L.R. (1942) Bom. 688=202 I.C. 286=15 R.B. 149=44 Bom.L.R. 380=A I.R. 1942 Bom. 199.**

——**S. 13 (a)**—"Court of competent jurisdiction"—Person born of Cochin parents resident in British India—Decree by Cochin Court against such person—If decree of Court of competent jurisdiction—Executability in British India. *See* 1941 Dig., Col. 210. RAMALINGA IYER *v.* SWAMINATHA AYYER. **200 I.C. 254=15 R.M. 16=(1941) 2 M.L J. 68.**

——**S. 13 (b)**—Applicability—Defendant set *ex parte* order set aside and—Defendant getting *ex parte* order set aside and filing written statement raising various issues and then withdrawing—Decree after examination of plaintiff—If not one on merits. *See* 1941 Dig., Col. 210. SUNDARAM PILLAI *v* KANDASWAMI PILLAI. **200 I.C. 83=14 R.M. 702=(1941) 1 M.L.J. 140.**

——**S 13 (e)**—Applicability—"Fraud"—Meaning—Decree obtained on evidence which is not true but which is believed by Court—If vitiated. *See* 1941 Dig., Col. 210. SUNDARAM PILLAI *v.* KANDASWAMI PILLAI. **200 I.C. 83=14 R.M. 702=(1941) 1 M.L. J. 140.**

——**S 13 (f)**—Applicability—Claim in foreign Court to recover money spent on marriage of minor members of joint family—Defendants over 18 years but minors under British Indian Law being wards under guardian—Decree—If unenforceable in British India under S. 13 (*f*). *See* 1941 Dig., Col. 211. SUNDARAM PILLAI *v.* KANDASWAMI PILLAI. **200 I.C. 83=14 R.M. 702=(1941) 1 M.L.J. 140**

——**S. 14**—*Scope—Duty of Court under—Presumption—Rebuttal.*

On production of a certified copy of a foreign judgment, it is obligatory on a Court in British India to presume that the Court which passed that decree was a Court of competent jurisdiction. It is open to the other party. however, to show by following the record itself that there was want of jurisdiction, or the presumption may be displaced by evidence led on the point (*Kania, J.*) VITHALBHAI SHIVABHA *v.* LALBHAI BHIMBAI. **I.L.R. (1942) Bom. 688=202 I.C. 286=15 R.B. 149=44 Bom.L.R. 380=A.I.R. 1942 Bom. 199.**

——**S. 16**—Declaratory suit—Place of suit—Immovable property attached before judgment—Objector's claim allowed—Suit for declaration that property belongs to defendant. *See* 1941 Dig., Col. 212. PRABHASINI DUTTA *v.* NRIPENDRA NATH SINHA. **199 I.C. 681=14 R.C. 619.**

——**S. 17**—*Applicability—Conditions.*

Before the provisions of S. 17, C. P. Code, can come into play there must be one property which is situated in different jurisdictions. The property must be capable of being described as a single entity. If there is a

C. P. CODE (1908), S. 17.

C. P. CODE (1908), S. 17.

dispute, for instance, about a single estate which both parties are claiming as a whole that estate is for the purposes of that suit a single entity. If, on the other hand, the owner of an estate has a claim against unconnected trespassers who have trespassed upon different patts of the estate or different properties situated within it, those parts or those properties would not for the purposes of the dispute between him and the trespassers be one entity but several entities and the provisions of S. 17 would not apply. (*Allsop and Verma, JJ.*) KARAM SINGH *v.* KUNWAR SEN. **1942 A.L.W. 399=1942 A.W.R. (H.C.) 270=A.I.R. 1942 All. 387.**

——S. 17—Jurisdiction of Court—Property situate outside British India and outside local limits. *See* 1941 Dig., Col. 212. RAM KISHAN *v.* OM PRAKASH. **197 I.C. 481=14 R.L. 241.**

——S. 20—*Contract regarding purchase of goods—Place of suit.*

To decide the question of jurisdiction of a Court to entertain a suit based upon a contract regarding purchase of certain goods, three points arise; one is the place of the contract; second is the question of delivery of the goods; and the third is the question of payment for the goods. (*Dalip Singh and Sale, JJ.*) SHAW HARI DIAL *v.* SOHNA MAL BELI RAM. **202 I.C. 449=15 R.L. 132=44 P.L.R. 428=A.I.R. 1942 Lah. 252.**

——S. 20—Jurisdiction—Suit by wife against husband and father-in-law for maintenance and return of stridhan property entrusted at time of marriage—Place of suing—Suit at place of wife's residence—Maintainability—Rule of debtor seeking out creditor—Applicability of. *See* 1941 Dig., Col. 213. RAMALINGA IYER *v.* JAYALAKSHMI. **200 I.C. 58=14 R.M. 685=(1941) 1 M.L.J. 784.**

——S. 20 (c)—*Cause of action—Contract of hiring—Dramatic work converted into film and hired to cinema company for exhibition—Film exhibited in pursuance of contract—Suit by author of dramatic work for infringement of copyright—Jurisdiction—Suit at place of exhibition of film—Maintainability.*

In the absence of any specific terms in the actual contract between the parties to the contrary, a transaction of hiring cannot be completed until the article hired is in the hands of the person to whom it is hired; an article cannot be said to be hired until it reaches the hands of the person to whom it is to be hired. The plaintiff brought a suit for damages for infringement of copyright in respect of a dramatic work, claiming that he had written that work which according to him, had been converted by the defendants into a cinematograph film. He complained that the defendants, who were a movietone company of Madras, entered into a contract with the proprietor of a cinema at Rajahmundry to exhibit the film and that the film was duly exhibited at Rajahmundry in pursuance of the contract. He brought his suit in Rajahmundry. The defendants contended that no part of the cause of action arose at Rajahmundry and that the suit therefore lay only in Madras and not in Rajahmundry.

Held, that the question whether the contract was completed in Madras or Rajahmundry was entirely irrelevant as the mere completion of the contract was no part of the cause of action; that the action of hiring out this film was not complete until the film reached Rajahmundry and was delivered to the proprietor of the cinema. Part of the cause of action therefore arose in Rajahmundry and the suit would therefore lie in Rajahmundry. (*King, J.*) KAMESWARA RAO *v.* NATIONAL MOVIETONE CO., LTD. **204 I.C. 25=1942 M.W.N. 448=A.I.R. 1942 Mad. 659=(1942) 2 M.L.J. 110.**

C. P. CODE (1908), S. 24.

——S. 20 (c)—*Cause of action—Jurisdiction—Suit for damages for a breach of contract.*

The cause of action in a suit for damages for a breach of contract arises either at the place where the contract was made or at the place where the contract was agreed to be performed or the place where the money was agreed to be paid or where the breach of contract actually took place. Where the contract actually takes place at *F*, where the defendant resides and the defendant agrees to perform it within the *B.* district, the breach of contract takes place in district *B.* when the defendant fails to perform it. Though there is a clause in the contract that the entire accounting would take place at *F.* it refers to the final adjustment, between the parties in the event of the contract being performed. Hence where it is not performed, that clause could have no operation. (*Ghulam Hasan and Madeley, JJ.*) MAHOMAD IDRIS *v.* RATI RAM. **199 I.C. 446=14 R.O. 489=1942 A.L.W. 40=1942 A.W.R. (C.C.) 53=1942 O.A. 30=1942 O.W.N. 56=A.I.R. 1942 Oudh 250.**

——S. 20 (c)—*Cause of action—Promissory note—Suit on—Jurisdiction—Note made at specified place—No reference to place of payment—If payable at place of payee—Duty of debtor to seek out creditor.*

The cause of action for a suit on a promissory note is the promissory note itself and not the consideration which gave rise to the note; and in a suit founded on a promissory note it is not permissible to go into the consideration for the note and to read into the note something founded on the circumstances giving rise to it. A promissory note made at a particular place and containing no stipulation as to the place of payment, cannot be regarded as being payable at any place other than the place where it is made. The common law rule that the debtor must seek out his creditor has no application to a negotiable instrument, and hence a suit on such a promissory note has to be instituted only at the place where the note is made. (*Beaumont, C. J and Somjee, J.*) JIVATLAL PURTAPSHI *v.* LALBHAI FULCHAND. **I.L.R. (1942) Bom. 620=203 I.C. 27=15 R.B. 184=44 Bom.L.R. 495=A.I.R. 1942 Bom. 251.**

——S. 20 (c)—Cause of action—Suit on contract—Place of receipt of letter or telegram of acceptance of offer. *See* 1941 Dig., Col. 213. SEPULCHRE BROTHERS *v.* KHUSHAL DAS JAGJIVAN DAS. **I.L.R. (1942) Mad. 243=201 I.C. 176=15 R.M. 260=A.I.R. 1942 Mad. 13=(1941) 2 M.L.J. 481.**

——S. 21—Scope of rule embodied in. *See* 1941 Dig., Col. 213. JAGNIRAM PREMSUKH *v.* GANPATI. **198 I.C. 873=14 R.N. 251.**

——S. 22—*Applicability—Conditions.*

The provisions of S. 22, C. P. Code, could apply only if the suit in its entirety, is cognizable by either of the Court in which the suit is filed or by the Court to which the suit is sought to be transferred. (*Allsop and Verma, JJ.*) KARAM SINGH *v.* KUNWAR SEN. **1942 A.W.R. (H.C.) 270=1942 A.L.W. 399=A.I.R. 1942 All 387.**

——S. 24—*Transfer—Grounds.*

Where a plaint was wrongly permitted to be returned and a fresh plaint put in the same Court, it is no ground for asking for a transfer of the case from out of that Court. (*Davies.*) NAND LAL *v.* AMAR SINGH. **1942 A.M.L.J. 33.**

——S. 24—*Transfer—Sufficient reason—Similar question of law in prior proceedings by same Judge.*

The circumstance that a Judge has already in prior proceedings between the same parties come to a conclusion of law on a similar question is no sufficient reason for transferring a suit from his Court to another Court.

C. P. CODE (1908), S. 34

(*Braund and Yorke, JJ.*) KAILASH CHANDRA JAIN *v.* JHAMOLA KUNWAR. **1942 A.L.W. 291.**

——**S. 34**—*Deposit of decree amount in Court—Security ordered before withdrawal—Liability to interest only till date of notice of deposit and not till date of withdrawal.*

Interest would continue to run on the decree amount from the date of deposit until the date when notice of the deposit is given to the decree holder. The decree holder is not entitled to interest after that date till he withdraws the amount on furnishing security. The fact that the next friend of the minor decree holder is unable to furnish the security is no ground for making the judgment-debtor liable for interest for that period. (*King and Kunhi Raman, JJ.*) THE SOUTH INDIAN RAILWAY CO., *v.* MAYILVAHANAN, **56 L.W. 17=1943 M.W.N. 8=(1942) 2 M.L.J. 803.**

——**S. 34**—*Interest prior to suit—Claim for—Sustainability—Absence of demand before suit—Effect.*

Interest prior to suit cannot be claimed or allowed when there has been no demand made for it prior to the suit. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8=8 B.R. 764=15 R.P. 25=23 Pat L.T. 407=A.I.R. 1942 Pat. 417.**

——**S. 34**—Interest—Right to—Facts entitling. *See* 1941 Dig., Col. 214. DISTRICT COUNCIL WARDHA *v.* ANNA. **I.L.R. (1942) Nag. 294.**

——**S. 34**—*Right to by way of damages.*

In the absence of usage or contract expressed or implied or of any provisions of law justifying the award of interest on the decretal amount for the period before the institution of the suit, interest for that period could not be allowed by way of damages caused by the wrongful detention of the money. (*Agarwal and Madeley, JJ.*) PIAREY LAL *v.* MAHADEO PRASAD. **199 I.C. 698=14 R.O. 514=1942 R.D. 320=1942 A.W.R. (C.C.) 109=1942 O.W.N. 157=1942 O.A. 88=A.I.R. 1942 Oudh 311.**

——**S. 35**—Beneficiary propounding will and applying for probate—Contest by widow—Putting plaintiff to proof—Costs of beneficiary proving the will—Right to—Practice—Duty of Probate Court to grant letters of administration with the will annexed to proper person where no executor is appointed under will. *See* 1941 Dig., Col. 215. KANAKASABAPATHI CHETTI *v.* UNNAMALAI AMMAL. **198 I.C. 560=14 R.M. 457=(1941) 1 M.L.J. 299.**

——**S. 35**—*Costs—Discretion of Court.*

Per *Dar, J.*—Costs are in the discretion of the Court and very often they are awarded on personal considerations. Sometimes they may be of penal nature. (*Iqbal Ahmad, C. J., Ganga Nath and Dar, JJ.*) CHANDRA SHEKAR *v.* MANOHAR LAL. **201 I.C. 695=15 R.A. 79=1942 A.L.W. 478=1942 A.W.R. (H.C.) 241=1942 A.L.J. 367=A.I.R. 1942 All. 233 (F.B.).**

——**S. 35**—*Costs—Discretion—Defendant succeeding on plea of limitation—Right to costs.*

A plea of limitation is in no sense an unjust plea, and because a defendant succeedson a plea of limitation, that is no ground why he should not get his costs. (*King and Kunhi Raman, JJ.*) RAJABAPAVVA *v.* BASAVAYYA. **55 L.W. 644 (2)=1942 M.W.N. 820 (2)=A.I.R. 1942 Mad. 713=(1942) 2 M.L.J. 515.**

——**S. 35**—Cost in partition suits—Rule—Parties if to bear own costs up to preliminary decree. *See* 1941 Dig., Col. 215. JUGESHER MISRA *v.* KIRIT SINGH. **198 I.C. 743=8 B.R. 463=14 R.P. 500=A.I.R. 1942 Pat. 76.**

——**S. 35**—*Costs—Liability of legal practitioner for—Circumstances justifying order against pleader.*

C. P. CODE (1908), S. 35.

There is no justification for the assumption that S. 35, C. P. Code, is not intended to cover any case where the act of a legal practitioner comes within the term 'misconduct' within the meaning of the Legal Practitioners and the Bar Councils Acts. A pleader may therefore be liable for costs of the proceedings taken by him in cases where the costs occasioned to his client are the direct result of the initiation and prosecution of the proceedings by him. Where an application for review purports to be made by a pleader personally on his own behalf and not on behalf of his client the minor or his gauardian, on grounds wholly untenable, there is no justification for his action and he can be asked to pay the costs personally. (*Ghulam Hasan and Madeley, JJ.*) SRIPAL SINGH *v.* MAHARAJ SINGH. **199 I.C. 385=14 R.O. 486=1942 A.W.R (C.C.) 65=1942 O.A. 43=1942 A.L.W. 73=1942 O.W.N. 68=A.I.R. 1942 Oudh 279.**

——**S. 35**—*Costs not following the result—Absence of notice prior to suit, if a sufficient reason.*

The mere fact that a successful plaintiff did not issue notice to the defendant prior to suit is no ground for not following the rule that costs should follow the result when the suit has been contested and it is not suggested that no costs would have been incurred if notice had been issued. (*Allsop and Verma, JJ.*) ALLAH DIYA *v.* SONA DEVI. **1942 A.L.J. 443=1942 A.W.R. (H.C.) 218=1942 A.L.W. 329=A.I.R. 1942 All. 331.**

——**S. 35**—*Costs—Pleader's fees—Return of plaint on ground of improper valuation—Basis for computing pleader's fee.*

Where the plaint in a suit valued at Rs. 1280 is ordered to be returned on the ground that the valuation of the suit was not properly made and that the correct valuation ought to have been Rs. 2396, the defendants are not entitled to claim pleader's fee on the correct amount of valuation. They are entitled to costs only on Rs. 1280. (*Agarwal, J.*) KALLU MAL *v.* MUNICIPAL BOARD, NAVABGANJ. **200 I.C. 608=15 R.O. 25=1942 O.W.N. 335=1942 A.W.R. (C.C.) 220=1942 O.A. 241=A.I.R. 1942 Oudh. 392.**

——**S. 35**—*Costs—Power of Court to award costs against stranger to litigation—Relief against real plaintiff in suit by benamidar.*

Per *Iqbal Ahmad, C. J. and Ganga Nath, J.*—Under S. 35, the Court may, in exceptional cases, award costs even against a stranger to the litigation. The Court, of course, will not, and cannot, award costs against a person without giving him an opportunity of being heard. It follows that if a party to a litigation desires costs to be awarded against a stranger to that litigation, he must, at an appropriate stage of the litigation, raise the point before the Court, so that the Court may, if it thinks proper to do so, implead the stranger as a party to the litigation and give him an opportunity of being heard. It is open to a defendant in a suit by a benamidar to say that the real plaintiff is a person other than the person in whose name the suit has been filed, and to ask the Court to implead the real plaintiff and award him costs as against the real plaintiff but if the defendant in such a suit does not adopt such a course, he cannot, after the termination of litigation, raise the question of costs by a separate suit. The question of costs of particular suit is a matter incidental to that suit and cannot, therefore, be made the subject of a separate suit. (*Iqbal Ahmad, C.J., Ganga Nath and Dar, JJ.*) CHANDRA SHEKHAR *v.* MANOHAR LAL. **201 I.C. 695=15 R.A. 79=1942 A.L.W. 478=1942 A.W.R. (H.C.) 241=1942 A.L.J. 367=A.I.R. 1942 All. 233 (F.B.).**

C. P. CODE (1908), S. 35.

——**S. 35**—*Discretion of lower Courts—Interference by Judicial Commissioner's Court—Practice.*

The Judicial Commissioner's Court does not normally interfere with the discretion exercised by the Courts below in the matter of costs. (*Mir Ahmad, J.C. and Soofi, J.*) KHADI KHAN *v.* MURAD KHAN. **200 I.C. 732=A.I.R. 1942 Pesh. 39.**

——**S. 35 and O. 7, R. 10**—Powers of Court—Order returning plaint—Condition that plaintiff should pay costs of defendant before presenting to proper Court—Jurisdiction to impose. *See* 1941 Dig., Col. 216. KESAVALU NAIDU *v.* VENKATARAMA CHETTIAR. **201 I.C. 119=15 R.M. 221=A.I.R. 1942 Mad. 35=(1941) 2 M.L.J. 450.**

——**S. 35 (2)**—*Compliance with—Duty of Court.*

A mere reference to the circumstances of the case with no further detail mentioned is not a sufficient compliance with the provisions of S. 35 (2). (*King and Kunhi Raman, JJ.*) RAJABAPAYYA *v.* BASAVAYYA. **55 L.W. 644 (2)=1942 M.W.N. 820 (2)=A.I.R. 1942 Mad. 713=(1942) 2 M.L.J. 515.**

——**S. 36**—*Applicability—Scheme for charitable trust—Clause empowering District Judge to remove trustee on his own motion or on application—District Judge acting under—If Court or* persona designata*—Order for costs by—Executability.*

Where a clause in a scheme for regulating and managing a charitable institution empowers a District Judge, of his own motion or upon the application or representation of any person interested in the institution, to remove from the management any trustee who may be found to be unfit or incompetent or negligent, it must be held that such power is given to him as *persona designata* and not in a judicial capacity. He can act under the scheme only as a *persona designata* and not as a Court, and it is therefore not competent to him to make an order for costs capable of execution under the C. P. Code. (*Beaumont, C.J. and Sen, J.*) LAXMAN RAGHUNATH *v.* MAHADEO. **199 I.C. 647=14 R.B. 374=44 Bom.L.R. 11=A.I.R. 1942 Bom. 97.**

——**S. 37**—*"Include" — Interpretation — Original Court, if excluded.*

The word 'includes" as used in S. 37, C. P. Code, though it extends the meaning of the expression "Court which passed the decree" in one sense, does in another sense restrict it. The effect of the words is to exclude, under the circumstances specified in Cls. (*a*) and (*b*) of the section, the original Court and substitute for it another Court which for purposes of the section is to be regarded as the only Court which passed the decree. Thus when a decree is passed in exercise of appellate jurisdiction as contemplated by Cl. (*a*) of S. 37, it cannot be said that the word "include" would not exclude the appellate Court which passed the decree, and that both the original and the appellate Courts are proper Courts for execution, to either of which an application for execution of the decree could be made. Similarly, to bring a case within the purview of Cl. (*b*) of that section, it is essential that the Court which originally passed the decree has ceased to exist or to have jurisdiction to execute it, and then only can the other Court, which would be entitled to try the suit if it was then instituted, be regarded as the Court which passed the decree. The other Court is substituted for and not added to the original Court. If the original Court has ceased to exist or has ceased to have jurisdiction to execute the decree, an application for execution cannot be made to that Court. (*Mukherjea and Biswas, JJ.*) MASRAB KHAN *v.* DEBNATH MALI. **I.L.R. (1942) 1 Cal. 289=201 I.C. 234=15 R.C. 144=46 C.W.N. 141=75 C.L.J. 255=A.I.R. 1942 Cal. 321.**

C. P. CODE (1908), S. 42.

——**Ss 37, 38 & 150**—*Mortgage decree—Subsequent order under S. 13 (2) of Civil Courts Act assigning area in which mortgaged property was situate to another Court—Application for execution—Proper forum.*

A Court which passes a mortgage decree does not cease to have jurisdiction to execute that decree merely by reason of a subsequent order of a District Judge under S. 13 (2) of the Bengal, Agra and Assam Civil Courts Act assigning the particular area on which the mortgaged property is situate to another Court in the same locality. Such an order is only an arrangement for distribution of civil business and cannot in any way curtail the jurisdiction of the Court which passed the decree over the entire area as determined by the Local Govt. under S. 13 (1) of the Civil Courts Act. The Court to which the particular area is assigned has no jurisdiction to entertain an application for execution of the decree as its competency is affected by S. 38, C.P. Code, which lays down that a decree could be executed only by the Court which passed it or the Court to which it was sent for execution The decree-holder cannot invoke the provisions of S. 150, C. P. Code, in his favour, as an assignment of business under S. 13 (2) of the Civil Courts Act is not a transfer of business within the meaning of S. 150, C. P. Code. (*Mukherjea and Biswas, JJ.*) MASRAB KHAN *v.* DEBNATH MALI. **I.L.R. (1942) 1 Cal. 289=201 I.C. 234=15 R.C. 144=46 C.W.N. 141=75 C.L.J. 255=A.I.R. 1942 Cal. 321.**

——**S. 37 (b)**—*"Jurisdiction to execute it"—If includes competency to effectively execute decree.*

The expression "jurisdiction to execute it" as used in S. 37 (*b*), C. P. Code, does mean and include the competency of the Court to entertain an application for execution of the decree. Even if in the circumstances of a particular case a Court cannot effectively execute the decree, that would not mean that it has ceased to have jurisdiction to execute it. It still remains a competent Court for purposes of execution, though the decree-holder might have to apply for transmission of the decree to another Court for the purpose of obtaining the relief which he wants. (*Mukherjea and Biswas, JJ.*) MASRAB KHAN *v.* DEBNATH MALI. **I.L.R. (1942) 1 Cal. 289=201 I.C. 234=15 R.C. 144=46 C.W.N. 141=75 C.L.J. 255=A.I.R. 1942 Cal. 321.**

——**S. 38**—*Execution of mortgage decree—Sale of property situate outside jurisdiction—Discretion of Court.*

Although an executing Court has power to order the sale of mortgaged property in execution of a mortgage decree even though the property is situated beyond the limits of its jurisdiction, it has a discretion to decline to do so on the score of convenience. (*Sale, J.*) GOKAL CHAND *v.* KISHORI LAL. **200 I.C. 425=14 R.L. 461=44 P.L.R. 125=A.I.R. 1942 Lah. 123.**

——**Ss. 39 and 42**—Small Cause Court decree—Transfer to regular side for execution against immovable property — Legality. *See* 1941 Dig., Col. 217. JALLA MALL JAWAHAR MALL *v.* MOTIA. **198 I.C. 446=14 R.L. 329.**

——**S. 42**—Scope and effect—Small Cause Court decree—Transfer for execution to regular side of another Court—Orders in execution—Appealability—Revision — Competency. *See* 1941 Dig., Col. 217. ANANTA SAHU *v.* BARAJU SAHU. **197 I.C. 824=14 R.P. 370=8 B.R. 306.**

——**S. 42**—Scope—Decree of one Court sent to another Court for execution—Limitation—If depends on character of executing Court. *See* 1941 Dig., Col. 217. RANGANADHAM *v.* PONNACHARAMMA. **197 I.C. 627=14 R.P. 322=8 B.R. 256=23 Pat.L.T. 87=A.I.R. 1942 Pat. 128.**

C. P. CODE (1908), S. 42.

——S. 42—Transferee Court—Jurisdiction—How conferred—Extent of. *See* 1941 Dig., Col. 218. LAL BHAGWAT SINGH *v.* HARI KISHEN DAS. **17 Luck. 249=A.I.R. 1942 Oudh. 1.**

——S. 44-A (3)—*Decree not given on merits—Burden of proof.*

It is quite clear from the provisions of S. 44-A (3), C. P. Code, that the burden is upon the judgment-debtor to establish that the decree falls within exception (*b*) of S. 13, namely, that it has not been given on the merits of the case. If the judgment-debtor alleges that the matter was adjudicated upon without evidence being given by the plaintiff, it is for him to prove it. There is a presumption under S. 114 of the Evidence Act that judicial acts have been regularly performed, and it is for the judgment-debtor to rebut that presumption. (*Derbyshire, C. J. and Gentle, J.*) SHEIKH ABDUL RAHIM *v.* MAHOMED DIN. **75 C.L.J. 271.**

——S. 45—*Court of Political Agent of Quetta—If one established or continued by Governor-General in Council.*

That the Court of the Political Agent, Quetta, is one established or continued by the Governor-General in Council is shown by Notification No. 3072-F.B. of 16th October 1903 which is reproduced in British Enactments in force in Indian States Edn. 4, Vol. I, page 68. The Governor-General in Council had issued a notification extending the provisions of S. 45 of the Code to the Courts established or continued by him in Baluchistan—Notification No, 786-I-B. Published in the Gazette of India of 12th April 1913, and that notification still continues to be in force by reason of para. 9 of the Government of India (Adaptation of Indian Laws) Order, 1937, until it is revoked or varied by the competent authority which is now the appropriate Provincial Government. Consequently an application to a Court in British India for transfer of a decree for execution to the Court of Political Agent Quetta is a valid application and can constitute a step-in-aid of execution for the purposes of limitation. (*Almond, J.C. and Mir Ahmad, J.*) FORBES FORBES CAMPBELL & CO. LTD. *v.* FAZAL KARIM. **201 I.C. 610=15 R. Pesh. 26=5 F. L.J. (H.C.) 159=A.I.R. 1942 Pesh. 49.**

——S. 45—*Words "foreign Prince"—Meaning of—Khan of Qalat—Quetta, if part of his state.*

The words "foreign Prince" in S. 45, C. P. Code, refer to Courts in Native Indian States in alliance with the British Government. It is not correct to say that Baluchistan is composed of two parts only, British Baluchistan and the tribal areas, for the territories of the Khan of Qalat are also situated within the borders of Baluchistan and there can be no doubt whatever that he is a foreign or Indian Prince within the meaning of S. 311, Government of India Act, for he is under treaty obligations with His Majesty as is shown in Vol. 9, Part 3, p. 398 of Aitcheson's Treaties. Quetta being a part of his State is situated within the territory of a foreign Prince or State and not within tribal areas. FORBES FORBES CAMPBELL & CO., LTD. *v.* FAZAL KARIM. **201 I.C. 610=15 R. Pesh. 26=5 F.L.J. (H.C.) 159=A.I.R. 1942 Pesh. 49.**

——S. 47—*Adjustment of decree by subsequent agreement—Power of parties—Limits to powers of the executing Court with reference to such agreement.*

The C. P. Code, contains no general restriction of the parties' liberty of contract with reference to their rights and obligations under the decree. Where it appears to a Court acting under S. 47, C. P. Code, that the true effect of an agreement between parties to a decree is to discharge the decree forthwith in consideration of certain promises by the debtor, then there would be no occasion for the Court to enforce it in execution proceedings and the creditor would have to bring a separate suit upon the contract. But where it is clear that the agreement in adjustment of the original decree is an agreement intended to govern the liability of the debtors under the decree and to have merely an effect upon the manner of its enforcement and is not an agreement whose effect is to discharge the decree forthwith, such an agreement is a matter to be dealt with under S. 47, C. P. C. (*Roberts, C.J. and Dunkley, J.*) KORBAN BIBI *v.* V. M. R. P. CHETTYAR FIRM. **1941 Rang.L.R. 767=A.I.R. 1942 Rang. 57.**

C. P. CODE (1908), S. 47.

——S. 47—*Appeal—Amounts realised in execution sale and lying in Court—Application in respect of and raising questions as to decree-holder's right to obtain more money by way of interest—Order on—Applicability.*

Where the subject matter of an application in respect of amounts realised by sale in execution of a decree and lying in Court is a question regarding the right of the decree-holder to obtain further sums by way of interest upon his decree amount, the question falls clearly under S. 47 C. P. Code, and an order passed on such application is open to appeal. (*King and Byers, JJ.*) PALAMALAI CHETTIAR *v.* RAMANATHAN CAETTIAR. **202 I.C. 475=15 R.M. 505=1942 M.W.N. 283=55 L.W. 212=A.I.R. 1942 Mad. 442=(1942) 1 M.L.J. 439.**

——S. 47—*Appeal—Application by purchaser at mortgage sale for retention of portion of sale proceeds for payment of unpaid taxes—Order thereon.*

An order on an application made by a purchaser at a mortgage sale to the effect that a certain sum might be retained by the Court for payment to the Calcutta Corporation which has a demand on the property sold for arrears of taxes, does not come within S. 47, C. P. Code, and as such cannot be challenged by way of appeal. (*Ghose and Mukherjea, JJ.*) SATISH CHANDRA DAS *v.* KAMALA BALA DEVI. **75 C.L.J. 363.**

——S. 47—*Appeal—Application by judgment-debtor for dismissal of execution case on full satisfaction in view of Bengal Money-Lenders Act.*

An application made by a judgment-debtor to the effect that in view of the provisions of the Bengal Money-Lenders Act it should be held that the decretal amount has been paid off, and the execution case be accordingly dismissed on full satisfaction, falls within S. 47, C. P. Code, and an appeal is, therefore, competent from an order rejecting that application. (*Henderson, J.*) ABDUR RAHIM *v.* ABDUR ROUF. **200 I.C. 734=15 R.C 68=46 C.W.N. 179=A.I.R. 1942 Cal. 342.**

——S. 47—Appeal—Decree against person in personal property—Objection to attachment and sale of property on the ground that he holds it as mutawalli—If falls under S. 47 or O. 21, R. 58—Appeal—Competency. *See* 1941 Dig., Col. 218. SHAHBAN MOHIB *v.* HEMRAJ RAGHAVJI. **197 I. C. 884=14 R. S. 125=A.I.R. 1942 Sind. 14.**

——S. 47—Appeal—Dispute between decree-holder and Court auctioneer regarding latter's commission—Order relating to—Not appealable. *See* 1941 Dig., Col. 218. HARDWARI MAL *v.* GANGA RAM. **I.L.R. (1942) Lah. 483=197 I.C. 862=14 R.L. 291.**

——S. 47—*Appeal—Execution—Order allotting or disallowing claim or plea but not terminating execution petition—Appealability.*

(*Krishnaswamy Ayyangar and Kunhi Rman, JJ.*) —If a claim or plea is definitely allowed or disallowed, the order is appealable notwithstanding that the execution petition in which it is made is not terminated by it. (*Leach, C. J., King and Lakshmana Rao, JJ.*) BALA-

C. P. CODE (1908), S. 47.

SUBRAMANIAM CHETTY v. KOTHANDARAMASWAMI NAYANIM VARU. 55 L.W. 623=1942 M. W. N. 657=A.I.R. 1942 Mad. 688=(1942) 2 M.L.J. 463 (F.B.).

——S. 47—Appeal—Execution sale and delivery—Application by judgment-debtor for re-delivery of part alleged to have been delivered in excess of what was sold—Order on—Appealability—If decree. *See* C. P. CODE, SS. 2 (2) AND 47. 1942 M.W.N. 190=(1942) 1 M.L.J. 336.

——Ss. 47 and 2 (2)—Appeal—Order interpreting scheme framed in suit under S. 92—Order finally adjudicating rights of parties under scheme—If decree, *See* 1941 Dig., Col. 219. SRIJIB NYAYATIRTHA v. DANDY SWAMI JAGANNATH ASHRAM. 199 I.C. 841 =14 R.C. 648.

——S. 47—*Appeal—Order refusing amendment of execution application.*

An order rejecting an application to amend an execution application does not amount to a conclusive determination of the interests of the parties and interlocutory orders of such a nature are not subject to appeal. (*Davies.*) BHAG CHAND v. SHANKAR LAL. 1941 A. M.L.J. 78.

——S. 47 and O. 21, R. 18—*Appeal—Order refusing to allow set-off.*

The question whether the decree holder is entitled to a set-off or not of a cross-decree under O. 21, R. 18, C. P. Code, is a question relating to execution or satisfaction of a decree within the meaning of S. 47, C. P. Code. An appeal is, therefore, maintainable from an order refusing to allow set-off. (*Harries, C.J. and Manohar Lall, J.*) SIDHESHWAR PRASAD SINGH v. SONU LAL. 197 I C. 440=14 R P. 300=22 Pat.L. T. 1031=8 B.R. 207=A.I.R. 1942 Pat. 197.

——S. 47—Appeal—Receiver—Order directing payment of sum of money to third party—Appealability. *See* C. P. CODE, O. 43, R. 1 (S). I.L.R. (1942) Kar. 343.

——S. 47—Appeal—Representative—Decree against insolvents—Attachment and sale of property—Notice not served on Official Receiver—Application by latter to set aside sale on ground of non-service of notice—Rejection—Appeal—Maintainability—Official Receiver—If representative of judgment-debtor. *See* 1941 Dig., Col. 220. OFFICIAL RECEIVER, NELLORE v. VENKIAH. 198 I.C. 417=14 R.M. 435=(1941) 1 M.L.J. 569.

——S. 47—Appealability—Execution sale—Application to set aside on ground of non-compliance with S. 13, Bihar Money-Lenders Act—If falls under S. 47 or O. 21, R. 90—Limitation. *See* LIMITATION ACT ART. 166. 23 Pat.L.T. 139.

——S. 47—*Applicability—Bihar Money-Lenders Act, S. 13—Order under—If decree—Second appeal—Maintainability.*

Obiter:—An order under S. 13 of the Bihar Money-Lenders Act amounts to a decree and comes within S. 47, C. P. Code, and a second appeal is therefore competent. (*Meredith, J.*) LAL BAHADUR SINGH v BISHWANATH PRASAD SINGH. 198 I.C. 204=14 R P. 412=1942 P.W.N. 28=8 B.R. 335=23 P.L.T. 14 =A.I.R. 1942 Pat. 237.

——S 47—Applicability—Court of Deputy Collector under Bengal Rent Act. *See* 1941 Dig., Col. 220. SAKKAL SARDAR v. ISSARDAS THIRANI. 199 I.C. 740=14 R C. 629=A.I.R. 1941 Cal. 230.

——S. 47 and O. 21, R. 90—*Applicability—Execution sale—Application to set aside on ground of want of jurisdiction—Order on—Second appeal.*

C. P. CODE (1908), S. 47.

An application to set aside a sale on the ground of want of jurisdiction in the Court executing the decree and holding the sale falls under S. 47, C. P. Code, and does not fall under O. 21, R. 90, C. P. Code; hence an order passed on that application is open to appeal and second appeal. (*Harries, C.J. and Dhavle, J.*) MOHAN LAL MAHTO v. SHIBDHARY CHAUBE. 197 I.C. 651=14 R.P. 327=8 B.R. 273=22 Pat.L.T. 1018=A.I.R. 1942 Pat. 146.

——S. 47—Applicability—Proceeding under O. 20, R. 12—If one in execution—Award of mesne profits in preliminary decree for partition and direction as to mesne profits—Appal—If lies. *See* C. P. CODE, S. 2 (2) AND 47. I.L.R. (1941) Kar. 563.

——S. 47—Bar of suit—Decree for possession—Possession obtained without execution—Suit on subsequent dispossession—Maintainability. *See* 1941 Dig., Col. 221. LALTU SINGH v. MANGAN SINGH. 17 Luck. 109.

——S. 47—*Bar of suit—Execution sale of property in contravention of S. 12-A, Chota Nagpur Encumbered Estates Act—Objection—Dismissal—Suit to declare sale void and for possession from auction purchaser—Maintainability.*

The question whether a certain property can be sold in execution in contravention of S. 12-A of the Chota Nagpur Encumbered Estates Act is essentially one falling under S. 47, C. P. Code and must be decided in execution. The judgment-debtor cannot raise this question in a separate suit although such suit may be brought not against the decree-holder but against the auction-purchaser at the sale and though it may be assumed that the auction-purchaser is not a representative either of the judgment-debtor or of the decree-holder. Further if the judgment-debtor in execution objects to the sale on the ground that it is prohibited by S. 12-A of the Chota Nagpur Encumbered Estates Act and his objection is dismissed and the property is sold, the order which becomes final as against the decree-holder becomes final against the auction-purchaser as well. (*Fazl Ali and Meredith, JJ.*) BHAGWAT NARAIN SINGH v. MAHADEO PRASAD BHAGAT. 21 Pat. 233=198 I.C. 411=8 B.R. 417=14 R.P. 457= 23 Pat.L.T. 56=A.I.R. 1942 Pat. 244.

——S. 47—*Bar of suit—Mortgage suit—Party claiming property by title paramount and held to be not necessary party to suit—Procedure—Dismissal of suit as against such party—Propriety—Such party—If "party to suit"—Explanation to S. 47—Question between such party and decree-holder—Separate suit—If barred.*

Where in a mortgage suit some defendants plead that they are entitled to the property in suit and claim the mortgaged property or an interest in it by title parmount, and the Court holds that they are not necessary parties to the suit, the Court should order their names to be struck out of the plaint. It is not correct for the Court to dismiss the suit as against them. Where, instead of so directing that such parties should be struck out as having been improperly impleaded, erroneously makes an order dismissing the suit as against them, such persons cannot properly be said to have been parties to the suit within the meaning of the Explanation to S. 47, C.P. Code. A question which arises between them and the decree-holder in the execution of the decree cannot also properly be said to be one relating te the execution of the decree. A separate suit is therefore not barred by S. 47 (*Agarwala and Shearer, JJ.*). KUSMI v. SADASIVA MAHTO. 21 Pat. 601=201 I.C. 196=8 B.R. 770=15 R.P. 34=23 Pat.L.T. 354=A. I.R. 1942 Pat. 432.

C. P. CODE (1908), S. 47.

——S. 47—*Bar of suit—Partition suit—Decree—Provision that sharers other than plaintiff will be put in possession of shares on paying necessary Court-fee—Separate suit by defendant-sharer for recovery of share—Maintainability.*

Where a decree in a partition suit provides that the remaining sharers other than the plaintiff shall be put in possession of their respective shares on paying the necessary Court-fee, the proper method of reading such a decree is that it declares the right of the sharers to the properties allotted to them and gives an option to the defendant-sharers to pay the Court-fee in respect of the properties allotted to them and seek possession if they like in execution of that decree. But it does not oblige them to do so, and hence a separate suit for possession by a sharer defendant is not barred by S. 47, C.P. Code. But a decree may be passed in favour of a defendant without any condition particularly as regards his payment of Court-fee. Such a decree may be one executable under S. 47, C. P. Code, and may bar a separate suit. But before a separate suit can be barred, there must be an unconditional decree giving a defendant a right to execute the decree to get the properties allotted to him. (*Somayya, J.*) NAHA HAJI *v.* VEERAN. **55 L.W. 61=1942 M.W.N. 363=A.I.R. 1942 Mad. 364 =(1942) 1 M.L.J. 219.**

——S 47—Bar of suit—Partition suit respecting lands paying Government revenue—Preliminary decree directing that plaintiff is entitled to partition—No execution taken out—Fresh suit for partition—Bar of—C. P. Code, S. 11—*Res judicata. See* 1941 Dig., Col. 222. VISHNU JANARDAN *v.* MAHADEV KESHAV. **I.L.R. (1942) Bom. 14=198 I.C. 550=14 R.B 318=A.I.R. 1942 Bom 44.**

——S. 47—Bar of suit—Person impleaded in execution as legal representative of deceased party after having been dismissed from suit—Claim to property covered by decree—Cannot be set up in execution—Separate suit—Not barred. *See* 1941 Dig., Col. 222. HAMIDGANI AMMAL *v.* AMMASAHIB AMMAL. **I.L.R. (1942) Mad. 271=198 I.C. 158=14 R.M 389=(1941) 2 M.L J. 622 (F B.).**

——S. 47—Bar of suit—Suit on sale but decree as on mortgage—Defendant failing to pay amount decreed and plaintiff put in possession as per decree—Subsequent suit by defendant for possession alleging satisfaction of mortgage out of income—Maintainability. *See* 1940 Dig., Col. 202. PANDHARI *v.* DIGAMBARDAS. **I.L.R. (1942) Nag. 131.**

——S. 47—*Executability of decree—Decree fixing monthly maintenance — Agreement by decree-holder giving up portion of maintenance—If amounts to novation.*

An agreement by the decree holder to give up a portion of her monthly maintenance fixed by a decree does not amount to novation so as to preclude her from executing the decree according to agreement. (*Mir Ahmad, J.C.*) SANTO DEVI *v.* LAL CHAND. **198 I. C. 734=14 R. Pesh 75=A I.R. 1942 Pesh 13.**

——S. 47—*Executability of decree—Suit on hand note against members of joint Hindu family—Minor defendants not represented by guardian—Decree not passed against them—Decree passed against their fathers—If can be executed against them.*

Where in a suit brought on the basis of a hand-note against the members of a joint Hindu family the minor defendants are not represented by any guardian, the effect is that they are not in the eye of law parties to the suit at all. If, therefore, no decree is passed against them on this ground, it cannot be said that the suit is dismissed against them. That being so, the decree which is obtained against their fathers can be executed against the joint family property including the interest of the minor sons. (*Chatterjee and Shearer, JJ.*) TRIBENI PRASAD *v.* THAKUR PRASAD SINGH. **199 I.C. 157=8 B.R. 513=14 R.P. 540=A.I.R. 1942 Pat. 279.**

C. P. CODE (1908), S. 47.

——S. 47—Executing Court—Powers of—Benami decree-holder—Death of—Application for execution by real owner—Title—If can be adjudicated. *See* C. P. CODE, O. 21, R. 16. **55 L.W. 623=(1942) 2 M.L.J. 463(F.B.).**

——S. 47—*Executing Court—Powers of—Question whether and to what extent decree is executable—If can be raised and decided.*

The question as to how far a decree is capable of execution as an executory as opposed to a declaratory decree is one which can be taken in execution. Such a plea does not go behind the decree. The question falls under S. 47 and has to be decided by the executing Court, as it is entirely distinct from the question whether the decree to be executed was or was not a valid decree. (*Davis, C.J. and Tyabji, J.*) GODHUMAL *v.* MT. BHAMBHO. **I.L.R. (1942) Kar. 326=A.I.R. 1943 Sind. 11.**

——S. 47—*Executing Court—Power of—Power to award relief expressly denied in suit—Issue raised in suit and decided against plaintiff—Right to ask some relief in execution—Interpretation of decree—Reference to judgment.*

A Court executing a decree is bound by the decision in the suit in which the decree was passed. When there was a distinct issue raised in the suit on a point and decided against the plaintiff, a particular relief being thereby refused, it is open to the executing Court to give the plaintiff what was expressly denied to him by the decision in the suit. Where the plaintiff specifically prays in his suit for recovery of the amount due to him by sale of certain ornaments pledged with him and that prayer is refused, the Court executing the decree has no jurisdiction to sell those ornaments in execution. If the decree is in any way ambiguous the executing Court can always interpret the decree with reference to the judgment. (*Chatterji and Dhavle, JJ.*) KADHAMONI DEVI *v.* GOBIND CHANDRA DAS. **198 I.C. 250=14 R.P. 414=8 B.R. 401=A.I.R. 1942 Pat. 196.**

——Ss. 47 and 144 and Court-Fees Act, Sch. II Art. 11—Nature of order under S. 144—For purposes of Court fee. *See* 1941 Dig., Col. 223. ABDUL MAJID SHAH *v.* ABDUL SATTAR. **197 I C. 778=14 R.N. 194.**

——S. 47—*Powers of executing Court — Decree against dead person—Execution against his legal representative—Objection that decree is a nullity, if can be gone into.*

It is correct to say that an executing Court cannot go behind a decree but that presumes that there is a valid decree in existence. When a decree is passed against several persons one of whom was dead before the decree and it is sought to be executed against his legal representatives and their contention is that the decree is a nullity either in whole or in part, then to the extent of the nullity there is no decree. Consequently the executing Court is not going behind the decree in such a case but is considering whether there is a decree or not. The executing Court is the proper Court to decide this. (*Bose, J.*) BHAKRU *v.* RAMAJI. **1942 N.L.J. 338.**

——S. 47—Representative — Decrees for rent in favour of landlord for earlier and later periods—Execution of earlier decree—Sale of holding—Purchase by stranger—Liability of latter for arrears for period prior to purchase—Purchaser—If representative of judgment-

C. P. CODE (1908), S. 47.

débtor. *See* 1941 Dig., Col. 224. DARSON MAHTO *v.* SHEO KUMAR PRASAD SINGH. **197 I.C. 688=8 B.R. 263=14 R.P. 341.**

——S 47—"Representative"—Decree-holder attaching property of judgment-debtor—If representative of the latter. *See* 1941 Dig., Col. 224. PETHURAJU KONE *v.* MUTHUSWAMI AYYAR. **201 I.C. 199=15 R.M. 273=A.I.R. 1942 Mad. 128=(1941) 2 M.L.J. 784.**

——S. 47—*"Representative"—Meaning of—Assignee of decree—Assignment challenged by creditor of decree-holder—Plea that transfer is fraudulent and fictitious—Duty of executing Court.*

The term "representative" in S. 47, C.P. Code, is not confined to legal representatives but would also include the representatives in interest who may have obtained or who may allege to have obtained a decree-holder's interest by transfer or assignment. If that assignment is challenged by a creditor of the decree-holder and it is pleaded that the assignee is not the representative of the decree-holder, that the decree cannot be taken to have been assigned so far as the decree-holder is concerned and that the interest in the decree still continues to vest in the decree-holder, the question has to be gone into by the executing Court. (*Abdur Rahman, J.*) ADEMMA *v.* SUBBAMMA. **55 L.W. 682=1942 M.W.N. 826=A.I.R. 1942 Mad. 714=(1942) 2 M.L.J. 491.**

——S 47—*"Representative"—Purchaser in execution of money decree—Right of appeal against order in execution of another decree against judgment-debtor when he is not a party to the latter decree.*

A purchaser in execution of a money decree is not a representative of the judgment-debtor within the meaning of S. 47, C.P. Code, for purposes of execution of another decree agalnst that same judgment-debtor, so as to entitle him to appeal against a decision or order in the course of execution of the latter decree to which he is not a party. A representative in interest within the meaning of S. 47 includes only a purchaser of the judgment-debtor's interest, who, so far as that interest is concerned, is bound by the decree. (*Agarwala, J.*) LAKHPAT LAL *v.* MAKHAN RAM. **201 I.C. 786=8 B.R. 838=15 R.P. 77=23 Pat.L.T. 342=A.I.R. 1942 Pat. 369.**

—— **Ss. 47 and 60**—Saleability of property—Objection as to—Judgment-debtor, if can raise after sale. *See* C. P. CODE, O. 21, RR. 90 AND 92. **44 P. L. R. 302 (F.B.).**

——**S. 47**—*Scope—Mortgage Suit—Preliminary decree—Application for final decree—Application for execution before final decree—Proceedings started—Defendants not raising objection—Final decree actually passed before sale—Sale held in proceedings started before final decree—If void—Objection to validity—Competency.*

A preliminary decree on a mortgage was passed on 26—2—1937. The plaintiff in due course applied for a final decree and notices were served on the defendant. On 19—9—1937, without waiting for the final decree to be made, he applied for execution. Notices were served on defendants and the sale was held on 7—1—1939. In the meanwhile the final decree was passed on 14—1—1938. The defendants raised no objection to the proceedings in execution or to the sale. On 7—5—1940, one of the defendants applied under S. 47, C. P. Code, challenging the validity of the sale and the execution proceedings on the ground, mainly, that the Court has proceeded to sell the property in execution of the preliminary decree.

Held, that since the final decree was passed and a sale proclamation was actually issued thereafter before the sale, even assuming that there was any irregularity in the procedure, the sale could not be held to be void, especially because there was no objection raised by the defendants and no prejudice was shown to have resulted. (*Manohar Lall, J.*) BASHISTA NARAIN SINGH *v.* RAM PUKAR SINGH. **199 I.C. 470=14 R.P. 579=8 B.R. 582=1942 P.W.N. 64=A.I.R. 1942 Pat. 343.**

——**S. 47**—*Scope—Question between decree-holder and Official Receiver representing insolvent judgment-debtor—Order under O. 43, R. 1 (j)—Appeal and second appeal—Competency.*

A question between the decree-holder and the Official Receiver representing an insolvent judgment-debtor falls under S. 47, C. P. Code, and the order on such a question is open to appeal and second appeal, even when the order falls under O. 43, R. 1 (*j*). (*Leach, C.J. and Kuppuswami Ayyar, J.*) GURAVAIAH *v.* OFFICIAL RECEIVER, NELLORE. **I.L.R. (1942) Mad. 614=201 I.C. 769=15 R.M. 408=1942 M.W.N. 198=55 L.W. 119=A.I.R. 1942 Mad. 415 (1)=(1942) 1 M.L.J. 283.**

——**S. 47**—Scope — Question of trust—Question whether a wakf is valid or not under Shia School of Mahomedan Law—If can be decided in execution proceedings. *See* 1941 Dig., Col. 225. SHAHBAN MOHIB *v.* HEMRAJ RAGHAVJI. **197 I.C. 884=14 R.S. 125=A.I.R. 1942 Sind 14.**

——**S. 47**—Scope—Sale wholly without jurisdiction—Application by judgment-debtor to have it declared void—If lies. *See* 1941 Dig., Col. 225. BHAN KUMAR CHAND *v.* LACHMI KANTA RAI. **8 B.R. 507=199 I.C. 169=14 R.P. 557.**

——**Ss. 47 and 52**—*Scope—Suit by creditor against heir of debtor—Decree against assets—Separate suit for administration of debtor's estate—Maintainability.*

A Court is not bound to pass a decree or an order for the administration of the estate of a deceased person at the instance of a creditor when the question between the parties can be properly determined without such a decree or order. Where a creditor obtains a decree for recovery of his debt against the assets of the deceased, in the hands of his legal representative, but instead of proceeding to execute his decree under S. 52, C. P. Code, against the assets in the hands of the legal representative, files a separate suit to have the estate of the debtor administered, the Court will not pass a decree for administration of the estate. It is doubtful whether a creditor who has obtained a decree is entitled to file another action which in substance is really for recovery, of his debt, though in form an administration action S. 47, C. P. Code, may operate as a bar to such a suit. (*Somayya, J.*) VENUGOPALA NAIDU *v.* VALAMBAL AMMAL. **55 L.W. 308=1942 M.W.N. 356=A.I.R. 1942 Mad. 588=(1942) 1 M.L.J. 580.**

——**S. 47, Expl.**—*"Party"—Party against whom suit is erroneously dismissed instead of his being struck out of the plaint—If "party."*

Where in a suit the Court, instead of directing that a certain party should be struck out as having been improperly impleaded, erroneously makes an order dismissing suit as against him, such a person cannot properly be said to have been a party to that suit within the meaning of the Explanation to S. 47, C.P. Code. (*Agarwala and Shearer, JJ.*) KUSMI *v.* SADASIVA MAHTO. **21 Pat. 601=201 I.C. 196=15 R. P. 84=8 B.R. 770=23 Pat.L.T. 354=A.I.R. 1942 Pat. 482.**

——**S. 47 (1) (3)**—*Scope of—Disputes between attaching creditor and purchaser of decree—If can be gone into in execution.*

C. P. CODE (1908), S. 47.

Where an attaching creditor of a decree challenges the right of the purchaser of that decree to execute it, the matter cannot be gone into under S. 47, C. P. Code. The dispute is as between representatives of the decree-holder and not one between parties to the suit and hence would not come under S. 47 C. P. Code. (*Agarwal, J.*) DWARKA *v.* ABDUL SHAKUR. **14 R.O. 412=1942 O. A. 16=1942 A.W.R. (C. C.) 28=1942 A. L. W. 7=1942 O.W.N. 1=A.I.R. 1942 Oudh 281.**

——S. 47 (2)—*Suit against landlord and rival tenant—Conversion into proceedings in execution of prior decree against landlord alone.*

A subsequent suit against a landlord and a rival tenant who is not a representative of the landlord cannot be converted into proceedings in execution of a prior decree for possession obtained by the plaintiff against the landlord alone. (*Shivreff, J. M.*) BEHARI *v.* ANRUDH SINGH. **1942 O. A. (Supp.) 10=1942 A. W. R. (Rev.) 10.**

——S. 47 (3)—*Applicability—Dispute between one party and representative of another—Decision on*—Res judicata—*O. 22, r. 5—Application of.*

S. 47 (3) does not apply when the dispute is between rival representatives of one party, the other party having disclaimed any interest in the question. It applies where there is a dispute between one party and a representative of another party about the latter's right to represent the deceased party's estate, and a decision on the question by the executing Court will operate as *res judicata* in a subsequent suit between the same parties. O. 22, r 5, C. P. Code, does not govern such a case. (*Divatia, J.*) RAMA MARUTI *v.* MALLAPPA KRISHNA. **203 I. C. 339=44 Bom.L.R. 678=A.I.R. 1942 Bom. 309.**

——S. 48—*Applicability—Consigning of application to records—Revival.*

Where an execution was directed to be consigned to the records as partially unsatisfied, it cannot be regarded as a final order disposing completely of the execution application. This application can be subsequently revived and the time limit provided by S. 48, C. P. Code, is no bar to such an application. (*Agarwal and Madeley, JJ.*) MISRI LAL *v.* ISHRI PRASAD. **17 Luck. 618=199 I. C. 124=14 R. O. 467=1942 A. L.W. 146=1942 O.W.N. 123=1942 O. A. 69=1942 A.W.R. (C.C.). 91=A.I.R. 1942 Oudh 331.**

——S. 48—Applicability—Decree of Presidency Small Cause Court—Transfer for execution to Civil Court of original jurisdiction—Execution beyond 12 years of decree but within three years of last execution—If barred—Limitation Act, Arts. 182 and 183. *See* 1941 Dig., Col. 226. RANGANADHAM *v.* PONNACHAR AMMA. **197 I.C. 627=14 R.P. 322=8 B. R. 256=23 Pat. L T. 87=A.I.R 1942 Pat 128.**

——S. 48—Decree-holder ordered to refund money realised in execution—Application for execution within three years of order but more than 12 years after original decree—If barred—Application, if can be treated as continuation of original application. *See* LIMITATION ACT, ART. 182 (6) **46 C.W.N. 149.**

——S. 48—Starting point—Decree of Small Cause Court—New trial application and subsequent revision application in High Court—Effect of on limitation for execution—Period—If extended. *See* 1941 Dig., Col. 227. NAGALINGA CHETTY *v.* SRINIVASA IYENGAR. **199 I.C. 812=14 R.M. 631.**

——S. 48 (1) (b)—*Starting point—Direction for payment by instalments—Default—Limitation for execution—Starting point of* 12 *years.*

Under S. 48 (1) (*b*) of the C. P. Code, where a decree directs any payment of money at a certain date or at recurring periods, the date of default in making the payment in respect of which the applicant seeks to execute the decree will be treated as the starting point of limitation to calculate the twelve years period provided by S. 48 (1). (*Harries, C. J. and Manohar Lall, J.*) LAKSHMI NARAIN KHATRI *v.* GOPAL LAL. **202 I. C. 680=15 R.P. 139=9 B R. 45=1942 P. W. N. 184=A.I.R. 1943 Pat. 33.**

C. P. CODE (1908), S. 51.

——Ss. 50 and 52—*Decree against assets of deceased—Execution by sale of undivided interest in joint family, in the hands of widow—Availability.*

In execution of a decree passed against the assets of a deceased debtor, the life interest of his widow in the undivided interest in the joint family cannot be sold. (*Davies.*) GAURI SHANKAR *v.* KAJORI. **1941 A. M. L. J. 94.**

——S. 50 and O. 21, R. 22—*Decree for rent—No notice issued to legal representatives of deceased judgment-debtor—Execution sale—If void or voidable.*

If the holder of an unsatisfied decree wishes to continue the execution proceedings or wishes to execute the decree against the legal representatives of a deceased judgment-debtor, he must make an application to that effect under S. 50, C. P. Code, and a notice has to be served on such legal representatives in accordance with O. 21, R. 22 (1), C. P. Code. The mere fact that in connection with a rent decree obtained under the B. T. Act, execution proceedings are taken against the holding of the deceased person makes no difference. The holding represents a portion of the estate of the deceased judgment-debtor and the latter's heirs are, therefore, entitled to be brought on the record of the case and to receive the notice which the law requires in order that they may be given an opportunity either to satisfy the outstanding decree or to show cause why execution should not proceed. A sale held in execution of a rent decree is void and not merely voidable in a case in which there has been no application under S. 50 and consequently no issue of notice under O. 21, R. 22 (1), C. P. Code. (*Edgley and Akram, JJ.*) FAIZADDI TALUQDAR *v.* REZIA BEGUM. **I.L.R. (1942) 2 Cal. 262=202 I.C. 109=15 R.C. 290=75 C. L. J. 368=46 C.W.N. 631=A.I.R. 1942 Cal. 436.**

——S. 50 and O. 21, R. 95—Satisfaction of decree—Addition of legal representative—Necessity—Proceedings under O. 21, R. 95. *See* 1941 Dig., Col. 227. GANPATI SINGH *v.* RAM GOPAL. **I.L.R. (1942) Nag 633=198 I.C. 284=14 R.N. 209.**

——S. 51—*Arrest of debtor—Power of Court.*

A Court should not order the arrest and detention of a debtor if it is satisfied by evidence that the debtor has not the means to satisfy the debt or a substantial portion thereof but he can pay a small amount towards the debt monthly if appropriate steps are taken. (*Harries, C.J. and Fazl Ali, J.*) JOGESH CHANDRA SINGH *v.* TINKORI DATTA. **197 I.C. 470=14 R. P. 315=8 B. R 222 (1)=A.I.R. 1942 Pat. 242.**

——S. 51 and O. 40, R. 1—*Receiver—Appointment in execution without prior attachment—Validity.*

Appointment of a receiver in execution is itself a form of attachment. The C.P. Code does not contemplate an attachment as a necessary preliminary to the appointment of a receiver in execution. Therefore, the appointment of a receiver in execution without prior attachment of the property is not invalid. (*Wadsworth, J.*) NARAPPA NAIDU *v.* THUMMALUR CHINNA ASETHU REDDI. **203 I.C. 529=55 L.W. 89 (2)=1942 M.W. N. 116=A. I. R. 1942 Mad. 396=(1942) 1 M. L. J. 217 (2).**

C. P. CODE (1908) S. 51.

——Ss. 51, 60 (1) and O. 40, R. 1—*Right to future maintenance—Attachability—Receiver if can be appointed in respect of.*

A right to future maintenance in order to be non-attachable and non-transferable should be personal as distinguished from being heritable. Hence where such a right is heritable it is not exempt from attachment. The language of S. 51 shows that a receiver can be appointed even in cases in which attachment can not be made and it follows that in the case of a right to future maintenance a receiver can be appointed over it in execution of a decree against the person entitled to the right even though the right is exempt from attachment. (*Bennett and Agarwal, JJ.*) ASHFAQ MOHAMMAD KHAN *v.* NAZIR BANU. 201 I.C. 100=15 R.O. 54=1942 A.W.R. (C.C.) 241=1942 O.A. 262=1942 O W.N. 359=A.I.R, 1942 Oudh 410.

——S. 51 (d)—*Scope—If subject to O. 40, R. 1—Appointment of receiver in execution—If matter of right in decree-holder—Grounds—Bihar Money-Lenders Act, Ss. 13 and 14—Valuation under—If justifies appointment of receiver.*

S. 51 (*d*), C. P. Code, is subject to O. 40, R. 1, C. P. Code, and relief by way of appointment of a receiver under S. 51 (*d*) is not a matter of course or of right, but can only be given where it appears to the Court to be just and convenient. In other words a proper case must be made out for the exercise of the Court's discretion to appoint a receiver by way of execution, *e.g.*, by showing an impediment preventing the decree-holder from obtaining satisfaction of his decree by an ordinary execution sale. The valuation fixed by the Court under S. 13 of the Bihar Money-Lenders Act, is not such an impediment to an ordinary execution as would entitle the decree-holder to the appointment of a receiver for the purpose of selling the property of the judgment-debtor by private sale. The valuation under Ss. 13 and 14 of the Money-Lenders Act is a judicial decision binding on both the decree-holder and the judgment-debtor, and it would be a clear evasion of law to treat this valuation as an impediment to an ordinary execution sale by the Court and let the decree-holder have a receiver for sale of the property by private treaty on the ground that no bidders can be found for the value fixed by the Court. (*Harries, C. J. and Dhavle, J.*) BANK OF BIHAR, LTD. *v.* HARI KISHUN PRASAD. 201 I.C. 350=15 R.P. 50=8 B.R. 791=23 Pat.L.T. 191=A. I.R. 1942 Pat. 455.

——S. 52—Scope—Decree against assets of deceased in the hands of his legal representative—Remedy of creditor—Separate suit for administration of estate—Bar of. *See* C. P. CODE, SS. 54 AND 72. 55 L.W. 308=(1942) 1 M.L.J. 580.

——S. 54—*Appeal—Execution by collector—Order in—Appeal to Court—If lies.*

No appeal lies as a matter of course from the order of the Collector acting under S. 54 to the Court whose decree is being executed by the Collector. (*Davis, C.J. and Weston, J.*) CHANDUMAL JASSUMAL *v.* HAFIZ DIN MAHOMED. I.L.R. (1942) Kar. 162=A.I.R 1943 Sind 7.

——S. 54 and O. 20 R. 18—*Partition decree—Contents of—Powers of Court and of Collector—Discretion of Collector—Power of Court to interfere or to fetter.*

A Court passing a partition decree under O. 20, R. 18, C. P. Code, in respect of an undivided estate assessed to the payment of revenue to Government, has no power so to fetter the discretion of the collector as to overrule the powers that are conferred upon him under S 54 and O. 21, R. 18. The decree should declare the rights of the several parties interested in the property,

C. P. CODE (1908), S. 60.

and direct such partition to be made by the collector or his gazetted subordinate in accordance with such declaration. The Collector is to divide the estate in accordance with the rights declared in the decree, in the manner he thinks best, bearing in mind the convenience of the land as a revenue paying estate. The Collector is to execute the decree, but not to alter it, and the Court will not interfere with the exercise of discretion by the Collector unless he has contravened or ignored the terms of the decree. (*Davis, C.J. and Weston, J.*) CHANDUMAL JASSUMAL. *v.* HAFIZDIN MAHOMED. I.L.R. (1942) Kar. 162=A. I.R. 1943 Sind. 7.

——S. 55 (4)—*Construction—Rights of decree-holder—Surety for judgment debtor—Liability of—Judgment-debtor sent to jail—Subsequent proceedings against surety—Permissibility.*

Where a person has stood surety for a judgment-debtor under S. 55 (4), C.P. Code, the Court cannot at the instance of the decree-holder proceed both against the surety and against the judgment-debtor concurrently. If the judgment-debtor is committed to the civil prison the state of affairs is just the same as if the surety had never come forward so that the Court cannot concurrently proceed against the surety or his property. S. 55 (4) is explicit; the decree-holder having given up his rights against the surety by proceeding against the judgment-debtor and sending him to jail cannot be allowed to reopen the matter by asking that the surety should be proceeded against. (*Harries, C.J. and Manohar Lall, J.*) RAGHUBIR SINGH *v.* MAZHARUL HAQUE. 21 Pat. 644=202 I.C. 589=15 R.P. 129=9 B.R. 26=A.I.R. 1942 Pat. 506.

——S. 55 (4)—*Enforcement of security bond—Failure of one only of two conditions.*

A security bond executed under S. 55 (4), C. P. Code, can be enforced against the surety, although there has been a failure on the part of the judgment-debtor of only one of the two conditions set out therein, (*i.e.*) either in applying for adjudication as an insolvent or in appearance. It is not necessary that there should have been a failure on his part in both respects. (*Lobo and Tyabji, JJ.*) ASSANDAS *v.* HARDASMAL. I.L.R. (1942) Kar. 79=201 I.C. 750=15 R.S. 18=A.I.R. 1942 Sind 134.

——S. 55 (4)—*Obligation of Judgment-Debtor to apply to be declared insolvent—If ceases with presentation of petition.*

The mere presentation of a petition to be declared an insolvent is not a sufficient compliance with the undertaking given by a judgment-debtor under S. 55 (4), C. P. Code, that he would apply to be declared an insolvent. The obligation includes not only the presentation of a petition but the presentation of a petition in the manner provided by law and the proper prosecution thereof. (*Lobo and Tyabji, JJ.*) ASSANDAS *v.* HARDASMAL. I.L.R (1942) Kar. 79=201 I.C. 750=15 R.S. 18=A.I.R. 1942 Sind 134.

——S. 55 (4)—Surety under—Liability of—Right to apply for discharge before fulfilment of conditions in security bond—Contract Act, Ss. 129 and 130. *See* 1941 Dig., Col. 228. SANKARANARAYANA IYER *v.* PARAMASIVAN PILLAI. 200 I.C. 774=15 R.M. 141=A.I.R. 1942 Mad. 101=(1941) 2 M.L.J. 650.

——S. 60—*Applicability to sales under Encumbered Estates Act.*

R 6 of the Rules framed under the U. P. Encumbered Estates Act makes the provisions of the C. P. Code applicable to sales under the U. P Encumbered Estates Act so far as they are not inconsistent with the provisions of the Act and the

C. P. CODE (1908), S. 60.

rules. Hence S. 60 of C. P. Code would apply to such sales. (*Shirreff, S. M. and Sathe, J.M.*) CHHATAR *v.* THAKUR SINGH. **1942 A.W.R. (Rev.) 253 (1) = 1942 O.A. (Supp.) 279 (1) = 1942 R.D. 351 (2) = 1942 O.W.N. (B.R.) 262 (2).**

——**S. 60**- '*Debt*'—*Unpaid mortgage money.*

The unpaid balance of the consideration for a mortgage is not a "debt" due by the mortgagee to the mortgagor, and, therefore, it is not liable to attachment in execution of a decree against the mortgagor. It makes no difference whether the mortgage is simple or possessory or by way of conditional sale. (*Tek Chand and Beckett, JJ.*) SOHAN LAL *v.* LABH SINGH. **202 I.C. 347 = 15 R.L. 113 = 44 P.L.R. 342 = A.I.R. 1942 Lah. 234.**

——**S. 60 and O. 21, R. 46**—'*Debt*'—*Unpaid Purchase money left with vendee for payment to vendor's creditors—If attachable immediately after sale-deed*—Locus standi *of such creditors to object to attachment.*

The unpaid purchase price of a property left with the vendee for payment to the creditors of the vendor but which the vendee has not actually paid to them is a 'debt' due by the vendee to the vendor. It is the vendor's money in the hands of the vendee, which he is under an obligation to pay to the vendor and in the absence of a contract to the contrary, this obligation arises at the moment the sale transaction is completed. The fact that the money is, by agreement, made payable at a future date or that the vendor has asked the vendee to pay it to a third party makes no difference. It is none-the-less an existing and completed obligation and, as regards it, the relationship between the vendor and the vendee is that of a creditor and debtor.

If, therefore, at the instance of a person who holds a decree against the vendor, a prohibitory order under O. 21, R. 46, C. P. Code, is served on the vendee, before he has paid out the amount to the nominees of the vendor in accordance with the directions set out in the deed, the attachment is good and neither the vendee nor the vendor can object. The vendor's nominees of course have no *locus standi* to object, for there is no privity of contract between them and the vendor and the mere direction of the vendor to the vendee to pay the amount to them creates no jural relationship between them. The direction is, ordinarily, revocable at any time before payment has actually been made. Further, the decree-holder of the vendor can attach it even immediately after the execution of the sale-deed and need not wait until the lapse of reasonable time from the sale, within which the vendee could have paid, but has neglected to pay, the vendor's nominees. (*Tek Chand, Bhide and Sale, JJ.*) MELA RAM *v.* RAM DAS JOSHI. **203 I.C. 462 = 44 P.L.R. 415 = A.I.R. 1942 Lah. 275 (F.B.).**

——**S. 60**—"Property"—Meaning of. *See* 1941 Dig., Col. 229. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal. 169 = 200 I.C. 216 = 14 R.C. 685 = 46 C.W.N. 245 = A.I.R. 1942 Cal. 92.**

——**S. 60**—*Scope—Salary less than Rs. 100—Exemption from attachment — Protection conferred—Whether a personal benefit which can be waived by agreement—Public policy.*

The provisions of S. 60, C. P. Code which are imperative are intended to give protection to debtors on grounds of public policy and not merely to confer a personal benefit upon them which can be waived by agreement. I.L.R. (1941) Bom. 415, Foll. Accordingly an arrangement made by an employee of a Municipality who was drawing a salary of Rs. 100 a month that his creditor who had obtained a decree against him may take Rs. 15 per month out of his salary in satisfaction of the decree is not enforceable in law and the

C. P. CODE (1908), S. 60.

Rs. 15 cannot be attached in execution of the decree. As an assignment of salary such an agreement is also opposed to the provisions of S. 6 (*f*) of the Transfer of Property Act. (*Kunhi Raman, J.*) SUBRAMANIAM *v.* SATYANADHAM. **I.L.R. (1942) Mad. 640 = 203 I.C. 200 = 55 L.W. 130 = 1942 M.W.N. 179 = A.I.R. 1942 Mad. 391 = (1942) 1 M.L.J. 292.**

——**S. 60 (1)**—"Debt"—Provident fund of company for benefit of employees—Money payable to member after retirement in full or to nominee—Member not permitted by rules to dispose of moneys during service—Effect—Attachability and saleability in execution of decree against member—If trust money—Trusts Act, S. 5. *See* 1941 Dig., Col. 230. ISMAIL JAKRIA & CO. *v.* BURMA SHELL PROVIDENT TRUST, LTD. **199 I.C. 525 = 14 R.S. 187 = A.I.R. 1942 Sind 47.**

——**S. 60 (1) and Divorce Act (1869), S. 37**—*Protection under S. 60 (1), C. P. Code—If available to husband against whom an order for payment of alimony has been made.*

A person against whom an order of attachment of salary in execution of an order for alimony is made is entitled to the protection afforded by item (1) of the proviso to S. 60, C. P. Code. (*Grille, C.J. and Puranik, J.*) DR. NATH *v.* SHAKUNTALABAI. **203 I.C. 84 = 15 R.N. 109 = 1942 N.L.J. 450 = A.I.R. 1943 Nag. 1.**

——**S. 60 (1) (b)**—Applicability—"Tools of an artisan"—Musical instruments of musician—If exempt from attachment. *See* 1941 Dig., Col. 230. MANIKYAM *v.* MANIKYAMMA. **200 I.C. 868 = 15 R. M. 164 = A.I.R. 1942 Mad. 4 = (1941) 2 M.L.J. 671.**

——**S. 60 (1) (c)**—'*Agriculturist*'—*Occupancy raiyat—Land cultivated under* bhag *system—Small income derived by him from Zemindary properties.*

An occupancy *raiyat* who has got about 20 or 25 bighas of land which he gets cultivated under the *bhag* system and whose other income derived from Zemindary properties is only Rs. 25, is an agriculturist within the meaning of S. 60 (1) (*c*), C. P. Code. (*Mukherjea and Blank, JJ.*) NAGENDRA NATH SARKAR *v.* KRISHNA PADA SARKAR. **201 I.C. 632 = 15 R.C. 264 = 75 C.L.J. 501 = 46 C.W.N. 612 = A.I.R. 1942 Cal. 425.**

——**S. 60 (1) (c)**—'*Agriculturist*'—*Who is.*

No definition of an agriculturist can be formulated because the circumstances of every individual judgment-debtor have to be taken into consideration to decide whether he is an agriculturist or not. It is for the Courts to decide whether a particular individual situated as he is with reference to his occupation or other circumstances is an agriculturist or not. The judgment-debtor derived his whole income from his lands and had no other profession or occupation. The lands were mainly under the cultivation of tenants but as a landlord he had to take interest in the cultivation of his land in order to get the most out of it and had also to see that his share in the produce reached him. Moreover, it was in evidence that he was cultivating about 800 ks. of land through his servants and labourers and not through his tenants. In fact he had been working at the plough himself and had been telling people that he did so on grounds of health.

Held, that all the considerations when taken together led to only one conclusion, that the judgment-debtor was an agriculturist within the meaning of S. 60 (1) (*c*). (*Almond, J.C. and Mir Ahmad, J.*) ASADULLAH KHAN *v.* CHETAN DAS. **202 I.C. 770 = 15 R. Pesh. 52 = A.I.R. 1942 Pesh. 65 (2).**

——**S. 60 (1) (c)**—*Applicability—Right to exemption under—Conditions of.*

The property of an agriculturist to be exempt under cl. (*c*) of S. 60 (1), C.P. Code, must be shown to have been occupied by him as such for purposes of agricul-

C. P. CODE (1908), S. 60.

ture, *i.e.*, in order to enable the owner or occupier to cultivate the land. (*Abdur Rahman, J.*) OFFICIAL RECEIVER, KISTNA *v.* LAKSHMAYYA. **55 L.W. 634.**

——**S. 60, Cl. (1) (c)**—*Exemption from attachment.*

Where the evidence showed that a debtor had no other vocation except agriculture and that he kept his plough, bullocks and carts in his house, the house is really used for the purpose of carrying on his calling effectively as an agriculturist and is exempt from attachment under S. 60 (1) (*c*) of the Code of Civil Procedure, (1937) 2 M.L.J. 11: I.L.R. (1937) Mad. 777 (F.B.), applied. (*Venkataramana Rao, J.*) SUBBARAYUDU *v.* VENKATA SUBBAMMA. **201 I.C. 781=15 R.M. 407 =55 L.W. 176 (1)=1942 M.W.N. 128 (2)=A.I.R. 1942 Mad. 375=(1942) 1 M.L.J. 87.**

——**Ss. 60 (1) (c)**—*Exemption under—Availability —Facts to be proved.*

To claim exemption from attachment under S. 60 (1) (*c*), C. P. Code, it must be proved that the objector is an agriculturist and is occupying the house concerned (*i.e.*) it is being occupied *bona fide* for the purpose of agriculture. (*Agarwal, J.*) SHEO SHANKAR LAL *v.* BITTAN KUAR. **199 I.C. 456=14 R.O. 491=1942 R. D. 69=1942 A.W.R (C.C.) 27=1942 O.A. 15=1942 O.W.N. 23=A.I.R. 1942 Oudh 308.**

——**S. 60 (1), Proviso (c)**—*Exemption under—Availability to agriculturists who had knowingly mortgaged his house—Estoppel.*

Where an agriculturist mortgages his residential house and thereby causes the mortgagee to believe that it could be sold, he is estopped from raising the question that the house is not liable to attachment under S. 60, C. P. Code, as the voluntary nature of the mortgage must imply an agreement that the house may be sold under certain conditions. (*Shirreff, S.M.*) TARA CHAND *v.* SHIB PRASAD. **1942 A.W.R. (Rev.) 307=1942 O.A. (Supp.) 333=1942 O.W.N. (B.R.) 476=1942 R.D. 593.**

——**S. 60 (1) (c)**—*Objection based on—When to be raised.*

A judgment-debtor must raise objections prior to the sale as to his property being exempt from attachment and sale under S. 60 (1) (*c*) but if he refrains from doing so he has no right after the sale has been carried out, to prefer an objection that the property sold was not legally saleable. If he should succeed he must show that he was prevented by fraud from preferring the objection at the proper time. (*Agarwal, J.*) SHEO SHANKAR LAL *v.* BITTAN KUAR. **199 I.C. 456=14 R.O. 491=1942 R.D. 69=1942 A.W.R. (C.C.) 27=1942 O.A. 15=1942 O.W.N. 23=A.I.R. 1942 Oudh 308.**

——**S. 60 (1) (cc)**—*Milch animals not belonging to agriculturist—If exempt from attachment.*

S. 60 (1) (*cc*), C. P. Code, makes all milch animals exempt from attachment or sale, whether they belong to an agriculturist or not. (*Sale, J.*) JHANDA *v.* NIKKA. **200 I.C. 159=14 R.L. 460=44 P.L.R. 66=A.I.R. 1942 Lah. 88.**

——**S. 60 (1) (ccc)**—*Sale effected but not confirmed before Amending Act—Exemption.*

A judgment-debtor other than an agriculturist cannot claim exemption under S. 60 (1) (*ccc*), C. P. Code, when the sale had been effected before the date on which the Punjab Amending Act XII of 1940 came into force, though the sale had not been confirmed on that date. The word 'sale' in this clause is used, as in other parts of the Code as meaning sale as at the conclusion of the auction, and not as confirmed by the Court. (*Tek Chand, Monroe and Din Mohammad, JJ.*) SHAM SINGH *v.* VIR BHAN. **I.L.R. (1942) Lah. 349=200 I.C. 302=14 R.L. 462=44 P.L.R. 126=A.I.R. 1942 Lah. 102 (F.B.).**

C. P. CODE (1908), S. 60.

——**S. 60 (1), Proviso (g)**—Applicability—Money received by retired Government servant in commutation of pension—Liability to attachment. *See* 1941 Dig., Col. 232. HASSOMAL SAGUMAL *v.* DIAROMAL. **198 I.C. 630=14 R.S. 150=A.I.R. 1942 Sind. 19.**

——**S. 60 (1) (h)**—*Applicability—"Wages of a labourer"—Textile mill—Head jobber doing work of spinning occasionally as a term of his employment—Remuneration earned by—If exempt from attachment.*

A person would be regarded as a labourer within the meaning of S. 60 (1) (*h*), C. P. Code, if he does or is expected to do that class of work which requires manual labour, such as the work of spinning in a textile mill. If the doing of manual labour is a term of his employment, he is a labourer and the remuneration earned by him, constitutes "wages of a labourer" within the meaning of S. 60 (1) (*h*). The head jobber, *i.e.*, the head of a gang of workmen employed in a textile mill industry, is a labourer if he participates in the work of his gang occasionally, though not necessarily continuously, as a term of his employment. The remuneration earned by him must therefore be held to be "wages of a labourer" exempt from attachment under S. 60 (1) (*h*), C. P. Code. (*Wassoodew, J.*) KULKARNI *v.* GANPAT HIRAJI TELI. **I.L.R. (1942) Bom. 287=202 I.C. 157=15 R.B. 133=44 Bom.L.R. 264=A.I.R. 1942 Bom 191.**

——**(As Amended in 1937), S. 60 (1) (h)**—*Construction—Salary of persons in private service—If protected.*

An interpretation of Cl. (*h*) of S. 60 (1) founded upon the language of that clause alone without reference to the entire section would be unsafe and unwarranted. What the Legislature intended to protect from attachment in execution of a decree in the latter part of Cl. (*h*) was the salary of all persons in receipt of salary other than public officers and servants of a railway company or local authority. (*Lobo, J.*) HORMUSJI JAMSHEDJI, *In re.* **I.L.R. (1942) Kar. 237.**

——**S. 60 (1) (h)** — *Construction* — *"Wages of labourers"—If wholly exempt—"Salary"—If includes "wages".*

The first clause of S. 60 (1) (*h*), C. P. Code, is not controlled by the second clause, and "salary" in the second clause does not include "wages of labourers" in the first clause. The second clause is designed to protect to a limited extent, salaries of servants who are outside the class of labourers and domestic servants. But the wages of labourers and domestic servants are wholly exempt from attachment and are not liable to attachment at all. (*Wassoodew, J.*) KULKARNI *v.* GANPAT HIRAJI TELI. **I.L.R. (1942) Bom. 287=202 I.C. 157=15 R.B. 133=44 Bom.L.R. 264=A.I.R. 1942 Bom. 191.**

——**S. 60 (1) (h)**—*"Salary"—Meaning of.*

"Salary" in S. 60 (1) (*h*), C. P. Code, is not confined to the emoluments of labourers and domestic servants. The clause clearly makes a distinction between salary and the wages of labourers and domestic servants. "Salary" is something other than, and contrasted with, the wages of labourers and domestic servants. (*Harries, C.J. and Meredith, J.*) RAGHUNANDAN SAHAI *v.* JAIGOBIND SAHAY. **20 Pat. 866=199 I.C. 635=14 R.P. 601=1942 P.W.N. 38=8 B.R. 554=23 P.L.T. 400=A.I.R. 1942 Pat. 194.**

——**S. 60 (1) (k)**—Provident fund — Agreement between member and trustee of provident fund—Third parties, if affected—Rule as to forfeiture of amount on attachment—Effect. *See* 1941 Dig., Col. 233, R. C.

C. P. CODE (1908), S. 60.

DASS *v.* SECRETARY OF BURMA OIL SUBSIDIARY PROVIDENT FUND TRUST (INDIA), LTD. 198 I.C. 737 = 14 R.R. 220.

——S. 60 (1) (k)—*Provident Fund money of railway servant—Liability to attachment—Payment to subscriber—Test.*

The money due to a railway servant on his account in the Provident Fund is not liable to attachment by his creditor until it is paid over to him. In order to decide whether the money has been paid to him, the test to apply is whether the railway has obtained a valid discharge. After his retirement a railway servant filled in the necessary form asking for payment of the money due to him on his account in the Provident Fund. The railway authorities requested the Reserve Bank to send a cheque to Messrs. Thomas Cook and Sons. A creditor of the railway servant obtained an order from Court attaching the money. Messrs. Thomas Cook and Sons in the meantime had returned the cheque to the railway authorities alleging that the railway servant had no account with them.

Held, that the railway authorities would be discharged if, in asking the Reserve Bank to send the cheque to Thomas Cook and Sons, they were acting in accordance with the instructions given by the railway servant. (*Henderson, J.*) NAZAR MAHOMED KHAN KABULI *v.* BROWNE. 201 I.C. 17 = 15 R.C. 108 = 74 C.L.J. 524 = A.I.R. 1942 Cal. 292.

——S. 60 (m)—Applicability—Sale of Hindu co-parcener's interest in joint family property—If illegal—Want of specification of the interest of co-parcener—If vitiates sale *See* 1941 Dg., Col. 233 SHANMUGAM CHETTIAR *v.* NAGASWAMI AYYAR. 201 I.C. 156 = 15 R.M. 247 = A.I.R. 1942 Mad. 97 = (1941) 2 M.L.J. 550.

——S. 64—*Applicability—Claim enforceable under attachment—Applicant for rateable distribution—Right to challenge alienation by judgment debtor after setting aside of execution sale and satisfaction of decree under which sale was held.*

Where, the attachment in pursuance of which the property is brought to sale is set aside by reason of the decree-holder having been paid in full the attaching decree-holder has no claim against the judgment-debtor and therefore there is no claim enforceable under the attachment under S. 64, C.P.Code. The moment the attachment ends as a result of the sale being set aside all claims which were enforceable under it cease to be enforceable and a creditor who would have had a right to rateable distribution if the sale had stood, cannot therefore challenge an alienation by the judgment debtor under S. 64. as his claim has ceased to be enforceable on the sale being set aside. (*Leach, C.J. and Lakshmana Rao, J.*) RAMAYYA *v.* NAMAYYA. 1942 M.W.N. 682 = 55 L.W. 733 = (1942) 2 M.L.J. 607.

——S. 64—Applicability—Contract to sell land—Subsequent attachment in execution of decree against owner—Sale deed in pursuance of contract after attachment—Subsequent Court sale in pursuance of attachment—If prevails over sale in pursuance of contract—T. P. Act, S. 54. *See* 1941 Dig., Col. 233 ATHINARAYANA KONAR *v.* SUBRAMANIA AYYAR. 201 I.C. 307 = 15 R.M. 301 = A.I.R. 1942 Mad. 67 = (1941) 2 M.L.J. 722.

——S. 64—*Applicability, object and scope of—Transaction not prejudicing claims of decree-holder against property attached—If void.*

The very object with which S. 64, C. P. Code, has been enacted is to save right which do not conflict with the claims enforceable under the attachment. The expressions "contrary to such attachment," and "as against all claims enforceable under the attachment," limit the operation of S. 64 only to certain transfers or acquisitions of interest or payments to the judgment-debtor. It does not render void any transaction or part of a transaction which in no way prejudices the claims of the decree-holder against the property which he has got attached. (*Wadia and Sen, JJ.*) VISHNU BALKRISHNA *v.* SHANKARPPA GURLINGAPPA. 202 I.C. 392 = 15 R.B. 156 = 44 Bom.L.R. 415 = A.I.R. 1942 Bom. 227.

——S. 64—Effect of attachment—Scope and applicability of S. 64. *See* 1941 Dig., Col. 234. BHURA *v.* SADDULAL. I.L.R. (1942) Nag. 691 = 198 I.C. 665 = 14 R.N. 238 = A.I.R. 1942 Nag. 36.

——S. 64—*Scope—Attachment before judgment—Sale by debtor—Subsequent decree in suit—Insolvency of judgment-debtor afterwards—Application for sale of attached property—Official Assignee, if necessary party—Sale if void absolutely.*

A private alienation by a judgment-debtor of property attached by a creditor is, under S. 64, C. P. Code, not void absolutely, but only void against claims enforceable under the attachment in question. An adjudication of the debtor would automatically put an end to an attachment and vest the property in the Official Assignee free of attachment, but it has no such efficacy as regards an alienation made by the insolvent before his adjudication. Until the alienation is set aside by appropriate proceedings, it stands good, and the Official Assignee would therefore have no present interest in or title to the property in question. Hence the Official Assignee is not a necessary party to an application for sale of the property in execution by the attaching creditor. The appellant who filed a suit against his debtor obtained an order for attachment of the debtor's property before judgment and the property was attached on 19—4—1939. Later on 16—1—1940, the debtor sold the attached property to the respondent on 10—1—1941, the appellant obtained a decree in his suit against the debtor for Rs. 4,043-1-0 and interest. On 25—2—1941, the debtor was adjudged insolvent, and his estate vested in the Official Assignee, Madras. On 3—5—1941, the appellant applied in execution of his decree for sale of the attached property after bringing on record the respondent who had purchased the property pending the attachment. The application was dismissed as not maintainable on the ground that Official Assignee in whom the debtor's estate was vested was not made a party to the execution proceeding.

Held, that the property would not become the property of the debtor or vest in the Official Assignee until the latter obtained a declaration for setting aside the alienation and therefore the decree-holder (appellant) was not obliged to implead the Official Assignee in his application for sale in execution. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) LEELAVATHI AMMAL *v.* NENI KAVUR BAI. 1942 M.W.N. 740.

——S. 64—*Scope—Insolvency of Hindu father—Attachment of son's interest in family property in execution—Effect—Sale by Official Receiver pending attachment—Validity as against son of insolvent.*

So long as a Hindu joint family is undivided, the power of the father to sell the son's share, is not lost. The attachment of the son's interest may prevent the alienation taking effect as against claims enforceable under the attachment, in view of S. 64, C. P. Code and when a sale of the share is effected in pursuance of the attachment, the power of the father may be destroyed but the power does not cease till the sale takes place. So long as the power of disposal subsists, there is no reason why it should not vest in the Official Receiver on the insolvency of the father subject to the same disabi-

C. P. CODE (1908), S. 64.

lities as it would be subject to in the hands of the father at the date of vesting. During the pendency of the attachment, if the Official Receiver chooses to exercise the right of sale, the alienee will get a title which will prevail against the son though it may not prevail against the claims enforceable under the attachment. In other words, if a sale takes place in pursuance of the attachment, the purchaser under that sale would get an indefeasible title and the purchaser from the Official Receiver will not get any. The purchaser from the Official Receiver cannot resist the claim of the attaching decree-holder to bring the properties to sale or to contest the rights of a purchaser at such a sale, but the son would have no right against the alienee as his interest must be held to have been validly sold. (*Venkataramana Rao and Somayya, JJ.*) RAYANGI *v.* JANAKIRAMAYYA. **55 L.W. 35=1942 M.W.N. 338=A.I.R. 1942 Mad. 330=(1942) 1 M.L.J. 318.**

——**S. 64 and Expl.**—*Scope—Attachment and sale in execution—Sale set aside under O. 21, R. 89—Effect of—Private sale by judgment-debtor after sale and before it is set aside—Title of purchaser—Another creditor applying for rateable distribution at execution sale and attaching property after private sale and before sale was set aside—Rights of.*

Where an execution sale is set aside under O. 21, R. 89, C. P. Code, on deposit of the decree amount the attachment in pursuance of which the sale was held comes to an end. When the attaching creditor's sale is set aside and his claim is satisfied, the particular attachment necessarily comes to an end. Another creditor who had applied for and might get rateable distribution if the sale had stood, cannot therefore say that he has a claim enforceable under that attachment within the meaning of S. 64, C. P. Code. A private purchaser from the judgment-debtor after the sale and before its setting aside, would get a good title, because the effect of the setting aside of the sale is to declare that the judgment-debtor had a good title to convey his property from the date of the sale itself and not merely from the date of its setting aside. A creditor attaching the property after the private sale and before the setting aside of the execution sale is not entitled to rely on his attachment to impeach the private sale and such attachment cannot affect the rights of the private purchaser under S. 64, C. P. Code. (*King, J.*) SUBRAMANIA AYYAR *v.* ANNAVI PILLAI. **202 I.C. 451=15 R.M. 503=1942 M.W.N. 412=55 L.W. 274=A.I.R. 1942 Mad. 522=(1942) 1 M.L.J. 556.**

——**S. 66**—*Applicability and scope—Mahomedan decree-holder—Death of—Execution by some heirs—Purchase of property in execution—Suit by co-heirs for their shares—Maintainability.*

S. 66, C. P. Code, is designed to create some check on the practice of making benami purchases at execution sales for the benefit of judgment-debtors, and in no way affects the title of persons otherwise beneficially interested in the purchase. It cannot apply to the case of persons who by operation of law, and not by virtue of any private agreement or understanding, are entitled to treat as joint property an acquisition made by the use of joint funds by one or other of them in his own name, *e.g.*, members of a joint Hindu family, or joint decree holders where one of them executes the decree for the benefit of all and purchases the property in lieu of the joint decretal amount where some out of several co-heirs of a deceased Mahomedan decree-holder execute the decree obtained by the deceased and purchase the judgment debtor's property in execution, without purporting to act on behalf of the rest as well, whether they are regarded as joint decree-holders under O. 21, R. 15, C. P. Code,

C. P. CODE (1908), S. 71.

or not, the purchase enures for the benefit of all the heirs, and the other heirs who have taken no part in the execution proceedings are entitled to recover their shares in the property on paying their proportionate shares of the costs of the execution proceedings leading to the sale. S. 66 is no bar to a suit by them for recovery of their shares. (*Harries, C.J. and Faz! Ali, J.*) MUSAMMAT BIBI KANIZ AYESHA *v.* MOJIBUL HASSAN KHAN. **20 Pat. 855=200 I.C. 546=15 R.P. 5=8 B.R. 716=A.I.R. 1942 Pat. 230.**

——**S. 66**—Applicability—Sale by Revenue Court in execution of decree for rent under Madras Estates Land Act—Suit for declaration that purchase was for benefit of plaintiff—Maintainability—Estates Land Act, S. 192. *See* 1941 Dig., Col. 235. MUTHUKUMARA MANIAKARAR *v.* PETHIA MANIAKARAR. **201 I.C. 11=15 R.M. 239=A.I.R. 1942 Mad. 154=(1941) 2 M.L.J. 717.**

——**Ss. 68 to 72**—*Applicability—Decrees of Revenue Courts.*

Ss. 68 to 72 of the C. P. Code apply to decrees passed by Civil Courts the execution of which is transferred to the Collector in accordance with the provisions of S. 68, C. P. Code and do not apply to cases in which the decree has been passed by a Revenue Court. (*Verma and Yorke, JJ.*) HAKIM ALI *v.* SHANKER LAL. **I.L.R. (1942) All. 237=203 I.C. 93=1942 A.L.W. 409=1942 A.L.J. 416=1942 A.W.R. (H.C.) 155=A.I.R. 1942 All. 257.**

——**S. 68**—*Sale by Collector—Procedure.*

It is not necessary that the Collector himself should carry out the sale. The Collector in S. 68 is regarded as the head of the revenue and administration department and it is this department which would do the work and not necessarily the Collector himself. The papers must however be returned under the signature of the Collector to the civil Court concerned in token of his satisfaction with the work of the department. (*Davies.*) GHULAM DASTGIR *v.* VILLAYAT HUSSAIN. **1941 A.M.L.J 81.**

——**Ss. 68, 70 and Sch. III**—*Transfer of execution proceedings to Collector under Punjab Government Notification—Procedure of Collector and in regard to appeal and revision.*

Where a Civil Court has ordered land to be attached and sold in execution of a decree and has transferred the execution proceedings to the Collector in accordance with Punjab Government Notification issued under S. 68, C. P. Code, the proceedings are not proceedings under the Punjab Debtors Protection Act. The procedure of the Collector and the procedure in regard to appeal and revision are, therefore, governed by Sch. III, C. P. Code, and by the rules made under S. 70, C. P. Code, by the Punjab Government. The Collector cannot refuse to take action or postpone the sale of the attached property under Rule 1 of Sch. III when there is no possibility of raising the decretal amounts by any temporary alienation. (*Mitchell, F.C.*) GULAB DIN *v.* SARDARI LAL. **21 Lah.L.T. 15.**

——**S. 71 and United Provinces Revenue Department Manual, Ch. XL**—*Nature of proceedings under Ch. XL—Right of parties being heard.*

All proceedings under Ch. XL of the U. P. Revenue Department Manual are judicial proceedings and hence all orders must be passed after giving a hearing to the parties concerned. (*Sathe, J. M.*) MEWA RAM *v.* JAMNA PRASAD. **1942 A.W.R. (Rev.) 207=1942 O.A. (Supp.) 233=1942 O.W.N. (B.R.) 361=1942 R.D. 450.**

——**S. 71 and United Provinces Revenue Department Manual, Ch. XL**—*Revision prior to confirmation of refusal to set aside sale—If premature.*

C. P. CODE (1908), **S. 73.**

Where a judgment-debtor applied for setting aside an execution sale by the Collector on the grounds that the property was protected, the price was inadequate and the proclamation was not properly served and the Collector refused to set it aside and prior to its confirmation the judgment-debtor sought to revise that order, it was *held* that the revision was premature inasmuch as the questions may not arise if the sale is not ultimately confirmed. (*Sathe, J.M.*) MEWA RAM *v.* JAMNA PRASAD. **1942 A.W.R. (Rev.) 207=1942 O.A. (Supp.) 233=1942 O.W.N. (B.R.) 361=1942 R.D. 450.**

——**S. 73**—Applicability — Transferee of decree—Application by for execution before receipt of assets—Transfer not recognised before receipt of assets—If bars claim for rateable distribution. *See* 1941 Dig., Col. 236. VENKATACHELLAM *v.* SUBRAHMANYAM. **197 I.C. 238=14 R.M. 347=(1941) 2 M.L.J. 219.**

——**S. 73**—*Creditor obtaining rateable distribution—Receipt of excess—Suit for refund—Creditor if can plead the invalidity of the execution sale.*

A party cannot approbate and reprobate. A creditor who has obtained a rateable distribution out of funds realised in sale in execution against his judgment-debtor cannot, in a suit against him for the recovery of the sum paid in excess of his share, plead that the execution under which the money was realised was itself void. He cannot both retain the benefit received by the sale and plead its invalidity. (*Niyogi, J.*) CO-OPERATIVE CENTRAL BANK, LTD., MALKAPUR *v.* NARAYAN RAMJEE KUNBI. **I.L.R. (1942) Nag. 685=202 I.C. 512=15 R.N. 85=1942 N.L.J. 462=A.I.R. 1943 Nag. 7.**

——**S. 73**—Rateable distribution—Right to—Crucial date—Dismissal of execution application after the receipt of assets—Right, if affected. *See* 1940 Dig., Col. 217. BULAKHIDAS *v.* MURLIDHAR. **I.L.R. (1942) Nag. 139.**

——**Ss. 73 and 47**—Right to rateable distribution—Decree-holder failing to refund amount withdrawn, on sale being set aside—Attachment of his property already attached by another—Auction-purchaser if entitled to rateable distribution of the sale proceeds of that property. *See* 1940 Dig., Col. 218. BHIORAJ *v.* SHIOLAL. **I.L.R. (1942) Nag. 136.**

——**S. 73**—*Rateable distribution—Right to—Deposit of decree amount by one who stood surety to avoid attachment before judgment—Right of other decree-holders to share.*

Where to avoid an attachment before judgment a surety gives security and on a decree being passed deposits the decree amount in Court, the other decree-holders against the judgment-debtor are not entitled to rateable distribution out of such amount. (*Agarwal, J.*) KHAGENDRA NATH MITRA *v.* P. C. RAI. **203 I.C. 671=1942 A.W.R. (C.C.) 343 (1)=1942 O.W.N. 593=1942 O.A. 506=A.I.R. 1942 Oudh 491.**

——**S. 73 and Companies Act, Ss. 186 and 199**—Right to rateable distribution—Right of decree-holder against holder of payment order under S. 189, Companies Act. *See* 1941 Dig., Col. 238. RADHESHAM BEOPAR CO. *v.* KARAM CHAND **I.L.R. (1942) Lah. 460.**

——**S. 73**—"Same judgment-debtors" — Decree against Hindu father and son and decree against father alone as manager of family—If against "same judgment debtor." *See* 1941 Dig., Col. 239. LAXMAN ANANT *v.* GOVIND RAMBHAT. **I.L.R. (1941) Bom. 540.**

——**S. 73**—Same judgment-debtor—Decree against person personally and decree against him as legal representative of a deceased person—If against same judgment-debtor. *See* 1941 Dig., Col. 239. JAMIYATRAM GAURISHANKAR *v.* UMIYASHANKAR PRANSHANKAR JOSHI. **I.L.R. (1941) Bom. 544.**

C. P. CODE (1908), **S. 80.**

——**Ss. 73 and 64**—Scope and effect of—Application for rateable distribution by creditor holding decree—Execution sale set aside and payment made in full to decree-holder bringing property to sale—Effect on right of other creditors to challenge private alienation by debtor as void under S. 64. *See* C. P CODE, S. 64. **55 L.W. 733=(1942) 2 M.L.J. 607.**

——**S. 80**—Applicability — Suit against ex-public officer in respect of act done when he was public officer—Notice—Necessity. *See* 1941 Dig., Col. 240. PADMANABHA NAYAR *v.* APPU. **200 I.C. 813=15 R.M. 127=A.I.R. 1942 Mad. 288 (1)=(1941) 2 M.L.J. 242.**

——**S. 80**—*Notice—Contents and particulars of—Description of plaintiff—Notice giving fathers' names and places of residence of plaintiffs—Sufficiency—Surnames, caste and occupation—If necessary.*

Where a notice under S. 80, C. P. Code, is given within the period required by the law and purports to comply substantially with the provisions of the section, it cannot be held to be defective on the ground that the surnames or the caste or the occupation of the proposed plaintiffs has not been mentioned in the notice. The section does not state what kind of description ought to be given of the plaintiffs. It would be sufficient if the plaintiffs are described in such a manner that they can be easily identified and if the fathers' names of all the plaintiffs and their places of residence are given, that would be a sufficient description for purposes of S. 80, C. P. Code. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I.C. 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

——**S. 80**—*Notice—Waiver of—What amounts to—Right to raise plea of want of notice—Party not entitled to notice—Plea by—Sustainability—Delay in raising plea—Effect—When deemed waiver.*

It is well settled that the party in whose favour S. 80 prescribes notice to be given can waive his right to notice, and his waiver binds the rest of the parties. But only he can waive. Delay, however long, in raising the plea of want of notice, would not necessarily by itself, be a ground for holding that there has been waiver, but any prejudice to the plaintiff caused by the delay would result in the defendant being deemed to have waived his right to notice. A party who has himself no right to notice is not entitled to challenge a suit on the ground of want of notice to the party entitled to receive it. (*Broomfield and Macklin, JJ.*) HIRA CHAND HIMATLAL *v.* KASHINATH THAKURJI. **44 Bom.L.R. 727=A.I.R. 1942 Bom. 339.**

——**S. 80**—Period of two months—Computation of. *See* 1941 Dig., Col. 241. MARINA AMMAYI *v.* SECRETARY OF STATE. **200 I.C. 205=15 R.M. 3=(1941) 1 M.L.J. 328.**

——**S. 80**—'Public officer'—Common manager appointed under S. 95 of B. T. Act—Loan taken by him by executing bond—Suit on such bond—Notice, if necessary. *See* 1941 Dig., Col. 241. SUKUMARI GUPTA *v.* DHIRENDRA NATH ROY. **197 I.C. 869=14 R.C. 401.**

——**S. 80**—*Scope—Duty of Court—Suit instituted during currency of notice—Maintainability—Waiver of objection—What amounts to—Suit not maintainable on facts stated in plaint—Waiver—If arises—Pleadings—Rule.*

S. 80, C. P. Code, is express, explicit and mandatory and it admits of no implications and exceptions. The

C. P. CODE (1908), S. 80.

section imposes a statutory and unqualified obligation upon the Court, and a suit instituted during the currency of the notice required by the section is unsustainable *in limine* and must be dismissed. Where the facts stated in the plaint themselves show that the suit has been instituted before the expiry of the two months from the issue of the notice to the Secretary of State, it cannot be said that silence on the part of the Secretary of State to plead the sections as a bar to the maintainability of the suit amounts to an admission by him that the section is not a bar to the suit or to a waiver of the objection based upon the section. Where the applicability of S. 80 depends upon proof of certain facts and the Secretary of State does not deny facts alleged in the plaint, he would under the ordinary rule of pleadings be held to have waived his objection to the proof of those facts. For instance where the plaintiff states in the plaint that the notice has been sent with all the requisites beyond the period of two months, or that the notice has been served on a certain date which is beyond two months of the date of the suit, and the Secretary of State does not deny that the notice was received by him or does not raise any objection, he cannot during the trial be heard to say that he has not received the notice, and would be debarred from challenging the facts alleged in the plaint in the course of the trial. But where the facts are admitted by the plaintiff himself and he fails under the express provisions of the statute, though in a Procedure Code, no question of waiver can arise. (*Manohar Lall and Chatterji, JJ.*) SECRETARY OF STATE *v.* SAGARMAL MARWARI. **23 Pat.L T. 167.**

——**S. 80**—Scope—Mandatory nature of—Suit within two months—Maintainability—Plea of absence of proper notice—If can be waived. *See* 1941 Dig., Col. 242. MARINA AMMAYI *v.* SECRETARY OF STATE. **200 I.C. 205=15 R. M. 3=(1941) 1 M.L.J. 328.**

——**S. 82**—*Applicability—Award by Calcutta Improvement Tribunal—Land Acquisition Act, S.* 26 (2).

S. 82, C. P. Code, has no application to an award made by the Calcutta Improvement Trust Tribunal on a reference made to it by the Land Acquisition Collector. Even assuming that the award is a decree, it is certainly not a decree made in a *suit* against the Crown or a Public Officer.

Per *Mukerjea, J.*—An award made by the Tribunal is not a decree at all. S. 26 (2) of the Land Acquisition Act which was introduced by the Amending Act of 1921 cannot be taken as a part of the Calcutta Improvement Act of 1911. (*Mukherjea and Sen, JJ.*) ASMABOO KURBAN HOSSAIN *v.* PROVINCE OF BENGAL. **203 I. C. 429=46 C.W.N. 927=A.I.R. 1942 Cal. 569.**

——**S. 92**—*Applicability—Suit by trustee against co-trustees—Allegation of breach of trust and prayer for accounts and inquiries and directions—Sanction of Advocate-General—Necessity.*

The plaintiff and defendants were to be the trustees under a deed of settlement after the death of the settlor, who by the deed among other things, created a trust for public purposes of a charitable and religious nature. The plaintiff brought a suit against the defendants alleging breach of trust, namely that one of them had appropriated all the rents and profits of the property to himself, and praying, among other things, that the settlement deed may be construed, that the trust may be administered by and under the directions of the Court, that accounts may be taken, that the defendant No. I, may be ordered to pay to the plaintiff, or the trust estate, the amount found due and payable to him on the taking of such accounts and that the property may be sold, and that the plaintiff may be paid a claim in respect of a debt which he alleged was due to him from the trust estate.

C. P. CODE (1908), S. 92.

Held, that the plaintiff having alleged a breach of trust created for public purposes of a charitable and religious nature, the suit fell clearly within the express words of S. 92, C. P. Code, though the plaintiff brought the suit really for the purpose of enforcing payment of the amount alleged to be due to him from the trust estate. The suit was not merely a suit by a beneficiary for the purpose of enforcing a private right of his own, but was one which fell under S. 92, C. P. Code, and hence was not maintainable without the consent of the Advocate General. (*Blackwell, J.*) GAJANAN LAXMAN *v.* BHALCHANDRA KESHAV. **I.L.R. (1942) Bom. 293=200 I.C. 371=14 R.B. 402=44 Bom.L.R. 88=A.I.R. 1942 Bom. 125 (2)**

——**S. 92**—*Cost—Suit by trustee against co-trustee—Suit not complying with terms of S. 92 and failing—Liability for costs—Right to costs out of trust estate.*

A trustee must be deemed to know the provisions of S. 92, C. P. Code. If a trustee brings a suit which he is not entitled to bring according to S. 92, without complying with its terms, he must bear the consequences for the failure of such a suit. The mere fact that he has brought a suit against a co-trustee cannot be allowed to outweigh the ordinary rule that a man who brings a suit in a form not permitted to him, which suit must therefore necessarily fail, must bear the consequence. The plaintiff must be held liable for costs and cannot be permitted to have the costs out of the trust estate. (*Blackwell, J.*) GAJANAN LAXMAN *v.* BHALCHANDRA KESHAV. **I.L.R. (1942) Bom. 293=200 I.C. 371=14 R.B. 402=44 Bom.L.R. 88=A.I.R. 1942 Bom. 125 (2).**

——**S. 92**—*Court, if* functus officio *after framing scheme—Power to vary scheme—Powers of Judge in the appointment of trustees under a particular scheme.*

In a suit under S. 92 for the framing of a scheme for a religious institution the power of the Court to make orders in the suit does not come to an end when the decree is passed and the Court has power to vary the scheme. Where the Court appoints trustees under the scheme framed by it and reserves to itself the power to sanction the appointment of a new person in the vacancy of a trustee and an application to secure such appointment is made, the order which the Court thereupon makes is a decree in the suit itself and therefore is appealable. The scheme framed by the Court under S. 92 for a pagoda directed the appointment of nine trustees and made provisions for the filling of vacancies among this number. The trustees were enjoined to hold a meeting of the Burmese Buddhist inhabitants of the town for the purpose of ascertaining the wishes of the inhabitants with regard to the filling of the vacancy. After the meeting had been held the trustees were to apply to the District Court to appoint a new trustee to fill up such vacancy. On receipt of such application the Court merely refused to appoint the new person as trustee suggested by the other trustees.

Held, that the District Judge was bound to appoint a trustee for the pagoda. If he thought that the person suggested by the trustees was not a satisfactory person to be appointed, he might have asked the trustees to assist him by suggesting another name, or might have taken evidence on the point, or might have appointed some one not suggested by the trustees and purely on his own discretion.

Held, further, that it was unnecessary, and indeed not desirable for the Judge to examine the methods by which the trustees chose to inform themselves as to the public opinion in the town, in the way he would do if he were

C. P. CODE (1908), S. 92.

trying an election petition. (*Roberts, C.J. and Dunkley, J.*) U KYAW ZAN *v.* U SEIN WIN. **A.I.R. 1942 Rang. 75.**

——S. 92—*Interest—What would constitute.*

The nature of the 'qualifying' interest may vary widely with the character of the trust itself. If the trust itself is clear, precise and narrow, it may well be that an 'interest' would, in order to qualify a plaintiff, have to be precise and clear cut too. In other trusts of a more vague and general kind, the qualifying interest might itself be less definite. The interest required is something more than a mere abstract sentimental interest. Whether and to what extent, the interest must be 'actual' is, perhaps, a matter of doubt and may, vary in individual cases. Even an abstract interest is in a sense an 'actual' interest. It is genuine interest, even though in the abstract, if it proceeds from a real concern for one's own faith. Where certain plaintiffs in a suit under S. 92, C. P. Code, in respect of a trust for the benefit of Hindus, in various directions, did not even trouble themselves to come into Court and say whether they had any concern at all in the suit they sponsored or what their interest was nor even whether they had one, it was held that the qualification required by S. 92 was not satisfied. (*Hamilton and Yorke, JJ.*) GAYANANAND *v.* JAGDISH CHANDRA BAGCHI. **1942 A.L.W. 418=1942 A.L.J. 334=1942 A.W.R. (H.C.) 274=A.I.R. 1942 All. 315.**

——S. 92—Jurisdiction—Suit relating to trust—Compromise decree—Subsequent suit for declaration that compromise petition and decree are fraudulently obtained—Transfer for trial to Munsif—Jurisdiction of Munsif to make new decree under S. 92—Procedure. *See* 1941 Dig., Col. 243. MAHOMED IDRIS HAIDRI *v.* HABIBUR RAHMAN. **A.I.R. 1942 Pat. 79.**

——S. 92—*Public charitable or religious trust—What constitutes—Temple—Public user for long time without objection—If proves public character—Property acquired by* sadhu *for temple descending from* chela *and* chela—*Presumption as to dedication to religious uses.*

In order to constitute an express or constructive trust for a public purpose of a charitable or religious nature, the author or authors of the trust must be ascertained, and the intention to create a trust must be indicated by words or acts with reasonable certainty, and further, the purpose of the trust, the trust property and the beneficiaries must be indicated so as to enable the Court to administer the trust if required. Public user of a temple for a long period without objection is not conclusive of the temple being a public temple, though it is strong evidence. There is no doubt a presumption that where property has been acquired by a *sadhu* and has descended from *chela* to *chela* it has been dedicated to religious uses. But such presumption is limited to cases where the religious persons concerned are *grihasthas* and not celibates, so that there may be a conflict between the *chela* and the natural heirs of the *guru*. A Sanyasi's heir is always his *chela*. When in the case of *sadhus* belonging to a celibate order, there has never been any question of any property held by them, whether trust property or secular property, going by succession to any one but their *chelas*, the fact that all the properties have been held by *chelas* does not give rise to any presumption that the properties have been dedicated to religious uses. (*Broomfield and Sen, JJ.*) AMARDAS MANGALDAS *v.* HARMANBHAI JETHABHAI. **44 Bom.L.R. 643=A.I.R. 1942 Bom. 291.**

——S. 92—*Removal of trustee—Grounds—Trustee denying validity of trust and setting up claim adverse to trust—Sufficiency.*

C. P. CODE (1908), S. 92.

Where the interest of the trustee, on his own allegations, are adverse to the trust and he denies the validity of the trust, that is a good and valid ground for removing the trustee from his office. (*Davis, C.J. and Tyabji, J.*) HASHIM HAROON *v.* GHOWNSALI SHAH. **I.L.R. (1942) Kar. 179=A.I.R. 1942 Sind 137.**

——S. 92—*Sanction under—Form of—Application for sanction by several persons—Order granting sanction not setting out names of all applicants—Validity.*

The permission or sanction required by S. 92, C. P. Code, must be given to two or more named persons and it is not sufficient for the Advocate-General or the Collector to nominate one person and give him a blank cheque to join any other person or persons whom he chooses as co-plaintiffs. If, however, certain persons apply for sanction for instituting a suit and the application is granted, the omission to set out the names of all the applicants in the order granting sanction does not render it invalid. A suit instituted on such sanction is not incompetent. (*Broomfield and Sen, JJ.*) AMARDAS MANGALDAS *v.* HARMANBHAI JETHABHAI. **44 Bom. L.R. 643=A.I.R. 1942 Bom. 291.**

——S. 92—Scheme decree—Charitable trust—Clause in scheme empowering District Judge to remove trustee of his own motion or on application—Power of District Judge to make executable order for costs—If Court or *persona designata*. *See* C. P. CODE, S. 36. **44 Bom. L.R. 11.**

——S. 92—Scheme—Provision for its modification by application in suit—Power of Court. *See* 1941 Dig., Col. 244. SRIJIB NYAYATIRTHA *v.* DANDY SWAMI JAGANNATH ASHRAM. **199 I.C. 841=14 R.C. 648.**

——S. 92—*Scheme suit—Decree—Executability—Test—Clause vesting trust properties in trustee and empowering him to realise them through Court if necessary in execution—If part of scheme—Executability.*

The provisions of a decree in a scheme suit would be inexecutable if they form a part and parcel of the permanent scheme of administration and are not intended to be given effect to independent of the constitution framed by and embodied in the decree, even if they happen to be directory in their nature. They would be executable even if they happen to stray into the wording of the scheme if they are intended to be immediately executable for the purpose of introducing the scheme or otherwise. The true distinction is not whether a provision in a scheme is directory or declaratory, but whether the provision sought to be executed is or is not in what is really the scheme part of the decree. In a suit under S. 92, C.P. Code, for removal of a trustee and for the settlement of a scheme, a decree was passed under which a scheme was framed by the Court and a new trustee was appointed as a sole trustee for management of the trust. He was to manage the trust as per terms of the scheme, and it was provided that the trust property was to be realised and administered by the trustee, and that "all the trust properties either cash or movables shall vest in the trustee for the time being and he shall take possession of the same through Court if necessary in execution of this decree and manage the same on behalf of the public."

Held, that the decree was not executable and that the realisation of the trust properties was an essential part of the scheme and cannot be held to be executable as a money decree. (*Abdur Rahman, J.*) ATCHUTARAMA RAO *v.* BAPANAYYA. **55 L.W. 627=A.I.R. 1942 Mad. 748.**

—— **Ss. 92 and 115**—Scheme under S. 92—Absence of any provision as to removal of trustee—Removal of existing trustee on application—Jurisdiction—Proper

C. P. CODE (1908), S. 92.

procedure—Interference in revision. *See* 1941 Dig., Col. 244. SAADAT HUSAIN *v.* MOJIZ HUSAIN. **17 Luck 391=197 I. C. 743=14 R.O. 346=A.I.R. 1942 Oudh 135.**

——S. 92—*Scope—Suit on allegations contemplated by and asking for reliefs under section—Raising of other issues not appropriate to suit—Effect on maintainability of suit.*

Where a plaint undoubtedly contains the allegations necessary to bring the suit within the ambit of S. 92, C P. Code, and reliefs prayed for and granted all within it, the fact that the suit raises some issues which have no direct bearing on the issues arising under S. 92, and which are not really appropriate to a suit under S. 92 cannot affect the maintainability of the suit. (*Broomfield and Sen, JJ.*) AMARDAS MANGALDAS *v.* HARMANBHAI JETHABHAI. **44 Bom.L.R. 643=A.I.R. 1942 Bom. 291.**

——S. 92—*Scope of suit—Question as to validity of trust.*

Questions regarding the validity of a trust or a wakf are beyond the scope of a suit under S. 92, C. P. Code and should not be decided in such a suit. (*Davis, C. J. and Tyabji, J.*) HASHIM HAROON, *v.* GHOUNSALI SHAH. **I.L.R. (1942) Kar. 179=A.I.R. 1942 Sind 137.**

——S. 92—Scope—Trustee—Removal of trustee—Grounds—Proof of breach of trust or mismanagement—If essential—Trustee putting forward baseless claim to exclusive management—If ground for removal. *See* 1941 Dig, Col. 245. BAPUGOUDA YADGOUDA *v.* VINAYAK SADASHIV. **I.L.R (1941) Bom. 556.**

——S. 92—*Suit under—Active prosecution by all grantees of sanction—If essential.*

There is nothing in S.92, C.P.Code which requires that all the plaintiffs to whom sanction have been given for filing the suit should after filing the suit continue actively to prosecute the suit. (*Davis, C.J. and Tyabji, J.*) HASHIM HAROON, *v.* GHOUNSALI SHAH. **I.L.R. (1942) Kar. 179=A.I.R. 1942 Sind 137.**

——S. 92—Suit under — Amendment—Powers of Court—Procedure—Sanction of Advocate-General or Collector—Necessity. *See* 1941 Dig., Col. 246. BAPUGOUDA YADGOUDA *v.* VINAYAK SADASHIV. **I.L.R. 194 Bom. 556.**

——S. 92—"*Trust for public purpose*"—*Gift of property to idol—Public trust—If created.*

It cannot be laid down as a general proposition without qualification that whenever a gift of property is made to an idol, the trust created for the benefit of the idol is necessarily a public trust involving the operation of S. 92, C. P. Code. It is well settled that family idols may be endowed with property without any question of a public trust arising, and the same may be said to be true of some idols which are not family idols. (*Broomfield and Sen, JJ.*) AMARDAS MANGALDAS *v.* HARMANBHAI JETHABHAI. **44 Bom.L.R. 643=A.I.R. 1942 Bom. 291.**

——S. 92 (1) (h)—"Further or other relief"—Meaning of. *See* 1941 Dig., Col. 246. HAJI MAHOMED NABI *v.* PROVINCE OF BENGAL. **201 I.C. 248=15 R.C. 148=A.I.R. 1942 Cal. 343.**

——S. 93—*Consent of Collector—Form.*

The consent of the Collector should not be in the form of a judgment. Under no circumstances should any formal finding on the merits or expression of opinion of the sanctioning authority be endorsed on the plaint. (*Davies.*) CHHITAR MAL *v.* NAND MAL. **1941 A. M.L.J. 89.**

C. P. CODE (1908), S. 100.

——S. 93—*Consent prior to sanction from Local Government—Legality.*

It is illegal for the Collector acting as an Advocate-General to give his consent first and to obtain the sanction of the Local Government afterwards. Such a sanction does not constitute a valid consent on the part of the Collector concerned. (*Davies.*) CHHITAR MAL *v.* NAND MAL. **1941 A.M.L.J. 89.**

——S. 95—*Application under—Maintainability—Depositing money to withdraw attachment—Suit decreed—Subsequent application by defendant for compensation.*

A defendant in a suit against whom an order of attachment has been made and who has complied with that order with the result that it automatically terminated and with the result that the money deposited became available to the plaintiff in satisfaction of his decree, cannot apply to the Court for compensation upon the ground that the order of attachment, in respect of which the Court is *functus officio*, was obtained upon insufficient grounds, *a fortiori* when that was not the basis of the only application he has ever made for the vacation of the order of attachment. (*Yorke, J.*) GYAN PRAKASH MITAL *v.* KISHORI LAL. **I.L.R. (1942) All. 360=201 I.C. 184=15 R.A. 45=1942 A.L.W. 307=1942 A.L.J. 284=1942 A.W.R. (H.C.) 114=A.I.R. 1942 All. 261.**

——S. 95—Plaintiff—Next friend of minor plaintiff—Order of compensation against—Jurisdiction to make. *See* 1941 Dig,, Col. 247 SATYANARAYANA *v.* ANJAREDDI. **I.L.R. (1941) Mad. 985=200 I.C. 13=15 R.M. 2.**

——S. 99—Absence of prejudice—No question of jurisdiction—Defects, if can affect decree. *See* 1941 Dig., Col. 247. HAR KRISHNA LAL *v.* QURBAN ALI. **17 Luck. 284=A.I.R. 1942 Oudh 73.**

——S. 99—*Decision without specific issue—No prejudice—Defect, if cured.*

When evidence was given on a point which was raised in both the Courts below, the decision cannot be assailed merely because there was an omission to frame a specific issue on the point. If no prejudice has been shown, S. 99, C. P. Code, would cure the defect. (*Chatterji and Shearer, JJ.*) DULHIN RAJ KISHORE KUER *v.* MAHOMED QAIYAM. **198 I.C. 890=8 B.R. 475=14 R.P. 516=A.I.R. 1942 Pat. 366.**

——S. 99—*District Judge entertaining incompetent appeal—Second appeal.*

Dhavle, J.—If a District Judge entertains an appeal which does not lie to his Court, a second appeal lies to the High Court against his decision. The reason for this is that the principle that a decree made without jurisdiction is reversible on appeal is involved by implication in S. 99. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO **21 Pat. 1=198 I.C. 353=14 R.P. 420=8 Cut. L.T. 53=8 B.R. 361=A.I.R. 1942 Pat. 1 (F.B.).**

——S. 99—*Scope.*

The provisions of S. 99, C. P. Code, is a direct bar to a dismissal of an appeal by the District Judge on the ground of any misjoinder of plaintiffs. (*Davies.*) SUKH DEO *v.* GAURI SHANKAR. **1941 A.M.L.J. 84.**

——S. 100 and T. P. Act, Ss. 76 and 77—*Abandoned plea—Raising in second appeal—Question as to whether T. P. Act, S. 76 (h) applied or S. 77.*

Where a question as to whether S. 76 (*h*), T. P. Act or S. 77 applied though raised in the lower appellate Court is abandoned it cannot be held to estop that party from raising it in second appeal. (*Thomas, C.J. and Ghulam Hasan, J.*) RAMESHWAR PRASAD *v.* RAM

C. P. CODE (1908), S. 100.

ASREY. 203 I.C. 434=1942 O.W.N. 556=1942 A.W.R. (C.C.) 330 (1)=1942 O.A. 454=A.I.R. 1942 Oudh 499.

——S. 100—*Custom —Existence —Interference in second appeal—When justified.*

When a *wajib-ul-arz* recording a custom is treated as of no value on an erroneous view of the law, the decision arrived at as to the existence of custom can be interfered with in second appeal. (*Ghulam Hasan, J.*) BAJRANG BAHADUR SINGH *v.* RAM NEWAZ. **202 I. C. 743=15 R.O. 144=1942 O.W.N. 574=1942 A.W.R. (C.C) 328 (2)=1942 O.A. 448=A.I.R. 1943 Oudh 29.**

——S. 100—"Decree"—Collector's decision on application under S. 20-A, Madras Estates Land Act—Decision of District Judge on appeal—If "decree"—Second appeal. *See* MADRAS ESTATES LAND ACT, S. 190. **(1942) 2 M L J. 162.**

——S. 100 and O. 41, R. 27—*Discretion, exercise of—Interference in second appeal—Principles governing—Admission of map after issuing commission by first appellate Court.*

A distinction has to be drawn between 'jurisdiction' and 'discretion.' When the first appellate Court exercises its 'discretion', the Court of second appeal should always be reluctant to interfere. In fact when a discretion is vested in a Court by the provisions of the C. P. Code the Court is bound to exercise such discretion one way or other and a refusal to exercise it or the non-exercise of it amounts to a defect in procedure. The Court while exercising such discretion must do so judicially and on sound legal principles. It should not exercise it in a non-judicial or arbitrary manner. Where a Court has exercised a discretion in a judicial manner there is no error either of law or of procedure, and consequently such exercise of discretion should not be interfered with in second appeal. Where a first appellate Court considers that for the proper decision of an appeal before it a map of the locality concerned is necessary and that a decision without it would not be possible and in the exercise of its discretion issues a commission and admits the map as additional evidence, such exercise of discretion cannot be interfered with in second appeal. (*Thomas, C.J. and Madeley, J.*) MADANGOPAL *v.* HIRDEY NARAIN. **1942 O.W.N. 596=1942 A.W.R. (C.C.) 310 (2)=1942 O.A. 378=A.I.R. 1942 Oudh 485.**

——S. 100—Finding of fact—Concurrent finding that certificate sale was not vitiated by fraud—If conclusive. *See* 1941 Dig., Col. 249. NISAR MAHOMED KHAN *v.* TANQUIR AHMED. **23 Pat.L.T. 195.**

——S. 100—*Finding of fact—Conflicting statements made by party—Decision as to which is true—If conclusive.*

It is for the Court of fact to decide between two conflicting statments made by a party and to find which is the true version. A finding arrived at by the Courts below as to which is the true statement cannot be interfered with in second appeal. (*Harries, C.J. and Manohar Lall, J.*) PARMANANDA PRUSTY *v.* INDRAMANI MAHANTI. **202 I.C. 113=15 R.P. 93=8 B.R. 851=5 F.L.J. (H.C.) 178=8 Cut.L T. 35=23 P.L.T. 740=A.I.R. 1942 Pat. 479.**

——S. 100—*Finding of fact—Finality.*

Findings that the vendor made his purchase with open eyes and that his allegation that he was not given possession of all the property is untrue are findings of fact which are binding in second appeal. (*Davis, C.J. and Weston, J.*) ALLAHDINO BACHO *v.* UDHOOMAL. **I.L.R. (1942) Kar. 32=202 I.C. 584=15 R.S. 51=A.I.R. 1942 Sind 81.**

——S. 100—*Finding of fact—Finding arrived at after ignoring record of rights and village note—If conclusive.*

C. P. CODE (1908), S. 100.

Although there may be no presumption attaching to a village note, but it is certainly a piece of evidence, and good evidence on the question of village custom although it does not carry a statutory presumption as a record of rights. Where the lower appellate Court ignores such important pieces of evidence as the record of rights and the village notes, a finding of fact arrived at by it about the custom or usage cannot be supported and is not conclusive in second appeal. (*Fazl Ali and Chatterji, JJ.*) GHASHI SAHU *v.* SHIB SAHU. **20 Pat. 870=199 I.C. 684=14 R P. 605=1942 P.W.N. 39=23 P.L.T. 540=8 B.R. 603=A I.R. 1942 Pat. 140.**

——S. 100—*Finding of fact—Finding of fraud arrived at after examination of circumstances and conduct of parties—Sustainability.*

Where the lower Courts have arrived at a finding of fraud after examining the circumstances of the case and the conduct of the parties and they have not relied on evidence which is not admissible in law, the finding is one which is legal and cannot be attacked in second appeal as being one based on no evidence or based on mere surmise and conjecture. (*Harries, C.J. and Manohar Lall, J.*) BANARSI DAS *v.* BAHAWANI KUER. **202 I.C. 57=15 R.P. 83=8 B.R. 843=23 Pat.L.T. 364=A.I.R. 1942 Pat. 386.**

——S. 100—*Finding of fact—Finality when supported by evidence—Evidence not corroborated—If makes finding inconclusive.*

A finding of fact cannot be interfered with in second appeal if there is evidence to support that finding although such evidence is uncorroborated. (*Manohar Lall, J.*) KRISHNA PANDA *v.* JHORA CHOWDHURANI. **203 I.C, 65=15 R.P. 152=9 B.R. 50=8 Cut. L.T. 37=A.I.R. 1942 Pat. 429.**

——S. 100—*Finding of fact—Inference from proved facts—If can be ignored in second appeal.*

A concurrent finding of fact arrived at by both the lower Courts cannot be ignored in second appeal merely because it is an inference from facts satisfactorily proved by evidence. (*Harries, C. J. and Fazl Ali, J.*) KANIK MANDAL *v.* MEDNI RAI. **201 I.C. 560=15 R.P. 56=8 B.R. 806=23 Pat.L.T. 213=A.I.R. 1942 Pat. 317.**

——S. 100—*Finding of fact—Interference—Purchase out of savings.*

Per *Iqbal Ahmad, C.J. and Ganga Nath, J.*—The finding that a party purchased certain property from his own private savings and the party was as such, the sole owner of the property cannot be challenged in second appeal. (*Iqbal Ahmad, C.J., Ganga Nath and Dar, JJ.*) CHANDRA SHEKAR *v.* MANOHAR LAL. **201 I.C. 695=15 R.A. 79=1942 A.W.R. (H. C.) 241=1942 A.L.W. 478=1942 A.L.J. 367=A.I.R. 1942 All. 233 (F.B.).**

——S. 100—*Finding of fact—Question as to how long plaintiff had been ousted—Lower Court not considering real question but proceeding on wrong view of law—Finding—If conclusive in second appeal.*

Where in a suit for possession the lower appellate Court has not directed its mind to the determination of the question as to how long the plaintiff had been ousted from the property, being obsessed with the idea that no question of limitation arose in the case, there being a continuing wrong (encroachment) and comes to a perfunctory finding, it cannot be considered a definite finding based upon a consideration of the evidence so as to be binding in second appeal. (*Fazl Ali and Meredith, JJ.*) KUSESHWAR JHA *v.* UMA KANT JHA. **197 I. C. 818=14 R.P. 371=8 B.R. 302=22 Pat.L.T. 1001=A.I.R. 1942 Pat. 188.**

C. P. CODE (1908), S. 100.

——S. 100—Interference—Plea that valuation of suit for jurisdiction is not correct and that trial Court had no jurisdiction—If can be given effect to in second appeal. *See* 1941 Dig., Col. 251. MAHOMED IDRIS HAIDRI v. HABIBUR RAHMAN. **A.I.R. 1942 Pat. 79.**

——S. 100—*New plea—Point of law necessitating fresh findings of fact—If can be raised.*

A new point of law cannot be raised in second appeal for the first time if an investigation of facts and fresh findings of fact are required before such a point can be determined. (*Harries, C.J. and Dhavle, J.*) KUMAID KUMAR SINGH *v.* AMAR NATH SINGH. **21 Pat. 322 =A.I.R. 1943 Pat, 10.**

——S 100—New point—Question of fact not raised in Courts below—Question whether landlord purchaser at rent sale has taken steps to annul incumbrances under S. 167, Bihar Tenancy Act, if can be raised. *See* BIHAR TENANCY ACT, S. 167. **8 B.R. 479.**

——S. 100—New point—Question of fact—Submerged land—Constructive possession of true owner—If can be set up in second appeal. *See* LIMITATION ACT, S. 28. ADVERSE POSSESSION — SUBMERGED LAND. **1942 P.W.N. 100.**

——S. 100—*New question of law—Right to raise—Limits of the rule.*

A question of law cannot be allowed to be raised for the first time in a Court of last resort where the pleading necessary to sustain the new plea is an inconsistent one and inadmissible for that reason and where if it had been raised earlier it would have been easily met and the point of law is one which is not unanswerably clear. (*Shirreff, S.M. and Sathe, J.M.*) BHUSAI *v* DIRGAJ. **1942 A.W.R (Rev.) 361 (2)=1942 O.W.N. (B.R.) 496 (2)=1942 O A. (Supp.) 387 (2).**

——S. 100—*Question of fact*—Benami—*Finding as to—Conclusive character of.*

Whether a transaction is a *benami* one and whether a purchaser at a sale is a benamidar for another are eminently questions of fact and the finding thereon cannot be interfered with in second appeal. (*Harries, C.J. and Manohar Lall, J.*) BANARSI DAS *v.* BHAWANI KUER. **202 I C. 57=15 R.P. 83=8 B.R. 843=23 Pat L.T. 364=A I.R. 1942 Pat 386.**

——S. 100—Question of fact—Question whether conveyance by Mahomedan to wife and relinquishment by latter of dower debt is gift or sale—Finding on—If conclusive in second appeal. *See* 1941 Dig., Col. 252. MAHOMED ZOBAIR *v.* BIBI SAHIDAN. **197 I.C. 241= 14 R.P 289=23 Pat L.T. 72=8 B.R. 179=A.I R. 1942 Pat. 210.**

——S. 100—Question of fact—Structure if of a permanent character, *See* ESTATES ACT, S, 60 AND C. P. CODE, S 100. **1942 N L.J. 145.**

——S. 100—*Question of law—Adverse possession—Question whether admitted facts constitute open assertion of title—Finding on—If conclusive.*

The question whether certain admitted facts constitute an open assertion of title so as to amount to adverse possession is a question of law, and the finding of the lower appellate Court on such a question is not binding in second appeal. (*King, J.*) VENKATACHARLU *v.* RAJAH OF VIZIANAGARAM. **55 L.W. 614=1942 M. W.N. 603=A.I.R. 1942 Mad. 725=(1942) 2 M.L.J. 415.**

——S. 100—Question of law—Burden of proof, if correctly laid. *See* 1941 Dig., Col. 252. RAMGULZARILAL *v.* BHANUPRASAD. **I.L.R. (1942) Nag. 441.**

——S 100—*Question of law—Inference as to intention from document of title.*

Per *Din Mohammad, J.*—It is true that ordinarily the question of intention is a question of fact but when the question of the interpretation of a document of title is at the same time concerned, it is always a question of law to determine what legal inference can be deduced from the contents of the document taken as a whole. (*Young, C.J. and Sale, J.*) RAM RAKHI *v.* PEOPLES BANK OF NORTHERN INDIA, LTD. **199 I.C. 677= 14 R.L. 415=A I.R. 1942 Lah. 42.**

——S. 100—Question of law—Interpretation of lease. *See* 1941 Dig., Col. 253. GOPAL CHANDRA CHANDA *v.* DWARIKA NATH BEPARI. **74 C.L.J. 535.**

——S. 100—Question of law—Legal effect of proved fact—Meaning. *See* 1941 Dig., Col. 253. KESHRI KUMAR SINGH *v.* RAM SWAROOP SINGH. **17 Luck. 158=A.I.R. 1942 Oudh 19.**

——S. 100—Question of law—Question whether facts found constitute "sufficient cause" under S. 5 of Limitation Act. *See* 1941 Dig., Col. 253. KISHAN CHAND *v.* MAHOMED HUSSAIN. **199 I.C. 851=14 R.L. 434=A.I.R. 1942 Lah. 94.**

——S. 100—Question of law or fact—Existence of custom. *See* 1941 Dig., Col. 253. JOGESH CHANDRA GHOSE *v.* SREE DHAKESWARI MATA. **198 I.C. 837 =14 R.C. 509=A.I.R. 1942 Cal. 26.**

——S. 100—*Second appeal—Competency—Incompetent appeal entertained and dismissed on merits—Second appeal—If lies—Jurisdiction of the High Court to interfere.*

It is well established that when a lower appellate Court entertains an appeal which is not competent and modifies the decision of the trial Court, a second appeal will lie. But it is doubtful whether such a second appeal will lie when the lower appellate Court has dismissed the appeal preferred to it. If the lower appellate Court has dismissed the appeal as incompetent, a second appeal against that decision cannot be entertained. If the lower Court wrongly entertains an appeal and dismisses it on the merits, the only order which can be properly passed in second appeal is to set aside the incompetent appellate order. There is no justification for going into the trial Court's order in such a case which is unaffected by the incompetent appellate decision. Should the High Court, when hearing a second appeal against an incompetent appellate order come to the conclusion that the trial Court's order is wrong on the merits, in a proper case the High Court will interfere in revision with the order of the trial Court. (*Wadsworth, J.*) KALLALAGAR DEVASTHANAM, MADURA *v.* BASKARAM PILLAI. **1942 M.W.N. 632=A.I.R. 1942 Mad. 741=(1942) 2 M.L.J. 450**

——S. 100—Scope—Second appeal—Competency—Incompetent appeal entertained and decided by lower Court—Second appeal—Revision. *See* 1941 Dig., Col. 254. BANKA DAS *v.* SRINIVAS PADHI. **197 I.C. 837 =14 P.P. 374=8 B.R. 309.**

——S. 100—Scope—Second appeal—Interference—Trial Court's finding based on credibility of witnesses—Reversal on mere surmises—Powers of second appellate Court. *See* 1941 Dig., Col. 254. ANDOLI *v.* JAMNABAI. **197 I.C. 356=14 R.N. 167.**

——S. 100—*Second appeal—Competency—Appellate Court entertaining incompetent appeal—Second appeal —If lies.*

If an appellate Court entertains an appeal which does not lie to that Court, a second appeal lies against the decision of that Court. (*Agarwala, J.*) LAKHPAT LAL *v.* MAKHAN RAM. **201 I.C. 786=15 R.P. 77= 8 B.R. 838=23 Pat.L.T. 342=A.I.R. 1942 Pat. 369.**

——S. 100—Second appeal—Concurrent findings—Interference—Findings based on solitary statement. *See* LANDLORD AND TENANT—ADMISSION TO TENANCY. **1942 O. W.N. (B.R.) 43.**

C. P. CODE (1908), S. 100.

——**S. 100**—*Second Appeal—Finding of fact—Tenancy—Sitting tenants—Interference—Admission of new tenant over sitting tenant—Validity.*

Where it is found that the plaintiffs were sitting tenants from before the time when the lease is executed in favour of the defendant, the finding is one of fact which will not be interfered with in second appeal. A lease purporting to superimpose a tenant in chief over such sitting tenants was held to be invalid by the lower Court and its judgment was upheld in appeal. (*Sathe, A.M*) MARU SINGH *v.* HARBANS. **1941 O.A. (Supp.) 961 (2)=1941 A.W.R. (Rev.) 1213 (2).**

——**S. 100**—Second appeal—Lower appellate Court entertaining incompetent appeal—Second appeal—Competency. *See* MAD. AGRI. REL. ACT, S. 19. **(1942) 2 M.L.J. 568.**

——**S. 100 (c)**—*Error of law—Disregard of material evidence.*

The decision of Court must in law be based on the evidence parol and otherwise legally recorded therein. A Court will be committing an error of law if it completely disregards material evidence on the record when arriving at any conclusion. Entirely to ignore a piece of evidence which constitutes a fatal bar to the success of a party must be counted an error of law. (*Davies.*) SUKH DEO *v.* GAURI SHANKAR. **1941 A. M.L.J. 84.**

——**S. 100 (1) (c)**—*Error of law or procedure—Lower Court misdirecting itself in appreciating evidence and requiring higher standard of proof—Interference by High Court.*

Where the lower appellate Court misdirects itself in appreciating the evidence and requires a standard of proof higher than that laid down by the Evidence Act, that is an error of law or procedure which would justify interference under S. 100 (1) (*c*), C.P. Code. The High Court in second appeal is entitled to interfere in such a case, even though the finding of fact is against the appellant. (*King, J.*) VENKATA RAO *v.* VENKAYYA. **55 L.W. 772=A.I.R. 1943 Mad. 38 (2)=(1942) 2 M.L.J. 427.**

——**S. 102**—Suit of small cause nature—Co-sharer landlord in possession under S. 22 (2), Bihar Tenancy Act—Suit against for money due to co-sharers—Second appeal. *See* BIHAR TENANCY ACT, S. 22 (2). **23 Pat.L.T. 348.**

——**S. 103**—*Second appeal—Power of High Court to go into evidence and determine a question.*

Under S. 103, C. P. Code, it is open to the High Court in second appeal to go into the evidence and determine the question arising in the case, and it will do so if it thinks such a course advisable to save a remand upon that question. (*Fazl Ali and Meredith, JJ.*) KUSESHWAR JHA *v.* UMA KANT JHA. **197 I.C. 818=14 R.P. 371=8 B.R. 302=22 Pat.L.T. 1001=A.I.R. 1942 Pat. 188.**

——**S. 104 and O. 43 R. 1**—*Dismissal of appeal against order under O. 7, R. 10—Second appeal, if lies.*

An order dismissing an appeal against an order under O. 7, R. 10, C. P. Code, returning the plaint for presentation to the proper Court is not open to a second appeal. (*Bennett, J.*) MATHURA PRASAD RAM DHAN *v.* MANOHAR DAS RAM PRASAD. **202 I.C. 378=15 R. O. 120=1942 A.W.R. (C.C.) 322 (1)=1942 O.A. 426=1942 O.W.N. 494=A.I.R. 1942 Oudh 480.**

——**S. 104 (c) and O. 43, R. 1 (m) and Sch. II, Para. 16 (2)**—Award—Agreed modifications—Objections—Disposal—Appealability — Revision. *See* 1941 Dig., Col. 255. RAM GOPAL *v.* RAM SHANKAR. **17 Luck. 17.**

C. P. CODE (1908), S. 109.

——**S. 104 (1) (a) and Sch. II, para. 8**—*Refusal of extension of time to file award and supersession of arbitration—Appealability.*

Where a Court in refusing to grant extension of time to file an award also supersedes the arbitration and sets aside the reference, the order is appealable. The latter portion of the order being of no importance cannot have the effect of precluding the applicant from appealing against the refusal of extension of time. (*Ghulam Hasan and Madeley, JJ*) CHIMMAN *v.* BRIJ MOHAN DAS. **1942 O.A. 298=1942 O.W.N. 407=1942 A.W.R. (C.C.) 270.**

——**Ss. 104 (2) and 95**—*Second appeal in respect of orders under S. 95—Maintainability.*

In view of the provisions of S. 104 (2), C. P. Code, a second appeal is not competent where an appeal against an order awarding compensation under S. 95, C.P. Code, is dismissed. (*Yorke, J.*) GYAN PRAKASH MITAL *v.* KISHORI LAL. **I.L.R. (1942) A. 360=201 I.C. 184=15 R.A. 45=1942 A.L.W. 307=1942 A.L.J. 284=1942 A.W.R. (H.C.) 114=A.I.R. 1942 All. 261.**

——**S. 105 and O. 47, R. 7**—Granting of review—Difference in scope between appeal against order granting review and appeal against final decision. *See* 1941 Dig., Col. 256. ANANDRAO *v.* PARWATIBAI. **I.L.R. (1942) Nag. 487.**

——**Ss. 107 (2) and 141**—Scope and effect—Civil Revision Petition in High Court—Return under O. 7, R. 10 for presentation as appeal in District Court—Application for—Maintainability. *See* C. P. CODE, O. 7, R. 10. **(1942) 2 M.L.J. 99.**

——**S. 109**—*"Decree or final order"—Order of High Court decreeing plaintiff's claim for possession of property upon payment of money to be ascertained by trial Court—Appeal to Privy Council.*

Where the High Court reverses the decree of the trial Court and passes a decree in favour of the plaintiff entitling him to recover possession of certain properties valued at more than Rs. 10,000 on condition of his paying a sum of money which is to be ascertained by the trial Court according to the directions contained in the judgment of the High Court,

Held, that the order of the High Court is a decree and a preliminary decree and is, therefore, appealable to the Privy Council.

Obiter: The order is also a final order within the meaning of S. 109, C. P. Code. (*Mitter and Khundkar, JJ.*) SURENDRA NATH SARKAR *v.* SAILENDRA NATH KUNDU. **208 I.C. 518=46 C.W.N. 857=A.I.R. 1942 Cal. 537.**

——**Ss. 109 and 110**—*Subject-matter of valuation of appeal—If to include interest subsequent to appellate decree sought to be appealed against.*

The grant of interest subsequent to the date fixed for payment in a mortgage decree is discretionary and grantable under S. 34, C. P. Code prior to 1929 and the law is the same even after 1929. Therefore even if the Judicial Committee is likely to reverse the decision of the High Court on appeal on the facts of the particular case it might refuse to award interest from the date fixed for payment in the lower Court. Therefore what may or may not be awardable is not to be included as part of the claim and if without adding the interest the value is less than Rs. 10,000 a party is not entitled to leave to appeal to the Privy Council.

Quaere:—Whether after the amendment of 1929 even interest after the date of suit comes within S. 34, C. P. Code and whether the grant of interest at the contract rate up to the date fixed for payment is obligatory. (*Venkataramana Rao and Somayya, JJ.*) RANGASWAMI

C. P. CODE (1908), S. 109.

GOUNDAR v. OFFICIAL RECEIVER, COIMBATORE, I.L.R. (1942) Mad. 618=202 I.C. 170=15 R.M. 453 =1942 M.W.N. 399= 55 L.W. 120=A.I.R. 1942 Mad. 535=(1942) 1 M.L.J. 296.

——S. 109 (a) and (b)—*Applicability—Application to set aside* ex parte *decree in appeal—Application to excuse delay in making application—Order dismissing —Right to grant of leave to appeal.*

Neither an order dismissing an application for setting aside an *ex parte* decree in an appeal nor an order refusing to excuse the delay in making the application can be held to fall under S 109 (*a*) or (*b*), so as to entitle the applicant to the grant of leave to appeal to His Majesty in Council. (*Venkataramana Rao and Horwill, JJ.*) RAMASWAMI UDAYAR *v.* RAMANATHAN CHETTIAR. 202 I.C. 75=15 R.M. 428=55 L.W. 163=1942 M.W.N. 142=A.I.R. 1942 Mad. 357 (1)=(1942) 1 M.L.J. 291.

——S. 109 (a)—*Applicability—Order dismissing appeal for non-prosecution.*

An order dismissing an appeal for non-prosecution is neither a decree nor a final order passed on appeal within the meaning of S. 109 (*a*), C. P. Code. (*Thomas, C. J. and Agarwal, J.*) JAGDISH KUMAR SINGH *v.* HARI KRISHEN DAS. 199 I.C. 835=14 R.O 525=1942 O. A. 135=1942 O.W.N. 206=1942 A.W.R. (C.C.) 156 =A.I.R. 1942 Oudh 362.

——S. 109 (a)—*'Final order'—Meaning—Order that a party is entitled to be substituted in place of deceased party—If open to appeal to Privy Council.*

An order of an appellate Court is not a final order within the meaning of S. 109 (*a*), C. P. Code, unless it finally disposes of the rights of parties in relation to the suit and hence an order which merely decided that a particular person was entitled to be substituted in place of a deceased party is not a 'final order' as contemplated by S. 109 (*a*), C.P. Code and is not appealable as such. (*Agarwal and Madeley, JJ.*) HARI SARAN DAS *v.* HAR KISHAN DAS. 198 I.C. 658=14 R.O. 426= 1942 A.W.R. (C.C.) 75=1942 R.D. 173=1942 O.A. 53=1942 O.W.N. 100=A.I.R. 1942 Oudh 283.

——Ss. 109 (a) and 110—*Valuation—Subject-matter in dispute in trial and appellate Court less than Rs.* 10,000—*Decree for more than Rs.* 10,000—*Appeal to Privy Council if lies.*

Where the subject-matter in dispute both before the District Court and the Judicial Commissioner's Court was less than Rs. 10,000, though the decree passed by the Judicial Commissioner was for more than Rs. 10,000 it was held that leave to appeal to Privy Council could not be granted. (*Davies.*) GIRDHAR LAL *v.* BISHAN DEVI. 1942 A.M.L.J. 29

——S. 109 (c) and United Provnces Encumbered Estates Act (1934), S 6—*Appeal—Competency —Order in revision quashing order under S.* 6, *U. P. Encumbered Estates Act.*

Where an order is passed in revision quashing an order passed under S. 6 of the U. P. Encumbered Estates Act, there is nothing to prevent an appeal to the Privy Council lying against such an order under Cl. (*c*) of S. 109, C. P. Code, provided it is certified to be a fit one for appeal to His Majesty in Council. (*Shirreff, S.M. and Sathe, J.M.*) KHUSHHAL SINGH *v.* GOKAL CHAND. 1942 A.W.R. (Rev.) 117 (2)= 1942 O.A. (Supp.) 134 (2)=1942 O.W.N. (B.R.) 254=1942 R.D. 343.

——S. 109 (c)—*Certificate of fitness under—When should be granted.*

A certificate of fitness under S. 109 (*c*), C. P. Code, should be granted only if the decision affects not only parties to the suit but is of such great public importance

C. P. CODE (1908), S. 110.

depending on general principles and of such a nature that it may govern numerous cases. (*Grille, C.J. and Puranik, J.*) GANGARAM *v* BAPUJI. 1942 N.L.J. 386.

——S. 109 (c)—*Granting of ceritficate—When justified.*

In order that a High Court may be justified in granting a certificate under S. 109 (*c*), C. P. Code, the legal questions for decision must be of great public or private importance. (*M. R. Davies.*) UMRAO MAL SETH *v.* SETHANI MUKAND KANWAR. 1941 A.M.L.J. 134.

——S. 109 (c) and 110—*Leave to appeal—Grounds for granting—Appeal involving large stakes—If sufficient ground.*

The fact that large stakes are involved in an appeal would not in itself be a ground for granting leave to appeal to His Majesty in Council. (*Pandrang Row and Abdur Rahman, JJ.*) MAHADEVA ROYAL *v.* VEERABASAVA CHIKKA ROYAL. 1942 M.W.N. 136=A.I.R. 1942 Mad. 368=(1942) 1 M.L.J 309.

——S. 109 (c)—*Leave under—When can be granted —Where matter not of public importance.*

When the question involved is not of public importance leave to appeal can be granted under S. 109 (*c*) only in special cases in which the matter in dispute is incapable of being valued in money. (*Agarwal and Madeley, JJ.*) HARI SARAN DAS *v.* HAR KISHAN DAS. 198 I.C. 658=14 R.O. 426=1942 A.W.R. (C. C.) 75=1942 R.D. 173=1942 O.A. 53=1942 O.W. N. 100=A.I.R. 1942 Oudh 283.

——S. 109 (c)—*Scope.*

Where there is no question of great public importance and the suit is one for property only and so definable in money value, the case does not come within the principles of S. 109 (*c*). (*R.C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY 202 I.C. 551=15 R.C. 355=47 C.W.N. 9=A. I.R. 1942 Cal. 498 (S.B.).

——S. 109 (c)—Substantial question of law—Question whether report of enquiry into pauperism by Subordinate Court is binding on appellate Court. *See* C. P. CODE, O. 44, R. 2 AND S. 109 (*c*). 1942 O.W.N. 305.

——S. 110—*Affirming decree—High Court maintaining decree of lower Court but superseding order as to costs—Decree, if one of affirmance.*

Where the High Court in appeal maintains the decree of the lower Court, the decree is one of affirmance notwithstanding that the High Court interferes with the lower Court's decision in regard to costs and supersedes the lower Court's order as to costs. (*Pandrang Row and Abdur Rahman, JJ.*) MAHADEVA ROYAL *v.* VEERABASAVA CHIKKA ROYAL. 1942 M.W.N. 136 =A.I.R. 1942 Mad. 368=(1942) 1 M.L.J. 309.

——S. 110—*Affirming decree—What is—"Decree" —"Decision"—Meaning of.*

The term "decree" used in connection with the High Court and the expression "decision" used in regard to the lower Court in S. 110, C. P. Code, do not mean exactly the same thing; a single decree may comprise several decisions, and each decision may relate to a distinct matter. It cannot be said that any variation in a decree is enough to take it out of the last paragraph of S. 110. A suit on behalf of a trust for recovery of possession of certain properties was dismissed; in appeal the High Court also rejected the prayer for possession but directed the defendant to pay into Court a sum of Rs. 12,100 for the benefit of the trust, on the offer and undertaking of the defendant's counsel as a matter of concession and not as a decision of the Court. The

C. P. CODE (1908), S. 110.

High Court also gave certain directions regarding the amount.

Held, that the decree of the High Court as regards prayer for possession was affirming the decisions of the lower Court within the meaning of S. 110, C. P. Code, that as regards the sum directed to be paid into Court it did not form the subject-matter of the proposed appeal, having been fully satisfied, and leave to appeal could not be granted as there was no substantial question of law. (*Abdur Rahman and Somayya, JJ.*) KARUNALAYA VELANGAPULI PANDIAN *v.* REV. FATHER PIGNOT. **55 L.W. 589=1942 M.W.N. 565=A.I.R. 1943 Mad. 67=(1942) 2 M.L.J. 350.**

——**S. 110**—*Decree of affirmance—Chief Court affirming everything and only correcting a mistake which was an oversight.*

Whether a decree is one of affirmance or not must depend upon the facts and circumstances of each case. Where the Special Judge owing to an oversight awarded interest at a rate not permissible under S. 27, Encumbered Estates Act and the Chief Court apart from correcting it did nothing and dismissed the appeal it was held that the decree of the Chief Court affirmed the decree of the Special Judge. (*Thomas, C.J. and Ghulam Hasan, J.*) DEPUTY COMMISSIONER, HARDOI *v.* MST. MUNNU BIBI. **202 I.C. 767=15 R.O. 153=1942 O.W.N. 527 1942 A.W.R. (C.C.) 324 (2)=1942 O A. 435=A.I.R. 1942 Oudh. 478.**

——**S. 110**—*Question of law—Judges differing—Discussions and exchange of views between them—If amount to sufficient deliberation—Question, if one of fact or law.*

Where Judges happen to differ they need not confer with each other till the last moment with a view to bring unanimity amongst them. Even if they do not, the separate judgments which they deliver can be regarded as judgments. It is quite true that there must be discussions and exchange of views amongst judges composing a Division Bench before the judgments are prepared and delivered. But if there are consultations amongst them, it is for them and them only to judge if further discussions would be fruitful and for them only to say at what stage the discussions amongst them should cease. There cannot be an absolute rule of law as to what will amount to a sufficient conference for the purpose. The question whether or not the conferences or discussions amount to a sufficient deliberation by which the Judges composing the Division Bench mutually assist each other in arriving at a decision is at most a question of degree, and as such, a question of fact (and not a question of law) to be determined with reference to the facts and circumstances of each particular case. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. **202 I.C. 551=15 R.C. 355=47 C.W.N. 9=A.I.R. 1942 Cal. 498 (S.B.).**

——**S. 110**—*Question of law—Question as to weight to be given to evidence and value to be given to statement or admission.*

The question as to the weight to be attached to the evidence in the case and the value to be given to a statement or admission in a document is a question of fact and is not a question of law which would justify the grant of leave to appeal to the Privy Council under S. 110 C. P. Code. (*Pandrang Row and Abdur Rahman, JJ.*) MAHADEVA ROYAL *v.* VEERABASAVA CHIKKA ROYAL. **1942 M.W.N. 136=A.I.R. 1942 Mad. 368=(1942) 1 M.L.J. 309.**

——**S. 110**—*Substantial question of law—Decision as to admissibility of documents—Leave to appeal.*

The words "substantial question" in S. 110, C.P.Code, must be understood in their being of substance to the parties, a decision holding that certain documents, which are of great importance, are inadmissible in evidence, is a substantial question of law which would justify the grant of leave under S. 110, C. P. Code. (*Pandrang Row and Abdur Rahman, JJ.*) MAHADEVA ROYAL *v.* VEERABASAVA CHIKKA ROYAL. **1942 M.W.N. 136=A.I.R. 1942 Mad. 368=(1942) 1 M.L.J. 309.**

——**S. 110**—*Substantial question of law—If exists when appeal is dismissed for non-prosecution.*

When an appeal is dismissed by the chief Court of Oudh for non-prosecution under R. 18 of Chapter XVII of the Chief Court rules, the only question is whether the discretion has been properly exercised and it is not a substantial question of law within the meaning of S. 110, C. P. Code. For the purposes of deciding the competency of the appeal the questions of law decided in the trial Court cannot be taken into consideration. (*Thomas, C.J. and Agarwal, J.*) JAGDISH KUMAR SINGH *v.* HARI KRISHEN DAS. **199 I.C. 835=14 R.O. 525=1942 O A. 135=1942 O.W.N. 206=1942 A.W.R. (C.C.) 156=A.I.R. 1942 Oudh 362.**

——**S. 110**—*Valuation—Cost of proceedings and interest subsequent to suit—If can be added.*

Where the difference between the amount claimed and the amount decreed is less than Rs. 10,000 the plaintiff cannot add the costs of the proceedings to make up the deficiency. Nor can he add interest subsequent to the institution of the suit to make up that deficiency. (*Almond, J C. and Mir Ahmad, J.*) KALYAN SINGH & CO. *v.* NORTHERN INDIA FARMS. **198 I.C. 392=14 R. Pesh. 74=A.I.R. 1942 Pesh. 6.**

——**S. 110, Para. 2**—Appealability—Valuation—Test—Amount of decree less than Rs. 10,000 but value of property involved more than Rs. 10,000. *See* 1941 Dig., Col. 260. SADAMA PRASAD *v.* MAHOMED ABDUL ALIM. **16 Luck. 737.**

——**S. 110, Para. 2**—Valuation—Conditions. *See* 1941 Dig., Col. 260. PRAG NARAIN TRIVEDI *v.* FAKHRUL NISA. **197 I.C. 313=14 R.O. 292=A.I.R. 1942 Oudh 174.**

——**S. 111**—*Appellate decree of single Bench—Appeal to Privy Council—If lies—Letters Patent (Lahore), Cl. 29.*

No appeal lies to His Majesty, in Council, either under the Civil Procedure Code or the Letters Patent, from a decree passed on appeal by a Single Bench of the High Court. (*Tek Chand, Dalip Singh and Blacker, JJ.*) ADMINISTRATOR, LAHORE MUNICIPALITY *v.* BAKHSHI RAM. **I.L.R. (1942) Lah. 592=201 I.C. 468=15 R.L. 51=44 P.L.R. 318=A.I.R. 1942 Lah. 169 (F.B.).**

——**S. 113 and O. 46, R. 1 and C.P. Relief of Indebtedness Act, S. 20**—Right of reference if a substantive right—Proceedings under Relief of Indebtedness Act, if a 'suit'—Applicability of O. 46, R. 1, to District Court acting under S. 20, Relief of Indebtedness Act, if can make reference to High Court. *See* 1941 Dig., Col. 260. DT. JUDGE, HOSHANGABAD *v.* SHRI KISAN DAS. **198 I.C. 824=14 R.N 247=A.I.R. 1942 Nag. 8.**

——**S 115**—*Absence of evidence—Illegal decision.*

If a decision is reached for which there is no evidence it must be held to be illegal. (*Davies.*) RISHI MUNI DEVI *v.* OFFICIAL RECEIVER. **1941 A.M.L.J. 108.**

——**S. 115 and O. 6, R. 17**—*Amendment of application to sue in* form a pauperis—*Refusal—Revision—Competency.*

An order refusing leave to amend an application to sue in *forma pauperis* is not revisable under S. 115, C.P.

C. P. CODE (1908), S. 115.

Code. (*Collister and Baipai, JJ.*) TEJ SINGH *v.* JAGAT SINGH. **1942 A.L.W. 602.**

——**S. 115**—*Applicability— Jurisdiction—Question of fact or law affecting jurisdiction involved in case—Plea that arbitrators had no power to proceed because of pendency of suit in Civil Court relating to same subject-matter in part—Order deciding question—Revision.*

An application in revision under S. 115, C. P. Code, will lie only if some question of fact or law which affects jurisdiction is involved. The section applies to jurisdiction alone, the irregular exercise of it, or non-exercise of it, or the illegal assumption of it. It is not directed against conclusions of law or fact in which a question of jurisdiction is not involved. If the question raised is one that primarily affects jurisdiction, an application in revision is competent. Where it is contended that the arbitrators who made awards had no jurisdiction to proceed with the arbitration because a suit relating to the same subject-matter, in part at least was pending at the time in a Court, a question of jurisdiction is involved, and a revision petition will lie. (*Davis, C. J. and Weston, J.*) GOHRAM SHAMBAY *v.* JUMO ODHAVO. **I.L.R. (1941) Kar. 570=199 I.C. 291=14 R.S 175=A.I.R. 1942 Sind 41.**

——**S. 115**—Applicability—Orders passed under U P. Encumbered Estates Act. *See* 1941 Dig., Col. 261. HARI RAM *v.* SHYAM BAHADUR. **198 I.C. 21=14 R.O. 371.**

——**S. 115**—Applicability — Suit or proceedings under U. P. Tenancy Act. *See* 1941 Dig., Col. 261. JAGANNATH SINGH *v.* SITA RAM. **16 Luck. 775.**

——**S. 115**—*'Case decided' —Decision of part of a case—Preliminary point as to jurisdiction to entertain application—Decision on, if can be revised.*

The decision of a part of a case does not amount to 'a case which has been decided by a Court' within the meaning of S. 115, C. P. Code. But where an irreparable damage would be done to a party, if the order were allowed to stand, Courts would take a wide equitable view of the meaning of S. 115, in order to give the relief which seem to them to be fair. It was *held* that a decision that a Court had jurisdiction to entertain an application for the removal of certain trustees could not be revised. (*Bennett and Madeley, JJ.*) PRITHVI NATH *v.* BHAGIRATH TONDON. **197 I. C. 677=14 R. O. 336=1942 A.W.R. (C.C.) 6=1942 A.L.W. 16=1941 O.A. 1042=1941 O.W.N. 1350=A.I.R. 1942 Oudh 208.**

——**S. 115**—*Case decided—Decision of preliminary point regarding court fees.*

By the mere decision of a preliminary point regarding court fee no case is decided within the meaning of S. 115, C. P. Code, and hence it cannot be revised. (*Thomas, C.J. and Ghulam Hasan, J.*) DY. COMMISSIONER OF BARA BANKI *v.* B. K. DHAON. **1942 O. A. 501=1942 A.W.R. (C.C.) 342 (3).**

——**S. 115**—*"Case decided"—Judge allowing amendment adding issue against party's wishes after case is already referred to arbitration—Revision—Maintainability.*

Where the Judge has in effect decided that whether the plaintiff likes it or not, some particular issue, not agreed by the plaintiff to be referred to arbitration, is despite his objections, to be referred to arbitration that is a case decided within the meaning of S. 115. The Judge in such a case deals with the matter referred to arbitration within the meaning of para. 3 (2) of Sch. 2 when he allows the amendment of the written statement, and, in effect, directs the arbitrator to add to the issues referred a further issue on a question upon which, by necessary implication, the parties had already agreed

C. P. CODE (1908), S. 115.

and which agreement by necessary implication is involved in the issues referred. The Judge deals with the matter referred to arbitration in a manner not provided in the schedule. (*Davis, C.J. and Weston, J.*) SITALDAS POHUMAL *v.* NIHALCHAND ISSARDAS. **198 I. C. 847=14 R.S. 158=A.I.R. 1942 Sind 7.**

——**S. 115**—*Case decided—Order impounding document—Revision.*

An order impounding a document is not a mere interlocutory order but a case decided within the meaning of S. 115, C. P. Code, and a revision, therefore, lies from such an order. (*Din Mahomed, J.*) UTTAM CHAND *v.* PERMA NAND. **203 I.C. 7=15 R.L. 160=44 P.L. R. 188=A.I.R. 1942 Lah. 265.**

——**S. 115 and O. 41, R. 23**—*Case decided—Order of remand.*

Though the appeal is decided in an order of remand and the proceedings completed so far as it is concerned, the appeal does not in any way dispose of the suit. It leaves the suit as it was before the decision of the trial Court and it does not decide any point in the suit itself. Hence it cannot be said that an order of remand constitutes a 'case decided' within the meaning of S. 115, C. P.Code. (*Bennett, J.*) SITAL *v.* ANANT LAL. **200 I. C. 236=14 R.O 588=1942 O.W.N. 236=1942 O. A. 183=1942 A.L.W. 216=1942 A.W.R. (C. C.) 171 =A.I.R. 1942 Oudh 334.**

——**S. 115 and O. 1, Rr. 8 and 10**—*Case decided—Order on application to be made a party—When revisable.*

A distinction ought to be drawn between a case where a person applies to a court to be made a party and his application is refused and a case where the application is granted. When the application is refused, a case is decided so far as that party is concerned, but not so when he is made a party and the former order is revisable while the latter is not. (*Bennett and Agarwal, JJ.*) CHANDRA PRATAP SINGH *v.* BINDESHWARI PRASAD SINGH. **200 I. C. 259=14 R.O. 592=1942 A.W.R. (C. C.) 193=1942 O.A. 178=1942 O. W. N. 245=A.I.R. 1942 Oudh 340.**

——**S. 115**—Case decided—Order overruling objection as to maintainability of application for amendment of decree—If revisable. *See* 1941 Dig., Col. 262. KUSHAL CHAND *v.* SRI NARAIN. **A.I.R. 1942 Oudh 79.**

——**S. 115 and O. 33, R. 5**—*Case decided—Order refusing leave to sue as a pauper—Revision.*

An order refusing a person to permit to sue as a pauper amounts to a "case decided," for it finally disposes of the question whether the petitioners should sue *in forma pauperis* or not. It is not therefore of an interlocutory nature. Further the right to continue the suit on full court-fee cannot be called an alternative remedy for obtaining permission to sue *in forma pauperis*. Therefore, there is no way out of the situation for the petitioner except to get the order vacated on revision and hence a revision is competent. (*Mir Ahmad, J.*) FAIZ MOHD. *v.* JUMA KHAN. **200 I.C. 519=15 R. Pesh. 7=A.I.R. 1942 Pesh. 29 (1).**

——**S. 115**—"Case decided"—Proceedings under S. 476, Cr. P. Code—Order by Civil Court—Revision to High Court—If governed by C. P. Code, S. 115 or by S. 439, Cr. P. Code. *See* 1941 Dig., Col. 262. VALIRAM LILARAM *v.* GOVINDRAM. **197 I.C. 774=14 R.S. 120=43 Cr. L.J. 259.**

——**S. 115, and O. 6, R. 17**—Case decided—Refusal of amendment—Revision, if lies. *See* 1941 Dig., Col. 262. MANGILAL *v.* ZAMSINGH. **I.L.R. (1942) Nag. 478.**

C. P. CODE (1908), S. 115.

——S. 115 and O. 26, R. 4—*Case decided—Refusal to issue a commission.*

The mere refusal of an application to issue a commission cannot be considered to be a decision of any case. Further O. 26, R. 4 gives the Court discretion to issue a commission, and if a Court in the exercise of that discretion comes to the conclusion that a commission should not be issued, it cannot be said that it exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularily and hence its order cannot be revised in revision. (*Agarwal and Madeley, JJ.*) IQBAL ALI BEG *v.* ABDUL ALI. 199 I.C. 831=14 R O. 523=1942 A.W R. (C. C.) 203 =1942 O.W N. 367=1942 O. A. 215.

——S. 115 and O. 33, Rr. 5, 8 and O. 44—*Case decided—Rejection or granting of leave to sue or appeal as pauper.*

An order either rejecting or granting an application for leave to sue *in forma pauperis* amounts to a case decided within the meaning of S. 115, C. P. Code and the same principle would apply to applications for leave to appeal. (*Bennett, J.*) RAM DULARI *v.* ALIAN BIBI. 199 I C. 614=14 R O. 503=1942 A.W R. (C. C.) 79=1942 R.D. 181=1942 O.A. 57=1942 O.W.N. 106=A.I R. 1942 Oudh 240.

——S. 115—*Court-fee--Court refusing to proceed with case until proper court fee is paid—Revision.*

Where a Judge on an erroneous view of the court-fee payable refuses to proceed with the case until the proper court-fee is paid, he fails to exercise jurisdiction as a party is entitled to have his case tried if he has paid the court-fee. (*Davis, C.J. and Weston, J.*) GOBIND-RAM TARACHAND *v.* RAMCHAND CHANDIRAM. I L R. (1942) Kar. 61=200 I.C. 545=14 R.S. 213=A.I. R. 1942 Sind 76.

——S. 115—Court-fee—Order as to—Revision—Competency. *See* 1941 Dig., Col. 263. RAMAUTAR SAO *v.* RAM GOBIND SAO. 198 I.C 866=14 R.P. 512=23 Pat.L.T. 218=8 B.R. 471=A.I.R. 1942 Pat. 60.

——S. 115—*Court fee—Order directing plaintiff to give market value of land and calling on him to pay additional Court fee—Revision—Competency.*

An order directing a plaintiff to give the market value of the land in suit and to pay additional court fees thereon, the plaintiff having paid court-fee on the basis of the nett profits from the land for the previous year, can be made the subject of a revision petition under S. 115 of the Code of Civil Procedure. An order by a Court calling upon a plaintiff to pay additional court-fee and adjourning the suit to a later date for that purpose amounts to a refusal to proceed with the suit until the proper sum is put into Court, even if there is no specific order refusing to proceed with the suit. (*Chandrasekhara Ayyar, J.*) RATNAVELU PILLAI *v.* VARADARAJA PILLAI. 203 I.C 457=1942 M.W N. 352=55 L.W. 293=A.I.R. 1942 Mad. 585=(1942) 1 M.L J. 569.

——S. 115—*Court-fee—Order in appeal—Proper court-fee arising from trial Court decree not paid—Revision—Competency.*

The Judicial Commissioner's Court should not hear a revision application against an order in an appeal from a decree, on which the proper court fee, arising from the decree of the trial Court has not been paid by the applicant. There is no question of a notional valuation, when the result of the trial of the suit is that by a final decree the rights and liabilities of the parties have been fixed in specific sums. (*Davis, C.J. and Weston, J.*) GOBINDRAM TARACHAND *v.* RAMCHAND CHANDI-

C. P. CODE (1908), S. 115.

RAM I.L R. (1942) Kar. 61=200 I. C. 545=14 R. S. 213=A I.R. 1942 Sind 76.

——S. 115—"Court subordinate"—Collector acting under S. 204, Orissa Tenancy Act—Orders of—Revision—Powers of High Court. *See* ORISSA TENANCY ACT (AS AMENDED IN 1938), S. 204. A.I.R. 1942 Pat. 1 (F.B.).

——S. 115—*"Court subordinate"— Commissioner for workmen's compensation—Orders of—Jurisdiction of High Court to revise.*

A Court over which the High Court has appellate jurisdiction is a Court subordinate to the High Court within the meaning of S. 115, C P. Code, and is therefore subject to the revisional jurisdiction of the High Court. The Commissioner for workmen's compensation under the Workmen's Compensation Act being subject to the appellate jurisdiction of the High Court is a Court subordinate to the High Court and his orders are therefore revisable by the High Court under S. 115, C. P. Code, when no appeal lies. (*Agarwala and Meredith, JJ.*) DIRJI *v.* GOALIN. 21 Pat. 173=198 I.C. 529=14 R.P 476=8 B.R. 437=22 Pat.L.T. 1023=A.I.R 1942 Pat. 33.

——S. 115—*Court subordinate to High Coourt—Deputy Collector acting under S. 3 (5) of Madras Estates Land Act—Order by—Revision—Competency.*

Proceedings under S. 3 (5) of the Madras Estates Land Act are purely of an executive or administrative character, and a Deputy Collector acting under the section is not a Court subordinate to the High Court within the meaning of S. 115, C.P. Code. No revision therefore lies from an order passed under S. 3 (5) of the Estates Land Act. (*Byers, J.*) SYED MAHOMED GHOUSE SAHIB SUTHARI *v.* SYED MAHOMED GHOUSE SAHIB. 55 L.W.644 (1)=1942 M.W.N. 791 (1)=A.I.R. 1942 Mad 742 (2)=(1942) 2 M.L.J. 511.

——S. 115—*Discretion—Decision on preliminary issue as to maintainability of application—Unsuccessful party not challenging decision in revision—Revision after final decision—Interference on preliminary point—Rule.*

The power of revision under S. 115, C.P. Code, is a discretionary power conferred upon the High Court and there is no right of revision as such in an aggrieved party. Where the lower Court decides on a preliminary issue that an application under S. 192 of the Succession Act is maintainable, but the aggrieved party fails to take the matter in revision and takes the chance of a decision on the merits and fails ultimately, the High Court will not be too ready to assist him in his revision after the final decision on the preliminary point. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE. 21 Pat 197=198 I.C 535=14 R.P. 468=23 P.L T 547=8 B.R. 429=1941 P.W. N. 755=A I R. 1942 Pat. 251.

—— S. 115—*Discretion—Revisional powers—Conditions for exercise of.*

The powers of the High Court are discretionary and will not be exercised save and except for the prevention of injustice; but when the matter is before the High Court, the High Court, for the purpose of preventing a misunderstanding of the rights of the parties, if it considers that it is desirable that the matter should be clarified will interfere to that extent and make the necessary orders. (*Agarwala, J.*) SHEO NARAIN PRASAD *v.* JAWAHIR LAL. 199 I C 312=8 B.R. 536=14 R.P. 568=23 Pat.L.T. 135=A.I.R. 1942 Pat. 293.

——S. 115—Discretionary orders—Order under O. 22, R. 10—Revision—Maintainability. *See* 1941 Dig., Col. 264. KRISHNAJI RAMCHANDRA *v.* BHIKCHAND

C. P. CODE (1908), S. 115.

RAMKARAN. I.L.R. (1941) Bom. 629=200 I.C. 160 =14 R.B. 395=A.I.R. 1942 Bom 82.

——S. 115—*Discretionary order—Revision—Interference—Instalments—Bihar Money-Lenders Act* (1939), *S.* 12—*Order allowing payment of decree in instalments —Reasons not given — Effect—Interference—Decree-holder objecting to order but withdrawing money deposited under—If precluded from challenging order in revision.*

The High Court is reluctant to interfere with orders passed by Subordinate Courts in exercise of their discretionary powers, such as an order for payment of a decree by instalments under S. 12 of the Bihar Money-Lenders Act. Such discretionary power must, however, be exercised judicially and the Court should be careful to indicate in its order the reasons for it so that the High Court may be satisfied that the discretion has been exercised judicially and all the relevant matters specified in S. 12 of the Bihar Money-Lenders Act have been taken into consideration. Where the order does not show that all the circumstances have been taken into consideration and does not give reasons the High Court will not hesitate to interfere in revision and will set aside the order. The mere fact that the decree-holder who objects to the instalments, subsequently withdraws from the Court an amount of instalment deposited in Court will not debar him from challenging the instalment order in revision on the ground that he has taken a benefit under that order. There is no benefit to the decree-holder merely because an instalment order is passed as he is entitled to the money deposited under his decree. (*Agarwala, J.*) RAM NARAYAN SHARMA *v.* SITA RAM PATHAK. 201 I.C. 484=15 R.P. 52=8 B.R. 792=23 Pat. L.T. 194=A.I.R. 1942 Pat. 451.

——S. 115—Discretion of Court—Interference in revision. *See* OUDH RENT ACT, S. 124-D AND C. P. CODE, S. 115. 1942 O.A. 235.

——S. 115—*Erroneous decision on question of limitation—Revision—Interference.*

An erroneous decision on the question of limitation does not justify interference in revision as it cannot be said to be one without jurisdiction. (*Wadsworth, J.*) NATARAJA GRAMANI *v.* SIVAKOLUNDU GRAMANI. (1942) M.W.N. 789=55 L.W. 844 (1)=(1942) 2 M.L.J. 735.

——S. 115—*Error of law—If ground for interference.*

A wrong view of the law taken by the lower Court does not justify interference in revision with the decision. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE. 21 Pat. 197=198 I.C. 535=14 R.P. 468=8 B.R. 429=1941 P.W.N. 755=23 Pat.L.T. 547=A.I.R. 1942 Pat. 251.

——S. 115—Error of law—Interference—If justified. *See* 1941 Dig., Col. 261. PUNYA RAULO *v.* KHETRA GANDA. 197 I.C. 655=14 R.P. 329=8 B.R. 275=A.I.R. 1942 Pat. 133.

——S. 115—*Error of law—Omission to consider certain pieces of documentary evidence—Interference in revision.*

The omission to consider certain pieces of documentary evidence will not come within the mischief of S. 115 (*c*), C. P. Code, which applies only to errors committed in connection with the exercise of jurisdiction or errors committed in respect of procedure, and not to every error of law committed by a Judge. (*Sen, J.*) ASHUTOSH DEY *v.* FOOLCHAND KESHABDEO. 203 I.C. 388=46 C.W.N. 838=A.I.R. 1942 Cal. 530.

——S. 115—*Failure to exercise jurisdiction—What amounts to.*

C. P. CODE (1908), S. 115.

If a Commissioner quashes a Collector's appellate order solely on the ground that no appeal lay to him, when an appeal did in fact lie, there will be a failure of jurisdiction which will justify interference in revision. But if he reverses the Collector's order on the merits and not on the sole ground that no appeal lay to him, there is no refusal to permit the exercise of jurisdiction by the Collector, and no revision lies from the order. (*Mitchell, F.C.*) GHULAM MURTAZA KHAN *v.* SAMPURAN SINGH. 21 Lah.L.T 23.

——S. 115—*Finding of fact—Binding nature.*

The finding that an agreement was not proved is a finding of fact which even if incorrect is binding in revision. (*Gruer, J.*) AMRITRAO ATMARAM *v.* NARSINGRAO. I.L.R. (1942) Nag. 625=199 I.C. 702=14 R.N. 296=1942 N.L.J. 106=A.I.R. 1942 Nag. 47.

——S. 115—*Finding of fact—Interference.*

There can be no interference in revision with findings of fact arrived at by the lower Court. (*Thomas, C.J.*) C. D. LINCOLN *v.* NOOR ELAHI. 1942 O.A. 626=1942 O.W.N. 801.

——S. 115—Illegality—Execution petition—Dismissal for default—Subsequent restoration without notice to judgment-debtor—Revision—Interference. *See* C.P. CODE, O. 9, R. 9. 22 Pat.L.T. 965.

——S. 115—*Illegality or material irregularity—Failure to consider important point of fact—Effect of —Interference in revision.*

Where the lower Court fails to take into consideration an important question of fact which is indeed conclusive in the case, and the consequence of which is that it has given a decision which otherwise it would clearly not have given, S. 115 (*c*) applies, and the lower Court must be held to have acted illegally or with material irregularity so as to justify interference by the High Court in revision. (*Davis, C.J. and Weston, J.*) AYARAM ATAMPARKASH *v.* SUKHDEV & CO. I.L.R. (1941) Kar. 587=199 I.C. 707=14 R.S. 197=A.I.R. 1942 Sind 57.

——S. 115—*Illegally or with material irregularity —Summary proceeding—Exclusion of secondary or indirect evidence—If justifies interference.*

Where in a summary inquiry in proceedings under S. 182 of the Succession Act, the District Judge excludes certain statements which are in the nature of secondary or indirect evidence on the ground that the admission thereof would unduly prolong the inquiry, it cannot be said that he acts illegally or with material irregularity so as to justify interference in revision. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE. 21 Pat. 197=198 I.C. 535=8 B.R. 429=14 R.P. 468=1941 P.W.N. 755=23 Pat.L.T. 547=A.I.R. 1942 Pat. 251.

——S. 115—*Interference under—Principles—Interlocutory orders—If revisable.*

A strict compliance with the conditions laid down in S. 115, C. P. Code, is the *sine qua non* to the exercise of jurisdiction, under that section. Considerations of possible irreparable injury or failure of justice cannot be invoked to give jurisdiction to the Oudh Chief Court to interfere with any interlocutory order. If interference with orders of lower Courts in interlocutory matters are allowed on such grounds the trial of suits in the lower Courts will be unduly hampered and protracted. Hence an order remodelling an issue being an interlocutory order and not amounting to a case decided cannot be interfered with in revision. (*Thomas, C.J. and Ghulam Hasan, J.*) DEPUTY COMMISSIONER, RAE BARELI *v.* BHOLA NATH. 201 I.C. 317=15 R.O.

C. P. CODE (1908), S. 115.

70=1942 O.A. 260=1942 A.W.R. (C.C.) 239=1942 O.W.N. 384=A.I.R. 1942 Oudh 432.

——**S. 115**—*Interference—Refusal to amend decree according to U. P. Debt Redemption Act.*

A refusal to amend a compromise decree in respect of a promissory note according to the Debt Redemption Act could not be interfered with in revision when there has been no failure to exercise jurisdiction and there has been no material illegality or irregularity in the exercise of jurisdiction by the trial Court. (*Madeley, J.*) CHANDRA NATH *v.* RAJA RAM. **203 I.C. 234=15 R.O. 182=1942 A.W.R. (C.C.) 341 (2)=1942 O.W.N. 624=1942 O.A. 491.**

——**S. 115**—*Interlocutory order—Order requiring additional Court-fee—Revision.*

An order requiring the payment of additional Court-fee is *prima facie* an interlocutory order which according to the established practice of the Peshawar Judicial Commissioner's Court cannot be taken into consideration on the revision side. (*Almond, J. C.*) SARFRAZ KHAN *v.* MAHOMED YAKUB KHAN. **201 I.C. 83=15 R. Pesh. 13=A.I.R. 1942 Pesh. 23.**

——**S. 115**—*Interlocutory order—Order reviving proceedings which had terminated—If open to revision.*

An order passed on review setting aside an order of dismissal of an application for the removal of a mutwalli, is one reviving proceedings which had definitely terminated and so cannot be described as an interlocutory order so as to bar a revision under S. 115. (*Bennett, J.*) MAJID-UN-NISSA *v.* ANWARULLAH. **200 I.C. 142=14 R.O. 553=1941 O.W.N. 1361=1941 O.A. 1066=1942 A.W.R. (C.C.) 11=A.I.R. 1942 Oudh 210.**

——**S. 115**—*Interlocutory order—Refusal to recast issue—If revisable.*

An order rejecting an application to recast an issue framed in a case so as to remove the burden of proof wrongly placed upon a party is only an interlocutory order and hence is not revisable and the decision is at best a wrong decision which cannot be the subject of interference under S. 115, C. P. Code. (*Thomas, C.J. and Ghulam Hasan, J.*) RAM CHANDRA *v.* BIRENDRA BIKRAM SINGH. **201 I.C. 277=15 R.O. 68=1942 A.W.R. (C.C.) 256 (1)=1942 O.A. 283=1942 O.W.N. 377=A.I.R. 1942 Oudh 431.**

——**S. 115**— Jurisdiction— Absence — Collector entertaining and disposing of appeal under Orissa Tenancy Act entertainable by District Judge—Order of Collector—Revision — Power of High Court. *See* ORISSA TENANCY ACT (AS AMENDED IN 1938), S. 204. **A.I.R. 1942 Pat. 1 (F.B.).**

——**S. 115**—Jurisdiction—Decision as to absence of —Confirmation in appeal—Revision if lies. *See* 1941 Dig., Col. 264. KESHEORAO *v.* GANESHRAO. **198 I.C. 34=14 R.N. 201.**

——**S. 115**—*Jurisdiction—Failure to distinguish between condition in India and England—Following decision of High Court of another Province and not considering decision of own High Court—Interference—If justified—Error of law.*

It cannot be said that merely because the lower Court has not sufficiently distinguished between conditions in India and England or has not considered a relevant decision of the High Court of the Province and has followed a decision of the High Court of another Province, any question of jurisdiction arises. At the most it amounts only to an error in law which it is in the jurisdiction of the Court to make, and it does not justify interference in revision. (*Davis, C.J. and Weston, J.*) AVARAM ATAMPARKASH *v.* SUKHDEV & CO. **I.L.R.**

C. P. CODE (1908), S. 115.

(1941) Kar. 587=199 I.C. 707=14 R.S. 197=A.I.R. 1942 Sind 57.

——**S. 115**—*Jurisdiction—Failure to exercise—Commissioner for workmen's compensation—Failure to decide whether particular person falls within the category of persons enumerated in the class of dependents—Effect.*

While the Commissioner for workmen's compensation has no jurisdiction to decide that the persons designated in S. 2 (1) (*d*) of the Workmen's Compensation Act are not dependents or that persons not designated in the section are dependents, he has power to decide whether a particular person has the status of any of the persons referred to in the section. Where he fails to exercise this power and decide the matter, his order is liable to interference by the High Court under S. 115, C. P. Code. (*Agarwala and Meredith, JJ.*) DIRJI *v.* GOALIN. **21 Pat. 173=198 I.C. 529=8 B.R. 437=14 R.P. 476=22 Pat.L.T. 1023=A.I.R. 1942 Pat. 33.**

——**S. 115**—Jurisdiction—Failure to exercise — Decree on promissory note—Execution—Application by judgment-debtor on date of sale to fix value of property under S. 13, Bihar Money-Lenders Act—Dismissal—Interference in revision. *See* BIHAR MONEY-LENDERS ACT, S. 13. **23 Pat.L.T. 14.**

——**S. 115**—*Limitation—Application made beyond 90 days—Maintainability—Practice.*

Although the Limitation Act makes no provision for application for revision under S. 115, C.P. Code, the usual practice of the Court is not to entertain applications presented beyond 90 days. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE. **21 Pat. 197=198 I.C. 535=8 B.R. 429=14 R.P. 468=1941 P.W.N. 755=23 Pat.L.T. 547=A.I.R. 1942 Pat. 251.**

——**S. 115**—*Limitation for revision—Practice.*

There is no limitation prescribed for the application for revision but the Chief Court has held that if an application is unduly delayed it can be thrown out on that very ground and that ordinarily if an application is filed beyond the period of limitation prescribed for an appeal it ought to be considered to have been unduly delayed. (*Agarwal, J.*) KALLU MAL *v.* MUNICIPAL BOARD, NAWABGANJ. **200 I.C. 608=15 R.O. 25=1942 O.W.N. 335=1942 A.W.R. (C.C.) 220=1942 O.A. 241=A.I.R. 1942 Oudh 392.**

——**S. 115**—Material irregularity—Application under scheme framed under S. 92—Order deciding only some of questions raised—Revision. *See* 1941 Dig., Col. 265. SRIJIB NYAYATIRTHA *v.* DANDY SWAMI JAGANNATH ASHRAM. **199 I.C. 841=14 R.C. 648.**

——**S. 115**—Material irregularity—Court, when acts with. *See* 1941 Dig., Col. 265. BHAWANI SANKAR JAISI *v.* GANGA PRASAD. **198 I.C. 516=14 R.R. 204.**

——**S. 115 & O. 3, R. 1 and O. 11, R. 1**—Material irregularity—Order of Court rejecting act performed by party through recognised agent—No direction to perform it in person—Interference in revision. *See* 1941 Dig., Col. 266. K. C. MUJUMDAR *v.* SURAJ SINGH. **I.L.R. (1942) Nag. 258.**

——**S. 115**—Material irregularity—Setting aside *ex parte* decree without considering question of jurisdiction to do so—Interference in revision. *See* C. P. CODE, O. 9, R. 13 AND SS. 115 AND 151. **I.L.R. (1942) Nag. 675.**

——**S. 115 and C. P. Land Alienation Act**—Miscellaneous proceedings—Revision, if lies. *See* 1941 Dig. Col. 266. JANKILAL *v.* DEPUTY COMMISSIONER, BILASPUR **I.L.R. (1942) Nag. 602.**

C. P. CODE (1908), S. 115.

——**S. 115**—New plea—Interference—Practice. *See* 1940 Dig., Col. 245. BULAKHIDAS *v.* MURLIDHAR. **I.L.R. (1942) Nag. 139.**

——**S. 115 and O. 33, R. 5**—*New plea under O. 33, R. 5—If can be raised in revision.*

The plea under O. 33, R. 5 that the applicant was being financed by some one acting behind the scenes depends on facts which when neither pleaded nor proved cannot be gone into for the first time in revision. (*Gruer, J.*) AMRITRAO ATMARAM *v.* NARSINGRAO. **I.L.R. (1942) Nag. 625=199 I.C. 702=14 R.N. 296 =1942 N.L.J. 106=A.I.R. 1942 Nag. 47.**

——**S. 115 and C. P. Code, Sch. II, para. 21**—*Order directing award to be filed—Revision—If confined to question of jurisdiction.*

In a revision against an order of the Court directing an award to be filed, objection can be taken only on the question of jurisdiction. (*Davis, C.J. and Weston, J.*) JETHANAND PITAMBERDAS *v.* MIRABAI. **I.L.R. (1942) Kar. 36=202 I.C. 152=15 R.S. 24=A.I.R. 1942 Sind 79.**

——**S. 115**—Other remedy open—Appealable order not appealed from—Revision—Maintainability. *See* 1941 Dig., Col. 267. SUBBAYYA *v.* VENKATA HANUMANTHA BUSHANA RAO. **I.L.R. (1942) Mad. 60=200 I.C. 520=15 R.M. 69=(1941) 2 M.L.J. 125.**

——**S. 115**—*Other remedy—Claim order—Remedy—Revision—Competency.*

The proper remedy of a person who is adversely affected by an order under O. 21, R. 63 is by way of a suit and not by way of a revision application under S. 115, C. P. Code. The fact that the order is erroneons does not give the party a right in revision; the maintainability of a revision application is not a matter to be judged by the merits of such application. (*Davis, C.J. and Weston, J.*) DEWANDAS UDHOMAL *v.* BHOJIBAI. **I.L.R. (1942) Kar. 160.**

——**S. 115**—Other remedy open—Interference. *See* 1941 Dig., Col. 267. MANGILAL *v.* ZAMSINGH. **I.L.R. (1942) Nag. 478.**

——**S. 115**—*Other remedy open—Revision—Competency.*

The High Court will not ordinarily interfere in revision when the aggrieved party has another remedy open, *e.g.*, a regular suit. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE. **21 Pat. 197=198 I.C. 535=14 R.P. 468=8 B.R. 429=1941 P.W.N. 755=23 Pat.L.T. 547=A.I.R. 1942 Pat. 251.**

——**S. 115 and C. P. Relief of Indebtedness Act (1939), S. 6 (3)**—Other remedy open—Revision—Maintainability—Stay of passing decree absolute on receipt of notice under C.P. Indebtedness Act, S. 6(3)—Proper remedy of aggrieved party. *See* 1941 Dig., Col. 267. KULESHWAR PRASAD *v.* DWARKA NATH. **I.L.R. (1942) Nag. 577=199 I.C. 453=14 R.N. 280.**

——**S. 115 and O. 33, R. 7**—*Pauper application—Granting of leave—Revision, if lies.*

An order granting leave to sue as a pauper is not open to revision under S. 115, C. P. Code. (*Ismail and Mulla, JJ.*) PAUHARI OPENDRA DAS *v.* RAM KUMAR DAS. **202 I.C. 575=15 R.A. 172=1942 A.L.W. 610 =1942 A.L.J. 419=1942 A.W.R. (H.C.) 257=A.I.R. 1942 All. 347.**

——**S. 115**—Pauper application—Rejection on the ground that there was no subsisting cause of action—If revisable. *See* C. P. CODE, O. 33, RR. 4, 5 (*d*) AND S. 115, **1942 A.W.R. (C.C.) 150.**

——**S. 115 and O. 33, R. 5**—*Pauper application—Rejection—Revision, if lies.*

C. P. CODE (1908), S. 115.

An order rejecting an application for leave to sue in *forma pauperis* is revisable under S. 115, C. P. Code (*Ismail and Mulla, JJ.*) CHANDA BEGUM *v.* MAQSOOD HUSAIN KHAN. **202 I.C. 620=15 R.A. 175= 1942 A.W.R. (H.C.) 256=1942 A.L.W. 416=1942 A.L.J. 340=A.I.R. 1942 All. 319.**

——**S. 115**—Revision—Competency—Appellate order setting aside order for return of plaint for presentation to proper Court. *See* C. P. CODE, O. 7, R. 10, O. 41, R. 23, O. 43, R. 1 (*a*) AND Ss. 104 AND 115. **1942 O.W.N. 313.**

——**S. 115 and Stamp Act, S. 33 (1)**—*Revision—Competency—Impounding of documents not impoundable—Jurisdiction of High Court over Collector or Chief Controlling Revenue Authority.*

Where a lower Court impounds documents which it had no jurisdiction to impound, the order is revisable by the High Court under S. 115, C. P. Code. But the High Court has no jurisdiction apart from that conferred by Ss. 57 to 60 of the Stamp Act over the Collector or the Chief Controlling Revenue Authority. (*Bose, J.*) NARAYANDAS NATHURAM, *In re.* **1942 N.L.J. 564.**

——**S. 115**—*Revision—Competency—Order for furnishing accounts under Charitable and Religious Trusts Act.*

Where a District Judge orders under charitable and Religious Trusts Act a person to furnish accounts of a certain trust, the order of the District Judge is not revisable under S. 115, C. P. Code. (*Bennett, J.*) NAGESHWAR DASS *v.* HARNAM DASS. **200 I.C. 611 =15 R.O. 29=1942 O.W.N. 337=1942 A.W.R. (C. C.) 225=1942 O.A. 246=A.I.R. 1942 Oudh 387.**

——**S. 115**— Revision—Competency—Order under S. 61 (2), Stamp Act. *See* STAMP ACT, S. 61 (2) AND C. P. CODE, S. 115. **1942 O.A. 632.**

——**S. 115 and O. 44 and U. P. Encumbered Estates Act, Ss. 45 and 47**—*Revision—Competency—Order granting—Leave to appeal as pauper against decree of special Judge.*

An order granting or refusing leave to appeal as a pauper against an order of a special Judge though passed in connection with an appeal under the U. P. Encumbered Esfates Act is one passed on an application governed by the C. P. Code. There is no provision in the U.P. Encumbered Estates Act to govern such applications and hence proceedings prior to the admission of an appeal under the Act cannot be said to be proceedings under the Act. They are proceedings under O. 44, C. P. Code and the question of revision is governed by the C. P. Code and not the U. P. Encumbered Estates Act. (*Bennett, J.*) RAM DULARI *v.* ALIAN BIBI. **199 I.C. 614 =14 R.O. 503=1942 R.D. 181=1942 O.A. 57=1942 O.W.N. 106=1942 A.W.R. (C.C.) 79=A.I.R. 1942 Oudh 240.**

——**S. 115 and Lim. Act, Art. 181**—*Revision—Limitation.*

No special period is prescribed for an application for revision and therefore if any article is applicable it is Art. 181 of the Limitation Act which prescribes a three years period from the time when the right to apply accrues. Where an application is within 3 years of the order complained of, no question of limitation strictly speaking arises. (*Bennett and Agarwal, JJ.*) CHANDRA PRATAP SINGH *v.* BINDESHWARI PRASAD SINGH. **200 I.C. 259=14 R.O. 592=1942 A.W.R. (C.C.) 193= =1942 O.A. 178=1942 O.W.N. 245=A.I.R. 1942 Oudh 340.**

——**S. 115 and Cr. P. Code, Ss. 476 and 476 B**—Scope—Power to prosecute under S. 476—Interference by High Court, if and when justified. *See* 1941 Dig.,

C. P. CODE (1908), S. 115.

Col. 268. RAMBILAS *v.* JAIKISAN. **I.L.R. (1942) Nag. 388.**

——**S. 115 and O. 33, R. 2 (Oudh)**—*Sufficiency of substantial compliance with r. 2 of O. 33, Civil Procedure Code—Failure to give schedule of immovable property—Rejection—Revision.*

It is sufficient if there is a substantial compliance with the provisions of R. 2 of O. 33, C. P. Code. Where an application contains only a schedule of movable property while the plaint gives the particulars of the suit immovable property, there is a substantial and sufficient compliance with the requirements of R. 2, O. 33. Where a Court rejects such an application for leave to sue as a pauper on the ground that there has been no sufficient compliance with R. 2, O. 33, it acts with material irregularity and its order is revisable under S. 115. (*Bennett and Agarwal, JJ.*) LACHMI NARAIN *v.* BAHADUR LAL. **17 Luck. 605 = 198 I.C. 828 = 1942 A.L.W. 144 = 1942 A.W.R. (C.C.) 73 = 14 R.O. 445 = 1942 O.A. 51 = 1942 O.W.N. 95 = A.I.R. 1942 Oudh 239.**

——**Ss. 122 and 128**—*Rules framed by High Court—Validity—Conditions.*

It will be seen from the provisions of Ss. 122 and 128, C. P. Code, that (*i*) the delegated power of legislation conferred on the High Court in Part X of the Code is limited to annulling, altering or adding to the rules in the First Schedule of the Code; (*ii*) the rules framed must relate to matters regulating the procedure of the High Court or Subordinate Court; and (*iii*) such rules must not be inconsistent with any provision in the body of the Code. It is essential for the validity of every rule framed by the High Court that these conditions are satisfied. (*Tek Chand and Beckett, JJ.*) KISHAN SINGH *v.* BACHAN SINGH. **201 I.C. 667 = 15 R.L. 68 = 44 P.L.R. 253 = A.I.R. 1942 Lah. 201.**

——**S. 132 (1)**—'Personal appearance'—Meaning of. *See* 1941 Dig., Col. 268. KISSINLAL *v.* PURSHOTTAMDAS. **199 I.C. 150 = 14 R.C. 521 = A.I.R. 1942 Cal. 143.**

——**S. 141**—Scope—O. 7, R. 10—Application of to Civil Revision Petition in High Court. *See* C. P. CODE, O. 7, R. 10. **(1942) 2 M.L.J. 99.**

——**S. 144**—Applicability—Appeal from money decree—Application for stay of execution—Order granting stay on condition of security—Defendant depositing decree amount—No execution pending—Appeal allowed—Application by defendant for award of interest on amount deposited—Competency. *See* 1941 Dig., Col. 270. SITARAMAYYA *v.* VENKANNA. **201 I.C. 202 = 15 R.M. 269 = A.I.R. 1942 Mad. 166 = (1941) 2 M.L.J. 768.**

——**S. 144**—Applicability—Change of position in consequence of decree—Meaning of—Property held by receiver until one of rival claimants establishes his title—Property handed over to party obtaining decree—If direct consequence of that decree. *See* 1941 Dig., Col. 270. SALEHON SHAH *v.* ZAWAR HUSSAIN SHAH. **197 I.C. 574 = 14 R.L. 258.**

——**S. 144**—*Applicability—Modification or setting aside by trial Court itself.*

S. 144, C.P.Code, applies also to cases where an order or decree is set aside or modified by the trial Court itself. (*Sathe, J.M.*) KUNWAR DHUJ PRATAP SINGH *v.* SHIV DIN. **1942 O.W.N. (B.R.) 524 = 1942 A.W.R. (B.R.) 364 (2) = 1942 O.A. (Supp.) 390 (2).**

——**S. 144**—*Applicability—Person paying smaller sum than is due from him—If can claim restitution of that sum.*

A person who only paid in a sum which was less than the sum which turned out to be due from him cannot claim restitution, namely, payment back to him of the sum which he had paid into Court and which the other party had taken out. S. 144, C. P. Code, has no application to such a case. (*Lord Atkin.*) KEDAR NATH GOENKA *v.* BAGESWARI PRASAD SINGH. **69 I.A. 10 = 1942 O.W.N. 399 = 8 B.R. 734 = 1942 A.L.J. 397 = 1942 A.L.W. 405 = 1942 O.A. 328 = 1942 A.W.R. (P.C.) 21 = 14 R.P.C. 150 = 1942 P.W.N. 182 = 44 Bom. L.R. 765 = I.L.R. (1942) Kar (P.C.) 14 = 200 I.C. 337 = A.I.R. 1942 P.C. 30 = (1942) 2 M.L.J. 107 (P.C.).**

C. P. CODE (1908), S. 144.

——**S. 144**—*Applicability*—*'Varied or reversed'—If to be in appeal or the like—Claim order—Suit under O. 21, R. 63—Decree setting aside claim order—If reversal—Application for restitution by successful plaintiff in respect of costs paid by him in the claim to the other party—Competency—Limitation—Starting point.*

S. 144, C.P.Code, is not confined to cases where an order is reversed only in further stages like appeal, etc., but applies to any reversal. A suit brought under O. 21, C.P. Code, cannot be dissociated from the claim petition which has given rise to it, and is in fact an action in the nature of an appeal from the order passed on the claim petition. Where an order passed on a claim petition is set aside by the decree in a suit under O. 21, R. 63, C.P. Code it is in effect a reversal for purposes of S. 144, C. P.Code and therefore the party succeeding in the suit is entitled to restitution of the costs of the claim petition which he has had to pay to the unsuccessful party who succeeded in the claim. S. 144 does not provide that for an order of restitution to be made the decree or order must have been varied or reversed in any particular form of proceeding or by any particular Court. The starting point of limitation for an application for restitution in such a case under Art. 182 is the date of the decree in the suit under O. 21, R. 63 or if there be an appeal the date of the final order in the appeal and not the date of the order on the claim petition. (*Mockett and Happell, JJ.*) VENKATARAJU *v.* SURYANARAYANA. **55 L.W. 820 = (1942) M.W.N. 689 = (1942) 2 M.L.J. 791.**

——**S. 144 and Limitation Act (1908), Art. 181**—*Restitution—Limitation—Starting point—Conditional order granting review of ejectment order—Final order granting review.*

Limitation for an application for restitution of possession by an ejected tenant who has got the ejectment set aside on review is three years under Art. 181 of the Limitation Act. When the order granting the review is conditional on the judgment-debtor paying the full decree amount and the amount is paid and a final order granting review is passed, limitation for restitution of possession would start only from the final order granting review. (*Sathe, J.M.*) KUNWAR DHUJ PRATAP SINGH *v.* SHIV DIN. **1942 O.W.N. (B.R.) 524 = 1942 A.W.R. (B.R.) 364 (2) = 1942 O.A. (Supp.) 390 (2).**

——**Ss. 144 and 151**—*Applicability of S. 144—Variation of decree by trial Court itself—Inherent powers of Court to give relief in such cases.*

There is nothing in the wording of S. 144., C.P. Code, which definitely restricts its application to cases where a decree is varied by an appellate authority only. It can apply even to cases where the modification or reversal of the decree is by the trial Court itself. Moreover S. 144 does not exhaust all the powers which a Court possesses in order to put the parties in the position which they should occupy according to the latest orders. Under S. 151 the Court has inherent power to make such orders as will be necessary in the ends of justice or to prevent abuse of the process of the Court. Hence if the trial Court's final orders modify or set aside the decree originally given by it, it possesses powers at least under S. 151 if not under S. 144 to put the parties in the posi-

C. P. CODE ((1908), S. 144.

tion they should occupy under its later orders. (*Sathe, J.M.*) KAPURTHALA ESTATE *v.* SANT BUX SINGH. 1942 R.D. 443=1942 A.W.R. (Rev.) 232 (2)=1942 O.A. (Supp.) 258 (2)=1942 A.L.J. (Supp.) 39=1942 O.W.N. (B.R.) 354.

——S. 144—Appointment of receiver—Propriety—Applicant for restitution entitled to joint possession—Further appeal pending. *See* 1941 Dig., Col. 271. SALEHON SHAH *v.* ZAWAR HUSSAIN SHAH. 197 I. C. 574=14 R L. 258.

——S. 144—*Duty of Court—Justice to both parties to be done.*

Under S. 144, C. P. Code, the matter is one for the discretion of the Court to be exercised in the light not solely of the interests and position of the one party, but of both parties, and the duty of the Court is, so far as may be, to do justice to the interests of both sides (*Rowland and Chatterji, JJ.*) GOURI DUTT GANESH LAL *v.* MADHO PRASAD. 1942 P.W.N. 103.

——S. 144—*Interest—Award of—Proper rate of interest.*

Unless very special circumstances are shown, the proper rate of interest to be awarded in claims for restitution under S. 144, C. P. Code, is the Court rate of six per cent. (*Rowland and Chatterji, JJ.*) GOURI DUTT GANESH LAL *v.* MADHO PRASAD. 1942 P.W.N. 103.

——S. 144—*Interest—Date from which to be awarded—Execution of decree—Stay—Condition for deposit of money—Withdrawal of deposit by plaintiff—Subsequent reversal of decree on appeal—Restitution—Interest on amount withdrawn—From which date to run—Date of deposit or date of withdrawal.*

Where as a condition for stay of execution of a decree pending appeal, the judgment-debtor deposits money in Court as per order of Court and the plaintiff withdraws the same from Court, but subsequently the decree is reversed on appeal, the Court in allowing restitution will allow interest on the amount deposited and withdrawn, not necessarily from the date of deposit or the date of withdrawal, but from the date on which there was no longer any obstacle to the withdrawal of the money by the plaintiff. (*Rowland and Chatterji, JJ.*) GOURI DUTT GANESH LAL *v.* MADHO PRASAD. 1942 P.W.N. 103.

——S. 144—Mesne profits—Right to recover by way of restitution—Assignability—C. P. Code, S. 146 and O. 21, R. 16. *See* 1941 Dig., Col. 271. SATYANARAYANA *v.* RANGAYYA. 199 I.C. 23=14 R.M. 507.

——S. 144—*Notice—Necessity.*

There is nothing in the C. P. Code or the United Provinces Tenancy Act which either requires or forbids a notice to be issued to the party concerned before an order is passed under S. 144, C. P. Code. When a trial Court does not issue a notice there is nothing wrong in an appellate Court directing the lower Court to issue notice. (*Shirreff, J. M. and Sathe, A. M.*) AMAR SINGH *v.* KARAM SINGH. 1941 O.A. (Supp.) 956=1941 A.W.R. (Rev.) 1208.

——S. 144—*Restitution of property by Insolvency Court—Inherent jurisdiction of Court—Movables in the hands of executing Court directed to be handed over to interim receiver—Withdrawal of insolvency application—Procedure as to restitution.*

Where certain movables attached in execution were directed to be handed over to an interim receiver on the judgment-debtor applying for adjudication and later on the judgment-debtor was allowed to withdraw his application, it was held that the proper course for the Insolvency Court was to follow the principle of S. 144, C. P. Code and to restore the property to the executing Court and not to the judgment-debtor and thereby place

C. P. CODE (1908) S. 144.

the parties in possession which they would have occupied but for the insolvency proceedings. It was held further that though S. 144, C.P. Code, may not in terms apply, the duty or jurisdiction to place parties in *status quo ante* did not arise merely under S. 144, C.P. Code, but was inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved and that the restitution of the property to judgment-debtor was manifestly unfair and prejudicial to the creditor. (*Niyogi, J.*) SURAJ RATAN DAGA *v.* KASHISHWAR BANERJEE. 203 I.C. 206=1942 N.L.J. 500=A.I.R. 1942 Nag. 132.

——S. 144—*Restitution of property to thekadar—Land Revenue paid by person in prior possession—Credit for.*

Where restitution of the property is ordered to be made to the thekadar under S. 144, C.P. Code, the person in prior possession of the property should be given credit for payments of land revenue made by him. (*Shirreff, S.M., and Sathe, J.M.*) GANGA SINGH *v.* MAKKA LAL. 1942 O.A. (Supp.) 107 (1)=1942 A.W.R. (Rev.) 94 (1)=1942 R.D. 520 (2)=1942 O.W.N. (B.R.) 430 (2).

——S. 144—*Scope—If exhaustive—Inherent powers to order restitution—Power to compel third party to bring back money paid to him under erroneous order of Court—S.* 151.

Courts in ordering restitution after a decree has been varied or reversed are not confined to cases which fall strictly within the provisions of S. 144, C.P.Code. The inherent jurisdiction vested in them by virtue of S. 151, C.P.Code. may be invoked where an order of Court would otherwise do injury to one of its suitors. There is inherent jurisdiction in the Court to call back money paid, owing to an erroneous view, to a person not entitled to it, and a person who is not in any technical sense a party to the decree can be compelled to make restitution of the money paid to him. Whether the inherent powers of the Courts to order restitution should be invoked in a particular case must depend on the facts of that case. The 4th respondent brought a suit to enforce a mortgage executed by the 1st respondent seeking relief against the 1st respondent alone on the ground that the property mortgaged was his self-acquired property and that the money was taken by him for his own purposes. Respondents 2 to 3 who belonged to the same joint family as the respondent and who were also impleaded in the suit contended that the property was family property and that there was no family necessity for the loan secured by the mortgage. The suit was decreed on 10-8 1932, and in execution of his decree the 4th respondent brought the property to sale and purchased it himself for Rs. 7,200. The defendants in the suit, however, applied under O. 21, R. 89, C.P.C. and deposited the requisite sum amounting to Rs. 11,470-10-5 and the sale was set aside. The appellant who held a decree against the 4th respondent applied for attachment of Rs. 9,000 out of the amount of Rs. 11,470-10-5, in Court, and after attachment he applied for transfer of the attached sum to his own execution petition. This was ordered on 7-8 1935 and payment also was made out to him on the same date. Meanwhile an appeal against the mortgage decree was pending in the High Court, and on 9-11 1937, the appellate Court delivered judgment holding that the mortgaged property was family property, and as it had never been the 4th respondent's case that the mortgage was for purposes binding on the family the suit of the 4th respondent was dismissed. The respondents 1 to 3 (defendants in the mortgage suit) then applied for restitution of the amount deposited by them under O. 21, R. 89, C.P.Code, with

C. P. CODE (1908), S. 144.

interest thereon. They prayed for recovery of the whole amount from the 4th respondent with interest at 6 per cent. and for recovery of Rs. 9,000 with such interest from the appellant.

Held, (1) that there was inherent jurisdiction in the Court to order restitution though the case did not fall under S. 144, C.P.C. and that a person in the position of the appellant, not in any technical sense a party to the decree, could in law be compelled to make restitution of the money to him; (2) that if there were no other circumstances affecting the equities as between the respondents 1 to 3 and the appellant, it was the duty of the Court to set right the wrong done to its suitors (respondents 1 to 3) by reason of its own errors. (*King and Happell, JJ.*) REGO *v.* ANANTHAMATHI. **I.L.R. (1942) Mad. 949 = 202 I.C. 159 = 15 R.M. 450 = 55 L.W. 369 = 1942 M.W.N 388 = A.I.R. 1942 Mad. 472 = (1942) 1 M.L. J. 575.**

——**S. 144 and O. 21, R. 89**—Scope—Restitution of deposit made under O. 21, R. 89—Order for if justified by S. 144—Right of suit. *See* 1941 Dig., Col. 271. RAJA RAM *v.* MAHOMED TAQIKHAN. **198 I.C. 633 = 14 R.A 295 = A.I.R. 1942 All. 14.**

——**S. 144 and Sch. II**—Scope—Restitution proceedings—Reference to arbitration—Competency. *See* 1941 Dig., Col. 272. RAM GOPAL *v.* SHANTI LAL. **I.L.R. (1941) All. 807 = 14 R.A. 383 = 199 I.C. 346 = A.I.R. 1942 All. 85.**

——**S. 144**—Scope—Restitution—Right to interest—Rate. *See* 1941 Dig., Col. 272. SURAJMAL *v.* BAXIRAM. **I.L.R. (1942) Nag. 273 = 200 I.C. 574 = 15 R.N. 25.**

——**S. 145**—Scope—Supurtdar—Liability to produce property entrusted—Satisfaction of decree, if puts an end to—Order against supurtdar—In whose interest could be passed. *See* 1941 Dig., Col. 272. SETH HEMRAJSINGH *v.* ANOOP SINGH. **I.L.R. (1942) Nag. 198.**

——**S. 145**—*Security-bond—Mode of execution.*

The words in S. 145, C.P. Code, "in the manner herein provided for the execution of decrees" clearly refer not to the mode of applying for execution but to the mode of effecting execution. Where a person has incurred a forfeiture of a bond and action is sought to be taken against him under S. 145, C.P. Code, the bond can be enforced against him in the manner provided in O. 21, C.P. Code, for the execution of decrees, that is to say, by his arrest, by attachment of his movable property, by attachment of his immovable property, or in any other suitable manner provided in O. 21 for the enforcement of decrees. It is not necessary that the judgment-creditor should apply for execution in the form set out in O. 21, R. 11, C.P. Code. (*Lobo and Tyabji, JJ.*). ASSANDAS *v.* HARDASMAL. **I.L.R. (1942) Kar. 79 = 201 I.C. 750 = 15 R.S. 18 = A.I.R. 1942 Sind 134.**

——**Ss. 145, 47 and 11**—*Surety's property declared liable for sale in execution of a decree—Effect—Surety, if can later on file a suit to declare his property not liable to sale—Bar of* res judicata.

Where on a question as to the liability of surety's property being sold in execution of a decree being raised, the executing Court being the only Court competent to decide it, decides that it is liable to be sold, it becomes binding on the parties till set aside in appeal. The surety becomes a party under S. 47, C. P. Code, and any order for the sale of the surety's property amounts to a decree which would bind the parties and would operate as *res judicata* in a later suit brought by the surety to declare her property not liable to be sold. (*Allsop and Verma, JJ.*) BHAGGO BIBI *v.* ISHWAR RADHA RAMANJI. **202 I.C. 12 = 15 R.A. 94 = 1942**

C. P. CODE (1908), S. 150.

A.W.R. (H.C.) 160 = 1942 A.L.W. 365 = 1942 A.L. J. 439 = A.I.R. 1942 All. 260 (1).

——**S. 146 and O. 21, R. 16**—Applicability and scope—Assignee of future decree—Right to apply for execution after decree is passed. *See* 1941 Dig., Col. 272. MAHANANDI REDDI *v.* VENKATAPPA. **201 I.C. 148 = 15 R.M. 245 = 1942 M.W.N. 148 (2) = A.I.R. 1942 Mad. 21 = (1941) 2 M.L.J. 631.**

——**S. 146**—*Heirs of deceased decree-holder—Right to continue proceedings without fresh application.*

According to S. 146 of the C. P. Code, the heirs of a deceased decree-holder would be entitled to continue the execution proceedings started by the deceased during his lifetime and pending at the time of his death without filing a fresh application for the execution of the decree. (*Sathe, J.M.*) BADRI PRASAD *v.* KISHANPAL SINGH. **1942 O.A. (Supp.) 240 = 1942 A.W.R. (Rev.) 214 = 1942 O.W.N. (B.R.) 385 = 1942 R.D. 474.**

——**Ss. 148 and 151**—Applicability—Decree for money—Judgment-debtor to pay certain instalments and to get some concession on such payment—Default in payment—Power of Court to relieve, against clause providing for payment on default—Equity—Rule. *See* 1941 Dig., Col. 273. SHAMSUDDIN DOST MAHOMED *v.* SHIVJI PREMJI. **198 I.C. 174 = 14 R.S. 132.**

——**S. 148**—Scope—Order directing payment of money within specified time—In default, proceedings to stand dismissed—Failure to comply with due to mistake of Court's officer—Application for extension of time—Power of Court to extend—S. 151. *See* 1941 Dig., Col. 273. BALAIAH *v.* RAMAYYA. **199 I.C. 432 = 14 R.M. 578 = (1941) 1 M.L.J. 638.**

——**S. 149**—*Order to pay deficit Court-fee by certain date or suit to stand dismissed—Deficiency not paid by that date—Effect—Subsequent application for leave to sue* in forma pauperis—*If can be entertained.*

Where the Court orders the plaintiff to pay deficit Court-fees by a certain date and directs that if he fails to do so the suit will stand dismissed, but the deficiency is not paid by that date, the suit must be regarded as having been rejected on that date. The Court has, therefore, no jurisdiction thereafter to entertain an application for leave to sue *in forma pauperis*. (*Agarwala, J.*) CHANDRASEKAR MISSIR *v.* HARIHARSAHU. **197 I.C. 80 = 8 B.R. 148 = 23 Pat.L.T. 418 = A.I.R. 1942 Pat. 302.**

——**S. 149**—Powers of Court—Order fixing time for payment of deficit court-fee and providing that on default suit will stand dismissed—Jurisdiction to extend time—Refusal to extend—Revision. *See* 1941 Dig., Col. 274. RAM LAKHAN PANDEY *v.* TRIBENI DAS. **197 I.C. 433 = 14 R.P. 302 = 8 B.R. 204 = A.I.R. 1942 Pat. 234.**

——**S. 149**—Scope—Grant of time for payment of deficit court-fee after limitation—Effect of. *See* 1940 Dig., Col. 255. VENUGOPAL PILLAI *v.* THIRUGNANAVALLI AMMAL. **200 I.C. 443 = 15 R.M. 52 = (1940) 2 M.L.J. 427.**

——**Ss. 150 and 152**—*Amendment—Forum—Transfer of business to another Court—Decree of the Judicial Commissioner of Oudh—If can be amended by the Oudh Chief Court.*

As the business of the Court of the Judicial Commissioner of Oudh has been transferred to the Chief Court of Oudh, a decree of the former Court can now be amended by the Chief Court. (*Agarwala and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C. 479 = 14 R.O. 403 1941 A.W.R. (C.C.) 407 = 1941 O.A 1030 = 1941 O.W.N. 1384 = A.I.R. 1942 Oudh 226**

C. P. CODE (1908), S. 150.

——**S. 150**—*"Transfer of business"—If includes assignment of business under S. 13 (2) of Civil Courts Act.*

An assignment of business under S. 13 (2) of the Bengal, Agra and Assam Civil Courts Act is not a transfer of business within the meaning of S. 150, C. P. Code. (*Mukherjea and Biswas, JJ.*) MASRAB KHAN *v.* DEBNATH MALI. **I.L.R. (1942) 1 Cal. 289=201 I.C. 234=15 R.C. 144=46 C.W.N. 141=75 C.L.J. 255=A.I.R. 1942 Cal. 321.**

——**S. 151**—*Abuse of process of Court—Meaning.*

No act done or proceeding taken as of right and in due course of law, is an abuse of the process of the Court simply because such proceeding is likely to embarrass the other party. A person who brings himself within the terms of a statute is not to be deprived of a right conferred by that statute on "so treacherous a ground of decision as an abuse of the process of the Court." Nor is the failure to conform to a mere rule of practice, an abuse of process in every case; the Court must find in each case what exactly the abuse is. (*Sale, J.*) SHARBATI DEVI *v.* KALI PARSHAD. **200 I.C. 606=14 R.L. 469=44 P.L.R. 106=A.I.R. 1942 Lah. 119.**

——**Ss. 151 and 152**—*Amendment of decree—Refusal—Interference under S. 151 in revision.*

It is open to the chief Court to interfere in revision under S. 151, C. P. Code, with an order refusing to amend a decree, even if S. 115 was not applicable. (*Agarwal, J.*) KALLU MAL *v.* MUNICIPAL BOARD, NAWABGANJ. **209 I.C. 608=15 R.O. 25=1942 O.W.N. 335=1942 A.W.R. (C.C.) 220=1942 O.A. 241=A.I.R. 1942 Oudh 392.**

——**S. 151**—Appeal—Order of restitution under—Appealability. *See* 1941 Dig., Col. 274. BALI REDDI *v.* NAGI REDDI. **200 I.C. 36=14 R.M. 671=(1941) 1 M.L.J. 407.**

——**S. 151**—*Applicability—Absence of other provision.*

S. 151, C. P. Code, can be applied to make orders necessary for the ends of justice in those cases only where no other provision is applicable. (*Fazl Ali, J.*) RAMSANKAR BANDOPADAYA *v.* KHUDI RAM DUTT. **198 I.C. 672=8 B.R. 447=14 R.P. 487=A.I.R. 1942 Pat. 328.**

——**S. 151**—Applicability—Application challenging decree as not executable—Decree already executed and satisfied—Proper remedy. *See* 1941 Dig., Col. 274. TULSA DEVI *v.* SURAJ NARAIN. **17 Luck. 121.**

——**S. 151**—*Applicability—If can be invoked when special provisions exist.*

It is a well-known principle of law that where special provision exist in the Code, S. 151 cannot be invoked. (*King, J.*) GANGARAJU, *v.* VENKATARAJULU NAIDU **(1942) M.W.N. 676=55 L.W. 811=(1942) 2 M.L.J. 716.**

——**S. 151 and O. 9, R. 13**—*Applicability—Decree against firm—Application to set aside—Applicant not wishing to appear on behalf of firm but under protest under O. 30, R. 8—Procedure—Inherent powers.*

Where in the case of a decree against a firm the applicant does not wish to be heard on behalf of the firm and wishes to appear under protest under O. 30. R 8, O. 9, R. 13 does not apply. In such a case S. 151 applies and the Court should hear the applicant's application that he should be allowed to put on record his protest that he is not a partner and decide the question of his absence for sufficient cause by analogy with the provisions of O. 9, R. 13. If the Court holds he was absent for sufficient cause, then the decree against the firm, so far as he is concerned, should be set aside and the applicant will be entitled to dispute his liability as partner in any

C. P. CODE (1908), S. 151.

execution proceedings which may be taken thereafter. (*Davis, C. J. and Weston, J.*) VILAITIRAM TULARAM *v.* CHANGOMAL. **I.L.R. (1942) Kar. 220=202 I.C. 177=15 R.S. 26=A.I.R. 1942 Sind 99.**

——**S. 151**—Applicability—Execution sale—Application to set aside on ground of non-compliance with S. 13, Bihar Money-Lenders Act—If falls under O. 21, R. 90—Limitation. *See* LIMITATION ACT, ART. 166. **23 Pat.L.T. 139.**

——**S. 151 and O. 9, R. 13**—*Applicability*—Ex parte *decree against firm as such—Application by some of partners to set aside decree on ground that they were fixed with liability as partners without summons being served on them—Maintainability—Inherent powers.*

An *ex parte* decree was passed against a firm as such. The applicants who were included among the "served partners" in the decree made an application under O. 9, R. 13 to set aside the *ex parte* decree, on the ground that both by the terms of the decree and by reason of O. 21, R. 50 they were fixed with liabilities as partners, though no summons were served on them at all. The Court rejected the application being of the opinion that the words in the decree "served partners" which included the applicants, were really of no moment and of no effect. *Held*, that O. 9, R. 13 did not apply as the suit was against the firm which was represented by certain partners though not by the applicants and therefore the decree against the firm could not be set aside. While, therefore, the decree against the firm must stand and the presence of the words "served partners" in the decree made no difference one way or the other, because the liability of the served partners was determined by O. 21, R. 50, yet the Judge should hear the application under S. 151 and deal with the question of applicants' absence for non-service by analogy with the provisions of O. 9, R. 13, and if he came to the conclusion that the contention of the applicants that no summons were duly served on them was true, he should pass orders upon such application as will allow the applicants, if execution of the decree was to be sought against them, to take advantage of the provisions of O. 21, R. 50 (2) and dispute their lability as partners. (*Davis, C. J. and Weston, J.*). RADHA KISHIN NATHURAM *v.* HARBHAGWAN & CO. **I.L.R. (1942) Kar. 218=203 I.C. 357=A.I.R. 1942 Sind 97.**

——**S. 151 and O. 9, R. 9**—*Applicability of S. 151—Restoration when no reason for non-appearance is adduced.*

Where no reason has been adduced for the non-appearance of the plaintiff, S. 151, C. P. Code, cannot be applied to the case of an application for restoration because O. 9, R. 9, C. P. Code, is exhaustive in such a matter. (*Davies.*) DURGA PRASAD *v.* JODH RAJ. **1942 A.M.L.J. 1.**

——**S. 151**—*Applicability—Order amending decree of Small Cause Court without notice to party affected—Application by latter to recall order of amendment—O. 9, R. 13—Applicability—Provincial Small Cause Courts Act, S. 17.*

Where a consent decree passed in a small cause suit is subsequently amended by the Court under Ss. 151 and 152, C. P. Code, without notice to the party affected by the amendments the latter is entitled to ask the Court under S. 151, C.P.Code, to recall the order of amendment. It is not a case of setting aside an *ex parte* decree, and S. 17 of the Provincial Small Cause Courts Act need not be complied with. The mere fact that the applicant mentions not only S. 151, but also O. 9, R. 13. C.P.Code, does not affect the case. The case is properly based on S. 151, and the addition of O. 9 R. 13

C. P. CODE (1908), S. 151.

C.P.Code, must be ignored. (*Dhavle, J.*) SATVABADI PRADHAN *v.* KANHEI PRADHAN. **8 Cut. L. T. 105.**

——**S. 151**—Applicability—Other remedy open. *See* U. P. ENC. EST. ACT, S. 14 (1) AND C. P CODE, S. 151. **1942 O.W.N. 182.**

——**S. 151**— Applicability—Preliminary partition decree—Application to proclaim share. *See* 1941 Dig., Col. 275. SUKHPAL DAS *v.* KEDAR NATH. **16 Luck 765.**

——**S. 151**—Inherent powers—Appeal—Dismissal for non-payment of costs of preparation of paper book —Restoration—Jurisdiction of Court. *See* C. P. CODE, O. 41, R. 19. **44 Bom.L.R. 367.**

——**S. 151**—Inherent powers—Compromise decree —Setting aside on ground of fraud—Powers of Court. *See* COMPROMISE—CONSENT DECREE. **(1942) P. W.N. 186.**

——**S. 151**—Inherent powers—Consolidation of suits —Separate suits presented simultaneously but based on same cause of action—Power of Court to consolidate—Dismissal as barred under O. 2 R. 2. (2), C. P. Code—Propriety. *See* C. P. CODE, O. 2, R. 2 (2). **44 Bom. L.R. 819.**

——**S. 151**—*Inherent powers—Copy application dismissed for non-production of copy stamps—Fresh application—Application to restore original application —Power of Court to treat later one as continuation of original application—Computation of time for limitation for appeal.*

Where an application for copies of the decree and judgment is dismissed under R. 129 of the Civil Rules of Practice, and the applicant again applies afresh for copies and also applies to restore the original application for copies, the Court has power to order copies to be granted on the original application. The later application has to be regarded as a continuation of the original application and the Court has inherent jurisdiction to do so as to enable the applicant to compute the time for filing an appeal on the basis of the original application. (*Patanjali Sastri, J.*) BERUMAL SOWCAR *v.* VELU GRAMANY. **55 L.W. 113=1942 M.W.N. 261=(1942) 1 M.L.J. 372.**

——**Ss. 151 and 152**—*Inherent power of Court to amend decree—Notice to party affected—Necessity for.*

It cannot be disputed that when the Court acts in the exercise of its jurisdiction under Ss. 151 and 152, C. P. Code, to amend a decree, it should only do so after notice to the party to be affected by the amendment—all the more so in the case of a decree that was passed on consent. The Court has no inherent power to alter orders passed with the consent of the parties unless at least notice is given to the parties affected. (*Dhavle, J.*) SATYABADI PRADHAN *v.* KANHEI PRADHAN. **8 Cut. L.T. 105.**

——**S. 151**—Inherent powers—Execution petition dismissed for default—Power of Court to restore. *See* **C. P. CODE, O. 9, R. 9. 22 Pat.L.T. 965.**

——**S. 151**—*Inherent powers—Refusal to take evidence—If a material irregularity.*

There is no provision in the C. P. Code like the one found in Cr. P. Code which specifically empowers a Court to refuse to take down the evidence of a witness tendered by a party. But S. 151, C. P. Code, gives similar powers even to a Civil Court. Therefore where the trial Court refuses to take down the evidence of all the witnesses tendered by a party its action cannot be said to be a material irregularity. (*Sathe, J. M.*) MITHOO SINGH *v.* PARSHADI. **1942 O A. (Supp.) 243=1942 A.W.R. (Rev.) 217=1942 R.D. 506=1942 O.W.N. (B.R.) 416.**

C. P. CODE (1908), S. 151.

——**S. 151**—Inherent powers—Restitution and compensation on reversal of decree by trial Court. *See* C. P. CODE, SS. 144 AND 151. **1942 R.D. 443=1942 O.W.N. (B R.) 354.**

——**S. 151**—Inherent powers—Restitution—Power of Court to order as against person not party to decree. *See* C. P. CODE, S. 144. **(1942) 1 M.L.J. 575.**

——**S. 151**—Inherent powers—Setting aside of execution sale—Loss or deterioration of property sold after sale and before confirmation if ground for setting aside sale. *See* C.P. CODE, O. 21, R. 91. **44 Bom. L. R. 638.**

——**S. 151 and O. 41, R. 20**—Joinder of parties—Power of High Court—Addition of party to appeal after limitation. *See* 1941 Dig., Col. 276. SHANTI LAL *v.* HIRA LAL SHEO NARAIN. **I.L.R. (1942) Lah. 603=198 I C. 726=14 R L. 351.**

——**S. 151**—*Refund of Court-fee—Inherent power to order—Rejection of plaint for failure to pay deficit Court-fee—Payment of deficiency along with review application—Rejection of latter—Power to refund Court-fee.*

A plaint presented with insufficient Court-fee was rejected on failure to make up the deficiency. An application for review of the order of rejection was then made along with the necessary Court-fee to make up the deficiency. This application was also rejected. The plaintiff thereupon applied for refund of the Court-fee which he paid subsequently. The Court refused the prayer.

Held, in revision, that since the deficit Court-fee paid was not meant to be utilised until the application for review was granted by the Court, the said Court-fee ought to be refunded on the rejection of the application for review. Though Ss. 13 to 15 of the Court-Fees Act did not apply, the Court had inherent powers to order refund of Court-fee under S 151, C. P. Code. (*Abdur Rahman, J.*) NARAYANA REDDIAR, *In re.* **202 I C. 122=15 R.M 446=55 L.W. 88=(1942) M.W.N. 109=A I R. 1942 Mad. 316=(1942) 1 M.L.J. 226.**

——**S. 151**—*Refund of Court-fee—Powers of High Court to order refund of fee paid in excess under mistake or under order of Court.*

The High Court has ample powers and can make a declaration and assist a party to recover the excess amount of Court-fee erroneously paid by him under its own order or under orders of Courts subordinate to it. (*Abdur Rahman, J.*) VEDARANYASWAMI DEVASTHANAM, *In re.* **202 I C. 420=15 R.M. 498=55 L.W. 250=1942 M.W N. 206=A.I.R. 1942 Mad. 464=(1942) 1 M.L.J. 451.**

——**S. 151 and O. 41, R. 23**—*Remand—Decision on merits—Appeal.*

A remand can be ordered under O, 41, R. 23, C. P. Code, only in a case where the Court, from whose decree the appeal is preferred, has disposed of the suit upon a preliminary point and the decree is reversed on appeal, and not in a case decided upon the whole evidence and upon all the issues which were raised. If in the latter case an appellate Court concludes that the trial Court has wrongly decided the case and remands it for re-trial in the exercise of its inherent jurisdiction, the order of remand is not appealable (*Harries, C.J. and Fazl Ali, J.*) PRADYAT KUMARA TAGORE *v.* JYOTISH CHANDRA DAS. **197 I.C 13=8 B.R. 186 =14 R.P. 288=A I R. 1942 Pat. 195.**

——**S. 151**—Remand under—When justified. *See* 1941 Dig., Col. 276. ANANDRAO *v.* PARWATIBAI. **I.L.R (1942) Nag. 487.**

——**S. 151 and O. 41, R. 1 (u)**—*Remand under inherent powers—Appeal, if lies.*

C. P. CODE (1908), S. 151.

Where an order of remand does not fall under R. 23 of O. 41 and is hence under the inherent powers of Court, no appeal would lie under O 41, R. 1 *u*). (*Ghulam Hasan and Agarwal, JJ.*). NOOR MOHAMMAD *v.* SULEMAN KHAN; **203 I.C. 236=15 R.O. 166=1942 O.W.N. 520=1942 A.W.R. (C.C.) 322 (2)=1942 O. A. 430.**

——**S. 151**—*Restoration of appeal withdrawn—Powers.*

It is impossible to restore an appeal which was dismissed on the application of the appellant that he wished to withdraw it, though the appellant might have acted under a misapprehension. (*Allsop and Verma, JJ.*) RAMLAL SAHU *v.* DINA NATH. **201 I.C. 768 =1942 A.L.J. 382=1942 A.W.R. (H.C.) 161=1942 A.L.W. 361=A.I.R. 1942 A. 253 (1).**

——**S. 151**—Review—Inherent powers—District Judge transferring application for registration of wakf estate to additional District Judge—Power of latter to reconsider or vacate order by District Judge passed previously. *See* MUSSALMAN WAKF ACT, S. 2. **1942 P.W.N. 94.**

——**S. 151**—*Stay—Powers of Court—Discretion.*

Where an application to stay a new suit is made on the ground of similar question of law being involved in a pending appeal, the principle of S. 10 does not apply to the exercise of discretion by the Court. Its discretion is wholly unfettered and in exercising it the Court cannot but have regard to the history of the proceedings between the parties and the conduct of the applicant who is in default in the matter of payments decreed in prior proceedings. (*Braund and Yorke, JJ.*) KAILASH CHANDRA JAIN *v.* JHAMOLA KUNWAR. **1942 A.L.W. 291.**

——**S. 152**—*Accidental slip or omission—Correction—Equity.*

Unless it is inequitable to do so, mistakes in the judgment arising out of accidental slips or omissions should be corrected. (*Agarwala and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C. 479=14 R.O. 403=1941 A.W.R. (C.C.) 407=1941 O.A. 1030=1941 O.W.N. 1384=A.I.R. 1942 Oudh 226.**

——**S. 152**—*Amendment of decree—Forum—Dismissal of appeal after withdrawal by one of the appellants.*

Where an appeal has been dismissed on the merits though one of the appellants might have withdrawn his appeal earlier, an application for amendment of the decree lies only to the appellate Court and not to the trial Court. (*Davies.*) CHHOGA *v.* CHANDA. **1942 A.M.L.J. 31.**

——**S. 152**—Amendment of decree—Powers of Court. *See* 1941 Dig., Col. 277. RAM RAKHA MAL *v.* DINA NATH. **I.L.R. (1942) Lah. 212=197 I.C 728=14 R.L. 267.**

——**S. 152**—*Amendment under—Person not a party to suit—If can apply for.*

It is not necessary that the applicant for amendment should have been a party to the suit. (*Agarwal and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C. 479=14 R.O. 403=1941 A.W.R. (C.C.) 407=1941 O.A. 1030=1941 O.W.N. 1384=A.I.R. 1942 Oudh 226.**

——**Ss. 152 and 151**—Amendment under S. 152—When lies—S. 151 when applicable. *See* 1941 Dig., Col. 278. FAJAMMUL HUSAIN KHAN *v.* AMIRUDDIN. **17 Luck. 297=197 I.C. 471=14 R.O. 314=A.I.R. 1942 Oudh 189.**

——**S. 152**—*Applicability—Conditions.*

Before S. 152, C. P. Code, can be held to apply to a particular case, it must be shown that the alleged mis-

C. P. CODE (1908), S. 152.

take is either clerical or arithmetical or due to an accidental slip or omission. It cannot be invoked where the question before the Court is more or less of a contentious nature. (*Fazl Ali, J.*) RAMSANKAR BANDOPADAYA *v.* KHUDI RAM DUTT. **198 I.C. 672=8 B.R. 447=14 R.P 487=A.I.R.1942 Pat 328.**

——**S. 152**—*Applicability—Heading of application by mistake stating application to be by A who was dead—Mistake creeping into cause title of order recording adjustment—Correction.*

After the adjustment of the decree between the judgment-debtor *A* and the decree-holder, *A* died. Subsequently, *A*'s legal representatives made an application to record the adjustment but in the heading by mistake stated the application to be by *A* who was already dead. The application however was signed by the legal representatives as such. The mistake in the heading of the petition also crept into the cause title of the order recording the adjustment.

Held, that S. 152, C. P. Code, was just as much applicable to such a kind of mistake as to one in which there has been a miscalculation in arithmetic which originated in a plaint and persisted in the decree and that the mistake could be corrected. (*Roberts, C.J. and Dunkley, J.*) KORBAN BIBI *v.* V. M. R. P. CHETTYAR FIRM. **A.I.R. 1942 Rang. 56.**

——**S. 152**—Applicability—Mistake in deed repeated in plaint and decree in suit on deed—Amendment. *See* 1941 Dig., Col. 278. RANGA RAO NAIDU *v.* BALAKSONLAL JANAKI PRASAD. **199 I.C. 594=14 R.M. 609=(1941) 2 M.L.J. 452.**

——**S. 152**—*Applicability—Substantial modification of predecessor's order.*

Where a successor by an addition to his predecessor's order substantially modifies it and the addition does not amount to a correction of any mere clerical mistake, the amendment is not justified by S. 152, C. P. Code. (*Shirreff, S.M. and Sathe, J.M.*) RAJNATH LAL *v.* JADUNANDAN LAL. **1942 O.A. (Supp.) 486=1942 O.W.N. (B.R.) 662 (2).**

——**S. 152**—*Laches—Mistake of Court.*

Where the mistake sought to be corrected by the application for amendment is not one made by a party but by the Court, no question of laches can arise. (*Agarwal and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C 479=14 R.O. 403=1941 O.W.N. 1384=1941 A.W.R. (C.C.) 407=1941 O.A. 1030=A.I.R. 1942 Oudh 226.**

——**S. 152**—Order amending or refusing to amend judgment—Appeal—Revision. *See* 1941 Dig., Col. 279. RAM RAKHA MAL *v.* DINA NATH. **I.L.R. (1942) Lah. 212=197 I.C. 728=14 R.L. 267.**

——**S. 152**—*Power of trial Court to amend its order after it had merged in the appellate order—Mutation case—Inclusion by trial Court of costs after order in appeal—Legality.*

Once an order has been passed by the appellate Court the order or decree of the trial Court merges in the order or decree of the appellate Court and the trial Court has no jurisdiction to amend its own decree or order in any way thereafter. In a mutation case the previous amount of legal fees which are to be included in the memo of costs has to be fixed by the presiding officer of the Court in every case under para. 64 of the Revenue Manual. Where there has been no such fixation either in the trial or appellate Court, the trial Court has no power to include the legal fees after the final order in appeal. (*Shirreff, S.M. and Sathe, J.M.*) JATINDRA MOHAN SINGH *v.* BINDBASNI KUER. **1942 R.D. 586 =1942 A.W.R. (Rev.) 305=1942 O.A. (Supp.) 331 =1942 O.W.N. (B.R.) 469.**

C. P. CODE (1908), S. 152.

——**S. 152**—*Power to correct accidental mistake in award and decree thereon—Reference to arbitrator—Propriety.*

A Court can after an award has been made a decree of Court amend the award and the decree when it is satisfied that there has been an accidental mistake in the award and the decree. It can for this purpose refer to the arbitrator to find out if the mistake was clerical as alleged or not. (*Bennett, J.*) BHAGWAN DIN *v.* BHAGWAN DIN. **201 I.C. 127=15 R.O. 57=1942 O. W.N. 429=1942 A.W.R. (C.C.) 269=1942 O.A. 297 A.I.R. 1942 Oudh 426.**

——**S. 152**—*Rights of third party intervening before application.*

It was *held* that the fact of the opposite party having created certain perpetual leases in respect of the property could not prevent the Court from granting relief to an applicant for amendment. (*Agarwal and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C. 479 =14 R.O. 403=1941 O.W.N. 1394=1941 A.W.R. (C.C.) 407=1941 O.A. 1030=A.I.R. 1942 Oudh 226.**

——**S. 152**—*Time for applying for amendment—Expiry of limitation for filing of appeal by opposite party.*

Amendment can be allowed even if the application for it is made after the expiry of the period of limitation for the filing of an appeal by the opposite party. (*Agarwal and Madeley, JJ.*) BACHAN SINGH *v.* SHATRANAJI. **198 I.C. 479=14 R.O. 403=1941 O.W.N. 1384=1941 A.W.R. (C.C.) 407=1941 O.A. 1030=A.I.R. 1942 Oudh 226.**

——**O. 1, R. 1**—*Plaintiffs—Interests of, in suit property.*

It is not the law that every plaintiff should be interested in the entire subject-matter of the suit. (*Collister and Bajpai, JJ.*) MAMOMED KHALIL KHAN *v.* MAHBOOB ALI. **I.L.R. (1942) A. 103=199 I.C. 190 =14 R.A. 346=1941 A.L.J. 721=A.I.R. 1942 All. 122.**

——**O. 1, R. 3**—*Applicability—Conditions.*

In order that the provisions of O. 1, R. 3, C P. Code, should be applicable it is necessary that the right to relief should arise out of the same act or transaction or series of acts or transactions and this implies, that the acts or transactions, where they are different should be so connected as to constitute a single series which could fairly be described as one entity or fact which would constitute a cause of action against all the defendants jointly. Further, the case should be such that it could be said that the Court in which the suit was instituted had local jurisdiction in the first instance to deal with the controversies arising between the plaintiffs and each of the defendants. (*Allsop and Verma, JJ.*) KARAM SINGH *v.* KUNWAR SEN. **1942 A.L.W. 399=1942 A.W.R. (H.C.) 270=A.I.R. 1942 A. 387.**

——**O. 1, R. 3**—*Scope of enquiry on an application under—Effect of observation in order passed.*

The only point which is before the court and which alone it has to consider when a person applies to be impleaded as a defendant is whether he ought to be made a party. If the order impleading him states that he is a necessary party that observation is not binding on the parties. (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARAKASH RANI. **1942 O. A. 567=(1942) A.W.R. (C.C.) 355=1942 A.L.J. 766.**

——**O. 1, R. 3**—Single ejectment suit against defendants holding possession under different demises—Common questions of fact involved—No multifariousness. *See* MADRAS CITY TENANTS PROTECTION ACT—APPLICABILITY. **(1942) 1 M.L.J. 92.**

[affirmed on L. P. Appeal.]

C. P. CODE (1908), O. 1, R. 8.

——**O. 1, R. 8**—Applicability—Suits under S. 92. *See* 1941 Dig.. Col. 279. BAPUGOUDA YADGOUDA *v.* VINAYAK SADASHIV. **I.L.R. (1941) Bom. 556.**

——**O. 1, R. 8**—*Compromise—Defendants sued in representative capacity—Power to compromise suit.*

Persons defending a suit on behalf of themselves and others with leave of the Court can enter into a compromise so as to bind those whom they represent. (*Leach, C.J. and Lakshmana Rao, J.*) MUTHUKARUPPA ETHANDAR *v.* APPAVOO NADAR. **55 L.W. 837=1942 M.W.N. 775.**

——**O. 1, R. 8**—*Decree for injunction—If executable against defendants represented under O. 1, R. 8.*

A decree for injunction can be executed against defendants who are represented by other persons selected to represent them under O. 1, R. 8, C. P. Code, unless the injunction obtained applies only to the persons who are chosen as representatives. The whole object of a representative suit would be defeated if it is held that a decree obtained in such a suit cannot be executed against any persons except the chosen representatives. (*Bhide, J.*) WARYAM SINGH *v.* SHER SINGH. **200 I.C. 875=15 R.L. 25=44 P.L.R. 114=A.I.R. 1942 Lah. 136.**

——**O. 1, R. 8**—*Non-mention of names of chosen defendants in notice—Validity of decree.*

The mere fact that the names of the persons chosen to represent the defendants is not mentioned in the notice issued under O. 1, R. 8, C. P. Code, is not sufficient to render the decree passed in the suit a nullity. (*Bhide, J.*) WARYAM SINGH *v.* SHER SINGH. **200 I.C. 875 =15 R.L. 25=44 P.L.R. 114=A.I.R. 1942 Lah 136.**

——**O. 1, R. 8**—Representative suit—Plaintiff not described in cause title in representative capacity—Effect of. *See* 1941 Dig., Col. 279. HAJI MAHOMED NABI *v.* PROVINCE OF BENGAL. **201 I. C 248=15 R.C. 148=A.I.R. 1942 Cal. 343.**

——**O. 1, R. 8**—Representative suit—Suit on behalf of inhabitants of contiguous villages to restrain discharge of surface water from defendant's mauza—Maintainability. *See* 1941 Dig., Col. 279. NATABAR SASMAL *v.* KRISHNA CHANDRA. **A.I.R. 1942 Cal. 261.**

——**O. 1, R. 8**—*Scope—Permission to sue as representatives—Grant of after publication of notice in District Gazette—Sufficiency.*

The object of O. 1, R. 8, C. P. Code, is to permit a person who has an interest in the subject-matter of the suit to apply to the Court to be made a defendant. Where the Court gives permission to the plaintiffs as representatives of a village permission to sue the defendants as the representatives of another village after the Court has notified by public advertisement in the District Gazette, it must be held that there is sufficient compliance with O. 1, R. 8, C. P. Code. The fact that the Court does not pass orders on the applications for leave when admitting the plaint and does not leave the publication of the notice of the suit to a later stage cannot be held to prejudice any one or to make the proceedings invalid or irregular. (*Leach, C.J. and Lakshmana Rao J.*) MUTHUKARUPPA ETHANDAR *v.* APPAVOO NADAR. **55 L.W. 837=1942 M.W.N. 775.**

——**O. 1, R. 8**—*Suit against defendants in representative capacity—Nature of decree to be passed—Personal decree—If can be made—Plaint not in proper form—Leave to sue—Grant of.*

In a suit where a defendant or defendants are sued in a representative capacity all that the planitiff is entitled to against them is a declaration of his right as against the class whom the named defendant or defendants represent. He is not entitled to a personal decree against them, but is only entitled to be paid out of the

C. P. CODE (1908), O. 1, R. 10.

funds or the property and assets belonging to the class in which all the members of the class are interested. Where the plaint in a representative suit does not ask for a declaration of liability on the part of the members of the class represented but merely asks for a personal decree against the defendants, and contains no suggestion or undertaking that the decree which the plaintiff might obtain would be restricted to the funds of the class in the hands of the defendants or any other body in whom the funds are vested, it is not a proper plaint and leave to sue under O. 1, R. 8, should not be granted. (*Chagla, J.*) HARISCHANDRA KHANDERAO *v.* A. S. CRAIG. **I L.R. (1942) Bom. 504=200 I C. 618=15 R B. 13=44 Bom L.R. 251=A.I R 1942 Bom. 136.**

——**O. 1, R. 10**—Power of Court—Mortgage suit—Preliminary decree—Impleading of parties subsequent to—Legality—Attaching decree-holder withdrawing surplus sale proceeds subsequent to preliminary decree—If can be impleaded and bound by final decree. *See* 1941 Dig., Col. 281. KUNJA BEHARI MISRA *v* BENDUDHAR PANDA. **197 I.C. 739=14 R.P. 350=23 P L.T. 412=8 B R. 291=A.I.R. 1942 Pat. 185 (2).**

——**O, 1, R. 10**—Powers of Court—Transposition of parties—Suit for dissolution of partnership and accounts—Death of sole plaintiff—Application by defendant to transpose him as plaintiff and to make plaintiff's heirs defendants—Competency. *See* 1941 Dig., Col. 281. DEVSEY KHETSEV *v* HIRJI KHAIRAJ. **I.L.R (1942) Bom 35=198 I.C. 408=14 R.B. 298=A.I.R. 1942 Bom. 35.**

——**O. 1, R. 10 and Negotiable Instruments Act (1881), Ss. 8 and 78**—*Suit on pronote—Parties—Addition after limitation of person having one half interest in pronote—Effect.*

A person who has an interest to the extent of one half in a promissory note is a necessary party to a suit on it because one of the several payees of negotiable instrument cannot sue alone without joining the other promisees either as plaintiffs or defendants. Where in a suit such a person is added as a defendant after the expiry of the period of limitation, there is no properly constituted suit within the period of limitation and such suit is therefore barred by time (*Agarwal, J.*) JAGAN NATH PRASAD *v.* PARANA. **198 I C. 98=14 R.O. 376=1941 O.W N. 1357=1942 A. W. R (C C.) 8=1942 A L. W. 14=1941 O. A. 1061=A I.R. 1942 Oudh 202.**

——**O. 1, R. 10 (2)**—*Pre-emption suit—Vendor pleading agreement for reconveyance with vendee—Right to continue as party.*

Where a vendor defendant pleading an agreement with the vendee for reconveyance of the property back to him was discharged from the suit and he applied under O. 1, R. 10, C.P Code, that he should be permitted to remain as a defendant to the suit, it was *held* in view of the nature of the defences raised by the vendor it appeared that it was necessary to allow the vendor to remain as a defendant to the suit so as to ensure effectual and complete adjudication of the questions involved in the suit. It was further held that such a course had the additional advantage of eliminating multiplicity of suits to which the vender might or might not be driven against the pre-emptor. (*Thomas, C. J. and Ghulam Hasan, J.*) BRIJ NARAIN *v.* B. H. K. DHAON. **200 I.C. 504=15 R O. 10=1942 O W.N. 237=1942 O A. 186=1942 A.W.R. (C C.) 174=A I R 1942 Oudh 366.**

——**O. 1, R. 10 (2) and S. 115**—*Suit for pre-emption—Vendee pleading that he was benamidar for another—Application by real vendee to be impleaded as party—Rejection—Material irregularity.*

C. P CODE (1908), O. 2, R. 2.

Where the application of a person applying to be impleaded as a defendant on the ground that the defendant vendee on record was only a benamidar and that as such the applicant should be added is rejected by the court for the reason that the applicant has no *locus standi* to make such an application and that she was not entitled to put forward the contention that she was the real owner, it considers the case fom the wrong point of view and its order amounts to a wrong exercise of jurisdiction amounting to material irregularity and is liable to be set aside in revision. It is clearly in the interests of both the parties that the applicant should be made a party to the suit so that the question raised can be finally disposed of in these proceedings. (*Bennet, J.*) GHURAN *v.* BUGGAN. **200 I C. 238=14 R.O. 578=1942 O A. 167=1942 A.W R. (C.C.) 170=1942 O.W.N. 240=A.I.R. 1942 Oudh 338.**

——**O 2, R. 2**—*Applicability—Defendant pleading set-off—Omission to plead part of claim—Effect—O. 8, R. 6,*

A defendant who pleads a set-off under O. 8, R. 6, C. P. Code, is to be deemed to be a plaintiff within the meaning of O. 2, R. 2, and is bound by that provision of law, and consequently has to suffer the consequences of an omission. O. 8, R. 6 (2) requires the written statement put in by a defendant pleading a set off to be such as to enable the Court to pronounce a final judgment both in respect of the plaintiff's claim and of the defendant's claim, and the omission by the defendant to set up part of his claim makes him lose for ever his right in the part of the claim so omitted. (*Leach, C.J. and Byers, J.*) KATHERSA ROWTHER *v.* ABDUL RAHIM SAHIB. **I L.R. (1942) Mad 836=202 I C 674=15 R M 537=55 L W 407=1942 M.W.N. 638=A.I.R. 1942 Mad. 580=(1942) 2 M.L.J. 43.**

——**O. 2, R 2**—Applicability—Part assignment of debt—Suit by assignee—If barred. *See* 1941 Dig., Col. 282. RAM KISHEN MOHAN LAL *v.* GURDIAL MAL SAGAR MAL. **197 I.C. 735=14 R.L. 268.**

——**O 2 R. 2 and C.P. Tenancy Act (1920), S. 2 (3)**—*Applicability of O. 2 R. 2—Suits for arrears of rent—Rent when becomes an 'arrear'.*

By the definition of "arrear" in S. 2 (3) of the C. P. Tenancy Act, rent cannot become an arrear on the date on which it is payable, it only becomes an arrear after midnight on that day and a suit for rent payable on the 1st of May would be premature if filed on the 1st of May. Hence where rent is payable on the 1st of May a suit for arrears is filed on 1st May 1937 and a subsequent suit is filed on 2nd August 1938 in respect of arrears for 1936 37 the later suit is not barred by the operation of O. 2 R. 2 C.P.Code, inasmuch as the claim in the later suit could not have been included in the earlier one. (*Grille, J.*) HIRALAL HARI SINGH *v.* NIRBHESINGH. **202 I.C. 779=15 R.N. 103=1942 N. L J. 487=A.I.R. 1943 Nag. 20.**

——**O. 2, R. 2 and Agra Tenancy Act (1926), S. 81**—*Bar of fresh suit—Failure to include in application under S. 81 Agra Tenancy Act, claim for prior arrears.*

Where an applicant for the demand of a notice under S 81, Agra Tenancy Act, fails to include in it a claim for prior arrears, even though they had been the subject of distraint proceedings, O. 2, R 2, C. P. Code, bars a subsequent suit in respect of such claim. (*Skirrell, S. M.*) ONKAR NATH SINGH *v.* NAIN SINGH. **1942 R.D 206=1942 O W.N. (B R.) 140=1942 A.W.R. (Rev.) 163=1942 O A. (Supp.) 183.**

——**O. 2, R. 2**—Bar of suit—Ignorance of existence of right—Second suit—If barred. *See* 1941 Dig., Col,

C. P. CODE (1908), O. 2, R. 2.

282. BHAGWAN DASS *v.* TAJUNNISSA BIBI. 17 Luck. 84.

——**O. 2, R. 2**—*Bar of suit—Principles—Identity of cause of action—Allegations in plaint—How far decisive.*

In order to apply the provisions of O. 2, R. 2, C. P. Code, to bar a suit, it shall have to be found out, (1) what was the cause of action in respect of which the claim was made in the previous suit; (2) what is the claim made in the present suit; (3) whether the claim made in the present suit could have been made either wholly or in part in respect of the cause of action of the previous suit. In order to arrive at these findings, the two plaints must be compared. But this does not mean that in order to apply O. 2, R. 2 all the allegations made in the two plaints shall have to be taken and the bar imposed shall apply only when these are identical. The allegations are to be looked into only to find out to what extent they disclose any cause of action. Cause of action for this purpose would mean all the essential facts constituting the right and its infringement. If the plaintiff obtained a judgment in his favour on a particular cause of action in the previous suit his claim in that suit must be taken to have been based on that cause of action, and that judgment ought to be conclusive as to the cause of action in respect of which that claim was made. In order then to see what is the cause of action in respect of which the claim in the subsequent suit is made and what is the claim made in it we are to look to the plaint in the subsequent suit. If a certain allegation in the plaint discloses the self same cause of action which could have supported the claim made in the plaint, then, simply because other additional allegations have also been made in it, the plaintiff could not thereby escape the bar imposed by O. 2, R. 2. If without the additional allegations in the second plaint, the cause of action for the claim made in it be complete, then in that case the additional allegations will not constitute the cause of action at all, and the Court after finding that it will have to dismiss the claim under O. 2, R. 2. If the additional allegations go to constitute a fresh cause of action for the claim made, then certainly the cause of action as alleged in the second plaint is different from the cause of action of the first plaint. If the plaintiff fails to establish the additional allegations, he may fail for want of cause of action but his suit will not be hit by the provisions of O. 2, R. 2. (*Pal, J.*) SHERALI MRIDHA *v.* TORAPALI. **O. 2, R. 2. (*Pal, J.*) SHERALI MRIDHA *v.* TORAPALI. 202 I.C. 280=15 R C. 312=75 C.L.J. 216=46 C.W. N. 513=A.I.R. 1942 Cal. 407.**

——**O. 2, R. 2**—*Cause of action—Meaning of—All plaintiffs and defendants not being parties to both suits—If renders O. 2, R. 2, inapplicable.*

The expression "cause of action" means every fact which it would be necessary for the plaintiff to prove if traversed, in order to support his right to the judgment of the Court, but it does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. In the restricted sense, the expression means the circumstances forming the infringement of the right or the immediate occasion for the action. In its wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right but the infraction coupled with the right itself, in other words, in its wider sense it means the whole bundle of material and essential facts which it is necessary for the plaintiff to prove in order to entitle him to succeed in the suit. If the several items which make up the claim are of the same nature and form part of the same course of dealing so as to pass under the same description and form part of one transaction, they must be considered as one cause of action and must be joined in one suit. Where the title of the plaintiff is the same and the trespasser-defendant is the same defendant in both suits, the question whether the second suit is barred by the first, under O. 2, R. 2 depends upon whether the two trespasses took place in or about the same time and as part of the same transaction so that the two trespasses might be considered as a single transaction forming one and the same cause of action. If both trespasses had taken place before the first suit had been brought, O. 2, R. 2 might be a bar to the second suit. The fact that some of the plaintiffs or defendants to the former suit are not parties to the subsequent suit does not necessarily render the second suit so different as to make O. 2, R. 2 inapplicable. On the death of *R* in 1927, various persons including the plaintiffs and the defendants tried to set up their claims to the properties left by her. All the parties were aware of the definite dispute arising on the death of *R*. The properties left by *R* consisted roughly of two sets, *X* the Oudh properties and *Y* the Shahjahanpur properties. The plaintiffs and defendants both applied for mutation of names in respect of the *Y* properties and though the names of the plaintiffs were mutated by the pargana officer on 12th May, 1928, that order was reversed by the Collector on 20th June, 1928 and the Collector's order was confirmed by the Commissioner on 29th October, 1929, upto which date the plaintiffs continued in possession but thereafter the defendants' name was entered in the revenue papers and they entered into possession. On 14th September, 1928, the plaintiffs instituted a suit in the Oudh Chief Court against the defendants and certain others for declaration of their title to the property *X* left by *R* and for possession and mesne profits. The plaintiffs laid no claim in respect of the properties *Y*. Subsequently in 1938 the plaintiffs as heirs of *R* brought a suit against the defendants for declaration of their title to the property *Y* and for possession and mesne profits.

Held, that the trespasses on title or slander of title in the case so far as the Oudh suit was concerned was not distinct and different either in point of time or in point of character from the trespass on possession in the case of the property *Y*. The two trespasses were similar in character and formed part of the same transaction and the evidence to prove the facts which it was necessary for the plaintiffs to prove, if they wanted the judgment in their favour, was the same and the bundle of essential facts was also the same. The second suit in respect of the properties *Y* was barred by the provisions of O. 2, R. 2. (*Collister and Baipai, JJ.*) MAHOMED KHALIL KHAN *v.* MAHBOOB ALI. **I.L.R. (1942) All. 103 =1941 A.W.R. (H C.) 379=199 I.C. 190=14 R. A. 346=1941 A.L.J. 721=A.I.R. 1942 All. 122.**

——**O. 2, R. 2**—*Defence under—If can be raised in subsequent suit.*

A defence under O. 2, R. 2 can be raised in a subsequent suit even though it was not raised in an earlier suit, as there can be no estoppel against a statute. (*Almond, J.C.*) MAHOMED YUNAS *v.* JAHAN SULTAN. **198 I.C. 803=14 R. Pesh. 76=A.I.R. 1942 Pesh. 9.**

——**O. 2, R. 2**—*Prior suit for mesne profits—Subsequent suit for possession—Bar.*

Where a plaintiff sues for mesne profits where a claim for possession is also open to him, the subsequent suit for possession is barred. And where the suit for possession is thus barred a subsequent suit for mesne profits is also barred, as a person who is not entitled to obtain possession of property is not entitled to receive the mesne profits thereof. (*Almond, J. C.*) MAHOMED

C. P. CODE (1908), O. 2, R. 2.

YUNAS *v.* JAHAN SULTAN. **198 I.C. 803=14 R. Pesh. 76=A.I.R. 1942 Pesh. 9.**

——**O. 2, R. 2**—*Scope of the bar of a second suit—Right to retain possession of one property and right to recover possession of another—Separate causes of action.*

The question whether a subsequent suit is founded upon the same cause of action on which previous suit was based is essentially one of fact and must be determined upon the facts of each case. The right of an owner to maintain his possession over a particular item of property is quite distinct and apart from his right to recover possession of another item of property from which he has been ousted by a trespasser. Where there is an infringement of two separate rights by two separate acts of trespass committed by the same trespasser they give rise to two separate causes of action. No doubt if the several acts of trespass are so connected together in point of time as to form part of the same transaction they may not give rise to separate causes of action. But where the separate acts of trespass are far removed in point of time and are also different in character they cannot be said to form part of the same transaction. O. 2, R. 2, C.P. Code, does not make it incumbent upon the plaintiff to combine separate causes of action in the same suit. (*Ismail and Mulla, JJ.*) HAR SARUP *v.* ANAND SARUP. **203 I.C. 371=1942 A.L.J. 506=A.I.R. 1942 All. 410.**

——**O. 2, R. 2**—Scope—Prior suit for cancellation of lease—Decree—Subsequent suit for mesne profits—Maintainability. *See* 1940 Dig., Col. 266. VENUGOPAL PILLAI *v.* THIRUGNANAVALLI AMMAL. **200 I.C. 443=15 R.M. 52=(1940) 2 M.L.J. 427.**

——**O. 2, R. 2**—*Scope—Prior suit for possession of land—Subsequent suit for mesne profits—Bar of.*

A right to the rents and profits of properties wrongfully alienated by the adoptive mother of the plaintiff rests on exactly the same facts and law as the claim to the corpus of those properties, If in a suit for possession of the properties, the plaintiff does not ask for mesne profits, a subsequent suit for such mesne profits is barred by O. 2, r. 2, C. P. Code. (*Beaumont, C.J. and Sen, J.*) CHANNAPPA GIRIMALLAPPA *v.* THE BAGALKOT BANK. **44 Bom.L.R. 735=A.I.R. 1942 Bom. 338.**

——**O. 2, R 2 (2)**—*Applicability and scope—Two suits based on same cause of action presented simultaneously—Inherent power to consolidate suits—Dismissal of one as offending against rule—Not proper.*

Where two suits based on the same cause of action, are filed simultaneously on the same day, it cannot be said that O. 2, r. 2 (2) is infringed, as it is not the case of a plaintiff afterwards suing in respect of a portion of a claim omitted from a former suit. It cannot be assumed that one of the two suits presented simultaneously has been presented afterwards. In such a case, the Court has power to consolidate the two suits in its inherent jurisdiction and it would not be proper to dismiss one of the suits as offending against O. 2, r. 2 (1). (*Broomfield and Macklin, JJ.*) GANESH RAM CHANDRA *v.* GOPAL LAKSHMAN. **44 Bom L.R. 819 =A.I.R. 1943 Bom. 12.**

——**O. 2, R. 3**—*Joinder of causes of action—Conditions permitting.*

O. 2, r. 3 which permits joinder of causes of action is subject not only to the provisions of r. 6 of the same order which allow the Court to order separate trials where it appears that such causes of action so added cannot be conveniently tried or disposed of together but also to the condition that the Court should have jurisdiction in respect of all the causes of action involved. (*Allsop and Verma, JJ.*) KARAN SINGH *v.* KUNWAR SEN. **1942 A.L.W. 399=1942 A.W.R. (H.C.) 270=A.I.R. 1942 All. 387.**

C. P. CODE (1908), O. 5, R. 20.

——**O. 2, R. 3**—*Scope of—Plaintiff if can plead inconsistent alternatives.*

R. 3 of O. 2 is designed to meet a case in which a plaintiff, not being certain whether his cause of action rested on ownership or merely right of way, finds himself under the necessity of pleading each in the alternative. He has a right to plead the alternatives, though inconsistent, in the form of a right of ownership or alternatively an easement. (*Braund, J.*) THE MANAGING COMMITTEE OF JUMAMASJID *v.* GHASI RAM. **1942 A.L.W. 202.**

——**O. 3, R. 1**—"Any law"—Meaning—If refers to other parts of the Code. *See* 1941 Dig., Col. 284. K. C. MUJUMDAR *v.* SURAJ SINGH. **I.L.R. (1942) Nag. 258.**

——**O. 3, R. 2 (b)**—*Persons indicated in—Who are.*

The persons indicated in O. 3, r. 2 (*b*) C. P. Code, are those who carry on trade or business in the name of parties who permanently reside outside the jurisdiction of the Court and not merely stay there temporarily although it may be for an extended period. (*Gentle, J.*) BENGAL JUTE MILLS, *v.* JEWRAJ HEERALAL. **46 C.W.N. 957=A.I.R. 1943 Cal. 13.**

——**O. 3, R. 4 (2)**—Scope of appointment of pleader—Power to consent to setting aside *ex parte* decree—Fresh appointment if necessary. *See* 1941 Dig., Col. 285. U. OAK *v.* MA KIN. **197 I.C. 406=14 R.R. 121.**

——**O. 3, R. 5**—*Applicability—Appeals to High Court from original decrees of Subordinate Court—Service of notice—Procedure—Affixing of copy to office of advocate for respondent—Sufficiency—O. 41-A, R. 6 and R. 22.*

O. 3, r. 5, . Code, is a general provision governing all processes of Civil Courts, and O. 41-A, is a special order relating to the procedure in appeal to the High Courts from the original decrees of Subordinate Courts. It must therefore be inferred that the special provisions of O. 41-A, in so far as they are in conflict with the provisions of the parts of the Code, must prevail and must govern the procedure relating to appeals in preference to the general provisions. Since r. 6 of O. 41-A, excludes a notice of appeal from the category of processes which can be properly served by being left at the address for service of the party to be served, the inference is that such a notice must be served regularly either on the respondent or his advocate, and that service by merely affixing to the office of the advocate as provided in O. 3, r. 5 is not service on the party or his pleader for purposes of limitation for filing memorandum of cross objections under O. 41, r. 22, C. P. Code. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATARAJU *v.* RAMABHADDIRRAJU. **201 I.C. 785=15 R.M. 418=1942 M.W.N. 182 (2)=55 L.W. 115 =A.I.R. 1942 Mad. 403=(1942) 1 M.L.J. 245.**

——**O. 3, Rr. 5 and 6**—*Service of notice on registered clerk of pleader—If effective.*

A process served on the registered clerk of the pleader is as good a service and as effective as if it had been at the pleader's office. (*Shirreff, S.M.*) LAL BAHADUR *v.* MANKURR. **1942 O.W.N. 402=1942 R.D. 491=1942 A.W.R. (Rev) 293 (2)=1942 O.A. (Supp.) 319 (2).**

——**O. 5, R. 20**—*Substituted service—When to be ordered—Appeal adjourned owing to service on respondent being insufficient—Notice issued for fresh date—Appellant directed to apply for substituted service, if respondent evaded service—Substituted service, if can be ordered before date fixed in notice.*

C. P. CODE (1908), O. 6.

Where an appeal is adjourned owing to the service on the respondent being declared insufficient and notice for fresh future date is issued and the appellant is directed to apply for substituted service if the respondent evaded service, it is not open to the Court to pass an order for substituted service before the date fixed in the notice to the respondent for the hearing of the appeal. (*Thomas, C.J. and Ghulam Hasan, J.*) NANHIN *v.* DEPUTY COMMISSIONER, KHERI 200 I C 251=14 R.O 582 =1942 O.A. 160=1942 A.W.R. (C.C.) 163=1942 O. W.N. 215.

——O. 6—Obscure pleadings—Clarification—Duty of Court. *See* 1941 Dig., Col. 285. FAQIR BUX *v.* THAKUR PRASAD. 16 Luck. 832.

——O. 6, R. 4—Fraud—Absence of pleadings—Relief on evidence disclosing fraud. *See* 1941 Dig., Col. 285. ANDOLI *v.* JAMNA BAI. 197 I.C. 356=14 R.N. 167.

——O. 6, R. 4—*Fraud—Particulars of to be set forth in the plaint.*

General allegations of fraud however strong they may be are insufficient. Where fraud is the ground of action, the particulars thereof must be set forth in the plaint. The mere use of general words as 'fraud,' 'bogus' or 'collusion' are ineffectual to give a fraudulent colour to the particular statements of facts. (*Thomas, C.J.*) C. D. LINCOLN *v.* NOOR ELAHI. 1942 O.A. 626=1942 O.W.N. 801.

——O. 6, R. 5—Particulars—Power to order and to dismiss suit, if not furnished—Order of dismissal—Interference by appellate Court—Attitude of Courts with reference to failure to give particulars. *See* 1940 Dig., Col. 268. BAXIRAM RUDMAL *v.* GOKULDAS KISANLAL. I.L.R. (1942) Nag. 20.

——O. 6, R. 16—*Scope—Amendment of valuation of relief—Permissibility.*

There is no authority for holding that a valuation of a relief cannot be allowed to be amended under O. 6, R. 16, C. P. Code. The amendment of a relief, when it does not change the nature of the suit at all, may be allowed as it is within the competence of the Court to grant. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. I.L.R. (1942) Bom. 357=201 I.C 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.

——O. 6, R. 14—*One of the plaintiffs not signing plaint—Others not empowered to file suit on his behalf—Effect.*

Where one of the plaintiffs has not signed the plaint filed in a suit and the others are not shown to have been empowered to file the suit on his behalf, there is no suit filed by him or on his behalf at all. (*Shirreff, S.M. and Sathe, J.M.*) SARDAR HIRA SINGH *v.* GANGA BHAJAN. 1942 R.D. 587=1942 O.W.N. (B.R.) 470=1942 A.W.R. (Rev.) 301=1942 O.A. (Supp.) 327.

——O. 6 R. 14—*'Person duly authorised'—Oral authority—If sufficient.*

A person is duly authorised as contemplated by O. 6, R. 14, C. P. Code, even if he is only orally authorised. (*Gentle, J.*) BENGAL JUTE MILLS *v.* JEWRAJ HEERALAL. 46 C.W.N. 957=A.I.R. 1943 Cal. 13.

——O. 6, R 17—Addition to pleadings—Objection for first time in appeal. *See* 1941 Dig., Col. 285 MAHOMED EJAZ RASOOL *v.* ALI MAHOMED. 16 Luck. 812.

——O. 6, R. 17—*Amendment altering nature of suit, cause of action and reliefs—Permissibility in appeal—Planitiff under honest mistake as to legal rights—If ground for allowing amendment.*

C. P. CODE (1908), O. 6, R. 17.

The fact that the plaintiff was under an honest mistake as to his true legal right is no ground for allowing the whole matter to be gone into over again by an amendment of the plaint in appeal, which alters the nature of the suit, the cause of action and the reliefs, when the suit has failed. (*Broomfield and Macklin, JJ.*) MADHAVSANG HARIBHAI *v.* DIPSING JIJIBHAI. 202 I.C. 648=15 R.B. 178=44 Bom. L.R. 661=A.I.R. 1942 Bom. 280.

——O. 6, R. 17—*Amendment—Effect on limitation.*

In the absence of an express provision amendment does not as a rule extend limitation. (*Braund, J.*) CHIEF INSPECTOR OF STAMPS *v.* KALLU SINGH 1942 A.L.W. 296.

——O. 6, R. 17 and C. P. Court of Wards Act (1899), S. 26—*Amendment of plaint—General principle—Suit on pronotes—Rule in case where notice of suit is required to be given under S. 26 of the C. P. Court of Wards Act.*

When a plaintiff sues on a promissory note and finds that he cannot succeed for some technical defect such as want of the proper stamp or because the document is not a promissory note but a receipt, leave to amend is freely given, provided one distinct cause of action is not thereby substituted for another and the subject-matter of the suit is not thereby changed. In case where notice of suit is required by statute to be given as a condition precedent, there can be no defect in the frame of the suit if the cause of action set out in the notice is substantially the same as the one in suit. (*Stone, C. J. and Bose, J.*) SUNDARA BAI *v.* RAMLAL MADHAORAO. 1942 N.L.J. 229.

——O. 6, R. 17—*Applicability—Suit for ejectment of mortgagee of occupancy holding—Defendant if and when can set up new plea that mortgagor died leaving heirs.*

In a suit for the ejectment of a mortgagee of an occupancy holding where it is alleged that the mortgagor had died leaving no heirs though O. 6, R. 7, C. P. Code, would ordinary prevent the defendant from setting up a new plea that the mortgagor had not in fact died childless, yet if persons claiming to be such heirs apply to be made defendants, it would be advisable to add them as parties and decide the case once and for all so as to avoid multiplicity of proceedings. (*Shirreff, S. M. and Sathe, J.M.*) BADRI NARAIN SINGH *v.* JAG NARAIN. 1942 R.D. 354=1942 O.W.N. (B.R.) 265 =1942 A.W.R. (Rev.) 254=1942 O.A. (Supp.) 280 (1).

——O. 6, R. 17—Cause of action—Elucidation, not alteration—Suit on promissory note by deceased brother of joint Hindu family against survivor—Amendment that debt was for family benefit—If can be allowed. *See* 1941 Dig., Col. 286. SAMPAT SHUKUL *v.* SUBKARAN TEWARI. 17 Luck. 226=A.I.R. 1942 Oudh 161.

——O. 6, R. 17—Conditional order—Acceptance of cost by opposite party—Right to challenge amendment. *See* 1941 Dig., Col. 286. DISTRICT COUNCIL, WARDHA *v.* ANNA. I.L.R. (1942) Nag. 294.

——O. 6, R. 17—*Late stage—Amendment of plaint.*

The plaintiff's case throughout had been that the property in suit was non-ancestral. An issue as to the ancestral character of the property was actually framed, evidence led and a finding recorded that it was non-ancestral. At a late stage in the appeal the plaintiff sought to amend the plaint by stating that the property was ancestral.

Held, that the amendment introduced an inconsistent case and could not be allowed at a late stage in the appeal.

C. P. CODE (1908), O. 6, R. 17.

Held, further, that even if the amendment were allowed it would necessitate a remand for further enquiry as to ancestral nature of the property which could not be allowed as neither O. 41, R. 25 nor O 41, R. 27 had any application to the case. Nor could S. 151 be invoked on the facts of the case. (*Tek Chand and Din Mohammad, JJ.*) KARAM DAD *v.* MOHAMMAD BIBI. **I.L.R. (1942) Lah. 59=198 I.C. 340=14 R.L. 324=43 P.L.R. 737=A.I.R. 1942 Lah. 1 (F.B.).**

——**O. 6, R. 17**—Late stage—New but not inconsistent case—Amendment, necessitated by defendant's plea—Permissibility. *See* 1941 Dig., Col. 286. MANGILAL *v.* ZAMSINGH. **I.L.R. (1942) Nag. 478.**

——**O. 6, R. 17**—Mistake—No injustice done and nobody misled—Suit in the name of a deity when property is bequeathed to temple—Amendment if justified. *See* 1941 Dig., Col. 287. SHRI MAHADEOJI *v.* BALDEO PRASAD. **I.L.R. (1942) Nag. 92=201 I.C. 220=15 R.N. 33.**

——**O. 6, R. 17**—Powers of Court—Leave to amend written statement in appeal—Amendment introducing new and inconsistent case of *jus tertii* in suit for possession—Permissibility. *See* 1941 Dig., Col. 287. SUBBAYYA *v.* CHANDRAYYA. **198 I.C. 506=14 R.M. 439=(1941) 2 M.L.J. 442.**

——**O. 6, R. 17 and O. 7, R. 10**—*Powers of Court—Suit on account against firm of S filed in Small Cause Court—S found to be not firm but agriculturist individual—Plaint returned for presentation to proper Court—Propriety—Proper procedure—Amendment at late stage seeking to substitute one defendant for another—Permissibility.*

The plaintiff filed a suit on account in the Small Cause Court describing the defendant as firm *S*. The Small Cause Court found that the defendant *S* was not a firm but an individual and returned the plaint for presentation to proper Court holding that it had no jurisdiction as *S* was an agriculturist. Thereafter the plaintiff himself amended the plaint by describing the defendant as firm of *S* by its managing partner *S* and presented it in the Court of Sub Judge. The Sub-Judge finding that no such firm as firm of *S* existed, dismissed the suit. On appeal, the plaintiff applied to amend the plaint by substituting *S* in place of firm of *S*. The appellate Court holding that the application for amendment was not a *bona fide* one to correct an error of misdescription but to substitute one defendant for another and was made at a late stage when the claim against the proper defendant had become time-barred, dismissed the application and, agreeing with the trial Court that the suit was incompetent as no firm of *S* existed dismissed the appeal as well.

Held, that the suit and application for amendment both were rightly dismissed.

Held, further, that the Small Cause Court would have acted properly in dismissing the suit. The suit was not against an agriculturist but against a firm, and when that firm was found not to exist, there was no Court in which the suit should have been instituted for the presentation to which an order of return of the plaint could be made. The order returning the plaint therefore was not proper. (*Davis, C.J. and Weston, J.*) KEWALRAM TEKCHAND & CO. *v.* SHEWARAM ROCHIRAM. **I.L.R. (1942) Kar. 207=203 I.C. 344=A.I.R. 1942 Sind 104.**

——**O. 6, R. 17**—*Scope—Amendment altering nature of suit—Introduction of new cause of action arising after suit—Permissibility.*

The power of amendment given to the Court, wide though it is, does not cover the granting of an amendment to introduce into a suit a cause of action which did not exist when the suit is filed but which has arisen during the pendency of the suit especially when the effect of allowing such an amendment will be that the plaintiff is permitted to alter the nature of his suit. (*Lobo, J.*) SOBHRAJ PRITAMDAS *v.* VARIOMAL HOLARAM. **198 I.C. 69=14 R.S. 127=A.I.R. 1942 Sind 4.**

C. P. CODE (1908), O. 7, R. 6.

——**O. 6, R. 17**—*Scope—Suit against firm—Amendment seeking to alter character of suit—Substitution of one defendant for another—Permissibility.*

In the suit for the recovery of a loan the defendant was described as *A* in the plaint as originally typed. By a manuscript correction this was altered by changing the defendant into firm of which *A* was the partner. Notice under O. 30, R. 3 was served on *A* who was alleged to be the managing partner. *A* did not appear but another partner of the firm appeared and in his written statement alleged that the loan was not given to the defendant firm but to *A* as was clear from the receipt filed by the plaintiff which was executed by *A* in his personal capacity, that *A* had no authority to take loans on behalf of the firm and therefore the loan in suit was not binding on the defendant firm. Thereupon, the plaintiff filed an application under O. 6, R. 17 to amend the plaint by changing the description of the defendant from that of the firm to *A* as individual on the ground that the suit had been filed against the firm through a *bona fide* mistake and the loan was taken by *A* and not the firm. The Court dismissed the application and also the suit on the plaintiff's admission in the application for amendment that the loan was not incurred by the firm. *Held* that the amendment sought for was not one seeking to change the suit from one against the firm to one against the individual members composing the firm, but was one seeking to change the suit against a firm to one against an individual who happened to be a partner of that firm and that there was a marked difference in the nature of the two suits. *Held further* that in view of the manuscript correction in the plaint and the receipt executed by *A* which was filed by the plaintiff, the mistake in the description of the defendant far from being *bona fide* was dishonest. The case was one where the plaintiff sought to substitute one defendant for another and to change the nature of the suit he had filed and, therefore, the application for amendment was rightly dismissed. *Held* also that the suit as against the firm failed on the admission that the firm was not liable and therefore the suit also was rightly dismissed. (*Davis, C.J. and Weston, J.*). AHMED MOOSA BROS, *v.* LILARAM TIKAMDAS. **I.L.R. (1942) Kar. 210=A.I.R. 1942 Sind 93.**

——**O. 6, R. 18**—*Failure to amend within time—Effect—Decree, if inoperative.*

If a party does not avail himself of the leave to amend that has been given to him within the time prescribed by O. 6, R. 18, C. P. Code, it may be that he loses the right to do it thereafter. But the decree does not thereby cease to be operative, when it is not expressed to be nor is in fact conditional upon the amendment being made. (*Lord Romer.*) GADADHAR DHIR SAMANTA *v.* LABANYABATI DEI. **202 I C. 373 =15 R.P.C. 31=1942 A.L.J. 650=1942 A.L.W. 671 =1942 O.W.N. 715=9 B.R. 1=47 C.W.N. 68=56 L.W. 3 (P.C.).**

——**O 7, R. 6**—*'Ground'—Meaning.*

The word 'ground' used in R. 6 of O. VII, C.P. Code, means a fact and not a reference to the law governing a subject. A Court is bound to take judicial notice of all legal enactments. (*Shirreff, S.M. and Sathe, S.M.*) DURGA NARAIN SINGH *v.* RAMGOPAL. **1942 O.A. (Supp.) 498 (2)=1942 O.W.N. (B.R.) 731=1942 A.W.R. (Rev.) 472 (2).**

C. P. CODE (1908), O. 7, R. 10.

——**O. 7, R. 10, C. P. Revenue Department Manual, Para. 1011**—*Appeal against rejection of judgment-debtor's objections by sales officer—Incompetency—Procedure to be followed by Commissioner.*

An appeal against the rejection of the judgment-debtor's objections by the sales officer cannot be dismissed by the Commissioner on the ground that no appeal lies to him from the orders complained against under Para. 1011 of the U. P. Revenue Court Manual. He should only return the memorandum of appeal as required by O. 7, R. 10, C. P. Code. (*Shirreff, S.M and Sathe, J. M.*) SOHAN LAL *v.* KEDAR NATH. **1942 O.A. (Supp.) 249=1942 A.W.R. (Rev.) 223=1942 O.W.N. (B.R.) 396=1942 R.D. 485.**

——**O. 7, R. 10, O. 41, R. 23, O. 43, R. 1 (u) and Ss. 104 and 115**—*Appellate order setting aside order for return of plaint for presentation to proper Court—If appealable—Revision.*

An appellate order setting aside an order for return of plaint for presentation to proper Court and directing the Court to decide the suit according to law is not open to a further appeal. O. 41, R. 23, C.P. Code, has no application to such an order inasmuch as that rule clearly refers to a decree of the lower Court upon a preliminary point against which an appeal is preferred and does not contemplate the case of an order; as distinguished from a decree under O. 7, R. 10 of the C. P. Code. The order that the lower Court had jurisdiction is merely an interlocutory order which does not decide or terminate the suit and hence there is no room for the application of S. 115 of the C. P. Code. (*Ghulam Hasan and Agarwal, JJ.*) BHAGOLEY *v.* BALA DIN. **200 I.C. 512=15 R.O. 14=1942 O.A. 221=1942 A.W.R. (C.C.) 208=1942 O.W.N. 313=A.I.R. 1942 Oudh 370.**

——**O. 7, R. 10**—*Applicability—Court holding that it has no jurisdiction—Dismissal of suit—Propriety—Procedure.*

Where a Court holds that it has no jurisdiction to entertain the suit it should not dismiss the suit but should return the plaint for presentation in the proper Court. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat. 1=198 I.C. 353=14 R.P. 420=8 B.R. 361=8 Cut. L.T. 53=A.I.R. 1942 Pat. 1 (F.B.).**

——**O. 7, R. 10**—*Applicability—Some of the reliefs in plaint within the jurisdiction of Civil Court and some not—Procedure to be followed.*

Where a plaint filed in a Civil Court raises issues some of which are within the jurisdiction of the Civil Court and the rest are within the jurisdiction of the Revenue Court, it is wrong to apply the provisions of R. 10 of O. 7, C. P. Code, in its entirety to the case. The Court might exercise its powers under O. 6, R. 16 and strike out those portions of the plaint which relate to issues not within its jurisdiction as tending to prejudice, embarrass or delay the fair trial of the part relating to issues within its jurisdiction and proceed to try to the latter part alone. (*Braund, J.*) LATU *v.* MAHA LAXMIBAI. **I.L.R. (1942) A. 129=199 I.C. 748=14 R.A. 400=1941 A.W.R. (Rev.) 1141=1941 O.A. (Supp.) 922=1941 A.L.J. 713=A.I.R. 1942 A. 130.**

——**O. 7, R. 10**—*Application—Civil Revision Petition in High Court—Application for return for presentation to the District Court as an appeal—Competency—Ss. 107 (2) and 141.*

A prayer for the return of a memorandum of Civil Revision Petition from the High Court for presentation of the same as an appeal to the District Court on the ground that an appeal would lie to the latter Court, cannot be allowed. The provisions of O. 7, R. 10, read with S. 107 (2) and S. 141, C. P. Code, are not applicable to such a case. (*Patanjali Sastri, J.*) RAMA KURUP *v.* KUNHIPATHUMMA. **55 L.W. 425=1942 M.W.N. 508=A.I.R. 1942 Mad. 657 (2)=(1942) 2 M.L.J. 99.**

C. P. CODE (1908), O. 7, R. 11.

——**O. 7, R. 10**—Procedure—Suit against firm—Firm found to be non-existent—Procedure—Return of plaint for presentation to proper Court on ground that defendant was an agriculturist—Propriety of. *See* C. P. CODE, O. 6, R. 17 AND O. 7, R. 10. **A.I.R. 1942 Sind 104.**

——**O. 7, R. 10**—Second appeal against dismissal of appeal against order under, if lies. *See* C. P. CODE, S. 104 AND O. 43, R. 1. **1942 O.W.N. 494.**

——**O. 7, R. 11, and O. 41, R. 23**—*Order dismissing suit after deciding preliminary issue as to its maintainability—Nature of—Remand by Appellate Court for further proceedings—Appeal.*

The trial Court framed the following two preliminary issues:—(1) Has this Court jurisdiction to hear this action and grant the plaintiff the relief claimed against defendant No. 1? (2) Do not the allegations in the plaint disclose a cause of action? After deciding them, it dismissed the suit with costs which were taxed on the ordinary scale applicable to the decision of the suit on the merits. On appeal by the plaintiff, the appellate Court remanded the case to the trial Court for further proceedings.

Held, that the trial Court dismissed the suit as being not maintainable and did not merely reject the plaint under O. 7, R. 11, C. P. Code, and that consequently an appeal is competent against the remand order under O. 43, R. 1 (*u*). (*Abdul Rashid, J.*) ROYAL CALCUTTA TURF CLUB, CALCUTTA *v.* KISHEN CHAND. **201 I.C. 619=15 R.L. 53=44 P.L.R. 236=A.I.R. 1942 Lah. 179.**

——**O. 7, R. 10 (1)**—*Order returning plaint for presentation to particular Court—Legality.*

Where the Court finds that the valuation of the subject-matter of the suit for the purpose of jurisdiction is not made *bona fide* but in order to effect an improper purpose, the proper order to be made under O. 7, R. 10 (1), C. P. Code, is to direct the return of the plaint to the plaintiff for presentation to the Court in which the suit should be instituted after a proper valuation has been made. An order directing the return of the plaint for presentation to a particular Court is not a proper order. (*Mya Bu and Sharpe, JJ.*) KHEM RAJ *v.* DURGI. **198 I.C. 673=14 R.P. 219=A.I.R. 1942 Rang. 10.**

——**O. 7, R. 11**—Procedure—Failure to pay additional Court-fee—Correct order to pass—Dismissal of suit—Propriety of. *See* 1941 Dig Col. 289. FAZILAT KHATUN *v.* RAHIMBUX GULMAHOMED. **197 I.C. 590=14 R.S. 112.**

——**O. 7, R. 11**—Procedure—Order for payment of required Court-fee within specified time—Non-compliance—Proper order—Dismissal of suit—Propriety. *See* COURT-FEES ACT, S. 7 (11) AND SCH. II, ART. 17 (VI). **I.L.R. (1942) Kar. 424.**

——**O. 7, R. 11**—*Scope—Suit for contribution—Prayer for relief against specified properties—Absence of prayer for personal decree—If bar to grant of personal decree.*

It cannot be said that in a suit for contribution praying for relief against specified properties on which the plaintiffs claimed a lien, no personal decree can be given to the plaintiffs in the absence of a specific prayer therefor. Such a contention ignores the provisions of

C. P. CODE (1908), O. 7, R. 11.

O. 7, R. 11, C. P. Code, under which a personal decree may be given on the analogy of a personal decree given in a suit in a mortgage. (*Meredith and Shearer, JJ.*) MUSAMMAT JAGPATI KUAR *v.* DAMRI SAHU HALKHORI RAM. **20 Pat. 811=198 I.C. 521=14 R.P. 460=8 B.R. 421=23 Pat.L.T. 588=A.I.R. 1942 Pat. 204.**

——**O. 7, R. 11 (a)**—*Applicability—Frivolous suit—Inconsistent allegations.*

Where the suit is a frivolous one based on inconsistent allegations, it could be dismissed under O. 7, R. 11 (*a*), C. P. Code. (*Sathe, J.M.*) CHHATTARDHARI AHIR *v.* GANESH AHIR. **1942 O.W.N. (B.R.) 287=1942 O.A. (Supp.) 195=1942 R.D. 376=1942 A.W.R. (Rev.) 175.**

——**O. 7, R. 11 (c)**—Power to reject plaint or memorandum of appeal after admission. *See* COURT FEES ACT, SS. 5 AND 28. **21 Pat. 720.**

——**O. 8, R. 1 (2) (Oudh)**—Production of document—Duty of defendants—Production on day of hearing—Rejection—Propriety. *See* 1941 Dig., Col. 289. MATA DIN *v.* IMDAD KHAN. **A.I.R. 1942 Oudh 145.**

——**O. 8, R. 6**—Applicability and scope—Malabar Compensation for Tenants' Improvements Act, S. 6 (2)—Suit for redemption of Kanom—Decree for arrears of rent in favour of landlord getting barred by limitation—Right to set off against value of improvements due to tenant. *See* MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, S. 6 (2). **55 L.W. 18 (3)=(1942) 1 M.L.J. 166.**

——**O. 8, R. 6**—Claim for set-off—Conditions to be fulfilled. *See* 1940 Dig., Col. 273. GIRDHARILAL *v.* SURAJMAL. **I.L.R. (1941) Nag. 753.**

——**O. 8, R. 6**—Equitable set-off—Discretion of Court. *See* 1940 Dig., Col. 273. GIRDHARILAL *v.* SURAJMAL. **I.L.R. (1941) Nag. 753.**

——**O. 8, R. 6**—Scope—Defendant pleading set-off—Position of—If bound by O. 2, R. 2. *See* C. P. CODE, O. 2, R. 2. **(1942) 2 M.L.J. 43.**

——**O. 8, R. 6**—*Set-off and counter-claim—Distinction—Defendant's claim not barred at date of suit but barred at date of written statement—If can be set up.*

If the claim set up by the defendant is in respect of an ascertained sum of money which is less than or equal to the plaintiff's claim in the suit, it is a plea of set-off pure and simple, but if it exceeds the plaintiff's claim it is to the extent of the excess a cross claim, for, for the excess he is to be given a decree against the plaintiff in the same action. By the terms of O. 8, R. 6, C.P.C., the claim must be legally recoverable, that is, must not be a dead claim. If the defendant does not claim a sum in excess of the plaintiff's claim, on principle the relevant enquiry would be whether it was a dead claim at the date of the plaintiff's suit. Where however the defendant pleads for a sum of money which is in excess of the plaintiff's claim, he occupies to the extent of the excess the position of a plaintiff in a cross suit, and in such a case and for the excess amount time is to be reckoned not from the date of the plaintiff's suit but from the date when he filed his written statement. (*Mitter and Khundkar, JJ.*) HARENDRA NATH CHAUDHURY *v.* SOURINDRA NATH. **203 I.C. 336=46 C.W.N. 882=A.I.R. 1942 Cal. 559.**

——**O. 8, R. 6 and Court Fees Act, Sch. I, Art. 1**—Set-off—Payment of Court-fee—Necessity—Amount. *See* 1940 Dig., Col. 274. GANGARAM LAL *v.* SURAJMAL. **I.L.R. (1941) Nag. 753.**

——**O. 9, R. 3**—Applicability—Date fixed for proof of service—No steps taken and plaintiff failing to appear—Dismissal for default—Legality. *See* 1941

C. P. CODE (1908), O. 9, R. 9.

Dig., Col. 291. RAM RANBIJAYA PRASAD SINGH *v.* SAKALPAT TEWARY. **A.I.R. 1942 Pat. 56.**

——**O. 9, Rr. 3 and 5**—*Applicability—"Hearing"—Meaning of—Summons returned as served—Plaintiff ordered to prove service and to file registered cards by a certain date—Failure to comply—Plaintiff absent when suit called on—Dismissal for default—Propriety.*

The word "hearing" in R. 3 of O. 9, C. P. Code, cannot be read as meaning hearing of the evidence in the case. It is used to indicate that when a summons has been issued upon the defendant calling upon him to appear on a particular date, if the parties fail to appear when the suit is called on for hearing on that date, the plaintiff's suit is subject to dismissal for default. Summons were issued to the defendants in a suit fixing 17—7—1940 for settlement of issues. By that date the summons had been returned as served and the plaintiff was called upon to prove service and to file registered cards by 29-7-1940. On that date the plaintiff filed *Aasri* but did not comply with the order of 15—7—1940. He was directed to comply with that order by 1—8—1940 positively. On that date the case was called out, but the plaintiff did not appear and no steps were taken on his behalf. The suit was then dismissed for default. It was contended that the Court should have proceeded under O. 9, R. 5.

Held, (1) that R. 5 of O. 9 applied only when summons had been returned as unserved, and as in this case the summons had been returned as served, R. 5 had no application; (2) that as neither of the parties were present, the conditions requisite for an order under O. 9, R. 3 were present and the suit was rightly dismissed for default. (*Agarwal, J.*) RAM RAN BIJAYA PD. SINGH *v.* ACHAIYA KUMAR TEWARI. **22 Pat. L.T. 950.**

——**O. 9, R. 5**—*Applicability—Appeals.*

O. 41, C. P. Code, provides so complete a Code to govern appeals in the matter of payment of charges for notices to respondents and the consequences for any default therein, that not only is recourse to O. 9, R. 5 unnecessary but it is by implication excluded in the case of appeals. (*Braund, J.*) RATAN LAL *v.* ZAHOOR-UL-HASAN. **1942 A.L.W. 56.**

——**O. 9, R. 5**—Applicability—Summons returned served—Plaintiff failing to comply with order requiring him to prove service and to file registered cards by date of hearing—Procedure—Dismissal for default—If justified. *See* C. P. CODE, O. 9, RR. 3 AND 5. **22 Pat. L.T. 950.**

——**O. 9, R. 7**—*Applicability—Defendant declared ex parte and case adjourned for evidence—Application on adjourned date to set aside ex parte proceedings—Duty of Court.*

Where after declaring a defendant *ex parte* the case is adjourned for evidence, the defendant applies on the adjourned date to set aside the *ex parte* proceedings, the case is governed by O. 9, R. 7, and the Court is bound to give the applicant an opportunity to support his contentions. There is no reason why a defendant should ordinarily not be allowed to take part in the proceedings of pending cases from the stage at which he puts in his appearance. (*Shivdeo, S. M. and Sathe, J.M.*) RAM SARUP SINGH *v.* MAHARIB SINGH. **1942 R.D. 722—1942 A.W.R. (Rev.) 395 (2)=1942 O.W.N. (B.R.) 894=1942 O.A. (Supp.) 42 (2).**

——**O. 9, R. 9**—*Applicability—Execution petition dismissed for default—Power of Court to restore—Inherent powers under S. 151—Restoration without notice to judgment-debtor—Legality—Exercise—Interference.*

C. P. CODE (1908), O. 9, R. 9.

A Court has no power under O. 9, C. P. Code, to restore an execution petition which has been dismissed for default of the decree-holder in remedying the defects as ordered by the Court. Nor can the inherent power of the Court under S. 151, C. P. Code, be utilised for this purpose. The proper remedy of the decree-holder in such a case is to file a fresh execution application within the period of limitation or to apply for review. Even in the case of a review notice has to go to the judgment debtor. The Court has no jurisdiction at all to restore the application without notice to the judgment-debtor. If it does so, it acts illegally in the exercise of its jurisdiction and the High Court can interfere in revision. (*Agarwala, J.*) RAJ KISHORE PD. NARAIN SINGH *v.* MOJIBUL RAHMAN. **22 Pat L.T. 965.**

——**O. 9, R. 9**—*Cause of action—Meaning—Dismissal of suit for ejectment for default—If bars subsequent suit for arrears of rent.*

'Cause of action' means the whole bundle of material facts necessary to maintain a suit. The dismissal of a suit for ejectment for default cannot bar a subsequent suit for arrears of rent though the issue 'whether the defendants were sub-tenants of the plaintiff' was common to both the suits. The cause of action is different in the two suits. (*Shirreff, S. M. and Sathe, J.M.*) SHEO HARAKH *v.* DWARIKA KURMI **1942 A.W.R. (Rev.) 329=1942 O.A. (Supp.) 355=1942 O.W.N. (B.R.) 541.**

——**O. 9, R. 9**—Dismissal for default—Procedure to be followed. *See* 1941 Dig., Col. 291 BAIJNATH *v.* IQTIDAR FATIMA. **17 Luck. 243=A.I.R. 1942 Oudh 75.**

——**O. 9, R. 9**—*Restoration—Considerations—Merits of the case—Relevancy.*

An application for restoration of an application dismissed for default should be judged on the validity or otherwise of the excuse given for non-attendance of the party concerned. The merits of the original application cannot justify the rejection of the restoration application. (*Shirreff, S.M. and Sathe, J.M.*) HOTI LAL *v.* GAURI SHANKAR. **1942 A.W.R. (B.R.) 72=1942 O.A. (Supp.) 78=1942 O.W.N. (B.R.) 103=1942 R.D. 135.**

——**O. 9, R. 9**—"*Sufficient cause*"—*Inability to be present—Meaning of.*

O. 9, R. 9, C. P. Code, permits the setting aside of an order of dismissal of a suit for default only when the plaintiff is unable to be present; and that inability does not mean inability to raise the wherewithal to continue the suit,—whether by lack of funds or absence of witnesses—but some physical inability such as the breakdown of a conveyance or illness. (*Horwill, J.*) SUNDARESAM PILLAI *v.* RAMACHANDRA PILLAI. **55 L.W. 725=1942 M.W.N. 665=A.I.R. 1943 Mad. 38 (1)=(1942) 2 M.L.J. 572.**

——**O. 9, R. 9**—*Sufficient cause—Missing an early train—Absence of any negligence or carelessness in the conduct of the suit.*

Where a suit was dismissed for default and the plaintiffs' absence was due to circumstances beyond his control, (*i.e.*) missing an early train and arriving in Court after the dismissal of suit, and there was nothing to show that he was negligent or careless in the conduct of the suit, it was held that there was sufficient cause to restore the suit. (*Ghulam Hasan, J.*) SHIB SAHAI *v.* TIKA. **200 I.C. 233=14 R.O. 579=1942 A.W.R. (C C.) 195=1942 A.L.W. 218=1942 O.A. 180=1942 O.W.N 242=A.I.R. 1942 Oudh 350.**

——**O. 9, R. 13**—Applicability—Decree against firm—Application by partner to set aside—Applicant not seeking to appear on behalf of firm but under protest

C, P. CODE (1908), O. 9, R. 13,

under O. 30, R. 8—Procedure—Inherent powers. *See* C. P. CODE, S. 151 AND O. 9, R. 13. **A.I.R. 1942 Sind 99.**

——**O. 9, R. 13**—Applicability—Decree against firm *ex parte*—Application by individual partners to set aside on ground of non-service of summons on them—Maintainability—Procedure. *See* C. P. CODE, S. 151 AND O. 9, R. 13. **A.I.R. 1942 Sind 97.**

——**O. 9, R. 13**—Applicability—Decree of Small Cause Court—Subsequent amendment without notice to party—Application by latter to set aside order of amendment—If one to set aside *ex parte* decree—Inherent power of Court to set aside. *See* C.P. CODE. S. 151. **8 Cut. L.T. 105.**

——**O. 9, R. 13**—*Applicability—Defendant's application for further adjournment refused—Decree after hearing plaintiff's evidence—If* ex parte*—Remedy of defendant.*

In dealing with an adjourned case under O. 17, R. 2, C. P. Code, in the absence of the defendant all that is open to the Court is either to grant an adjournment to enable the defendant to appear or to proceed in his absence *ex parte*. If the latter course is adopted, the defendant is entitled to apply to get the decree set aside under O. 9, R. 13, C. P. Code. The Court can hear the evidence of the plaintiff in the absence of the defendant and make such order as that evidence justifies. Where on the date to which the hearing of a suit is adjourned, the defendant applies for a further adjournment which is refused, and the Court hears the evidence of the plaintiff and gives a decree in his favour, the decree is one made *ex parte* and the defendant therefore is entitled to apply under O. 9, R. 13, C. P. Code, to have it set aside. It is not necessary for him to appeal against the decree, treating it as one passed on the merits. (*Beaumont, C.J. and Wassoodew, J.*) GURUNATH EKNATH *v.* LAXMIBAI GOVIND. **203 I.C. 645=44 Bom.L.R. 844=A.I.R. 1942 Bom. 344.**

——**O. 9, R. 13**—*Applicability—Suit against firm—Person served on behalf of firm absent—Application by, to set aside* ex parte *decree—Competency.*

It cannot be said that O. 9, R. 13 is entirely inapplicable in all cases where a decree is passed against a firm. O. 9, R. 13 is wide enough to cover a case where a firm is the defendant and where the person served on behalf of the firm is absent and asks that he should be heard so that the *ex parte* decree against the firm should be set aside. (*Davis, C.J. and Weston, J.*) VILAITIRAM TULARAM *v.* CHANGOMAL. **I.L.R. (1942) Kar. 220=202 I.C. 177=15 R S. 26=A.I.R. 1942 Sind 99.**

——**O. 9, R. 13 (Allahabad)**—Ex parte *decree, setting aside—Defendant though not served, aware of date.*

An *ex parte* decree cannot be set aside on the ground of irregularity of service of summons if it is found that the defendant though not served was in fact aware or had knowledge of the date of hearing. (*Shirreff, S.M. and Sathe, J.M.*) MANPHOOL *v.* MURARI LAL. **1942 O.W.N. (B.R.) 204 (1)=1942 R.D. 270 (1)=1942 A. W.R. (Rev.) 146 (2)=1942 O.A. (Supp.) 166 (2).**

——**O. 9, R. 13**—*Restoration—Sufficient cause—Confusion between different cases.*

Where the failure of the applicant for restoration of an ejectment case to contest the case was due to confusion between it and another, it was held to be a fit case for restoration. (*Shirreff, S M. and Sathe, J.M.*) DHARA *v.* KHACHERU. **1942 O.W.N. (B R.) 165 (1)=1942 R.D 231 (1)=1942 A.W.R. (Rev.) 147 (1)=1942 O A (Supp.) 167 (1).**

——**O. 9, R. 13 and Ss. 115 and 151**—*Setting aside* ex parte *decree—Inherent power—Setting aside without*

C. P. CODE (1908), O. 9, R. 13.

considering question of jurisdiction to do so—Interference in revision.

There is no power under S. 151, C. P. Code, to entertain an application to set aside an *ex parte* decree which can only be made under O. 9, R. 13. Under that rule the Court has no power to set it aside except on the grounds stated in that rule. Where an order setting aside an *ex parte* decree is made without consideration of the question whether it had jurisdiction or not, it is made illegally or with material irregularity within the meaning of cl. (c) of S. 115 and is therefore liable to be set aside in revision. (*Pollock, J.*) DAMROO LAL v. GOKUL PRASAD. **I.L.R. (1942) Nag. 676.**

——**O. 9, R. 13**—Sufficient cause—Non-receipt of intimation from attorney. *See* 1941 Dig., Col. 292. GOPAL KRISHNA NABAKRISHNA v. CHINTAHARAM MAZUMDAR. **199 I.C. 394=14 R.C. 536.**

——**O. 11 R. 1 and O. 3, R. 1**—Party ordered to answer interrogatories—If can answer through recognised agent. *See* 1941 Dig., Col. 293. K. C. MUJUMDAR v. SURAJ SINGH. **I.L.R. (1942) Nag. 258.**

——**O. 11, Rr. 12 and 13**—*Compliance with—If necessary to raise presumption from non-production of documents.*

No presumption can be drawn against a party for non-production of a document unless the party which wants that party to produce it has served upon him the necessary notice and followed the procedure prescribed by Rr. 12 and 13 of O. 11, C. P. Code. (*Verma and Yorke, JJ.*) GORDHAN DAS v. ANAND PRASAD. **I.L.R. (1942) All 247=1942 A.L.J. 246=1942 A.W.R. (H.C.) 118=1942 Comp. C. 184=1942 A.L.W. 186=A.I.R. 1942 All. 242.**

——**O. 11, R. 14**—Discretion of Court—Order directing defendant to apply for certified copies of income-tax returns and profit and loss statements and produce them at plaintiff's cost—Legality—Income-tax Act, S. 54. *See* 1941 Dig., Col. 294. VELAYUDHAM PILLAI v. SUBRAMANIA PILLAI. **14 R.M. 340=(1941) 1 M.L.J. 617.**

——**O. 14, R. 5**—*Adding new issue on date of hearing—If improper—Remedy if a party is aggrieved—Concern of appellate Court in such a matter.*

There is nothing extraordinary and still less improper in the framing of a new issue on the day of the hearing. If this had the effect of taking a party by surprise, that might be a good reason for giving him time to collect evidence to meet the new issue. It is not a ground for setting aside a decree on appeal and ordering the case to be retried. The really material question with which the appellate Court is concerned with is to see whether the parties had gone to trial knowing what the really material question between them was and had an opportunity of giving evidence on that question. (*Brown, J.*) RAM PRASAD SINGH v. SALEH ALI SHAH. **1942 A.L.W. 48.**

——**O. 16, R. 1**—*Refusal to summon witness—Belated application—Discretion of Court.*

Where a Court refuses to issue summons on the ground that the application for it was very belated, it is a matter of discretion exercised by the judge and when it is not shown that such a discretion has not been exercised wisely the appellate Court will not interfere. (*Stewart and Madsley, JJ.*) MAHOMED ABAID ALI KHAN v. SEEDO ALI KHAN. **1942 O.A. 530=1942 O.W.N. 657=1942 A.W.R. (C.C.) 348 (2).**

——**O. 17, R. 1**—*Award of costs—Rule as to.*

Costs of adjournment of a suit must be such as can reasonably be held to be occasioned by the adjournment and should not be in the nature of a penalty or punishment, nor should costs be awarded against a party who is not substantially at fault in the matter of an adjournment. (*Tek Chand and Beckett, JJ.*) MAHOMED BAKHSH v. SHAHU. **201 I.C. 240=15 R.L. 36=44 P.L.R. 186=A.I.R. 1942 Lah. 162 (2).**

C. P. CODE (1908), O. 20, R. 3.

——**O. 17, R. 1 and O. 33, R. 8**—Suit in *forma pauperis*—Trial—Plaintiff not ready—Grant of adjournment conditional on paying day costs within next hearing—Costs not paid—Power of Court to dismiss suit—Pauper, if exempted from payment of adjournment costs. *See* 1941 Dig., Col. 295. RAJU CHETTIAR v. RAMAKKAL. **199 I.C. 790=15 R.M. 12.**

——**O. 17, R. 2**—Scope of—Adjourned hearing—Defendant's application for further adjournment refused—Procedure—Decree after hearing evidence of plaintiff—If *ex parte*—Remedy of defendant—Appeal or application under O. 9, R. 13. *See* C. P. CODE, O. 9, R. 13. **44 Bom. L.R. 844.**

——**O. 17, R. 3**—*Case when falls under—Remedy.*

If an adjournment is given specially at the request of the defendant in order to enable him to perform any particular act or produce particular evidence and there is default, the case falls under R. 3 of O. 17. The remedy of the aggrieved party is only an appeal, not an application under O. 9, R. 13 for restoration. (*Sheriff, S.M. and Sathe, J.M.*) BINDRABAN v. ALAYAR KHAN. **1942 O.A. (Supp.) 72=1942 O.W.N. (B.R.) 105=1942 A.W.R. (Rev.) 66=1942 R.D. 137.**

——**O. 18, R. 8 and S. 99**—*Failure to maintain memorandum of evidence—Irregularity—Condonation.*

The failure of an Assistant Collector to maintain a memorandum in English of the evidence taken by the Court Abalmad is an irregularity, but where it has not prejudiced the case of either party it may be condoned under S. 99, C. P. Code. (*Sheriff, S.M. and Sathe, J.M.*) SHAMSHUDDIN AHMAD v. FAQIRE. **1942 O.A. (Supp.) 501=1942 O.W.N. (B.R.) 707=1942 A.W.R. (Rev.) 475.**

——**O. 18, R. 18**—Opinion formed on local inspection—When to be accepted in place of evidence. *See* 1941 Dig., Col. 296. MUNICIPAL COMMITTEE, BILASPUR v. WAMANRAO. **I.L.R. (1942) Nag. 269=197 I.C. 300=14 R.N. 157.**

——**O. 20**—*List of preliminary decrees—If exhaustive.*

The list of preliminary decrees mentioned in O. 20, C. P. Code, does not exhaust the whole list of preliminary decrees. (*Mister and Khandhar, JJ.*) SURENDRA NATH SARKAR v. SAILENDRA NATH KUNDU. **203 I.C. 513=46 C.W.N. 857=A.I.R. 1942 Cal. 557.**

——**O. 20, R. 3**—*Judgment—Dating—Procedure.*

A judge must not fail to give the year in which the judgment is given as otherwise it would be difficult to trace the identity of the judgment in future years. (*Sathe, J.M.*) BUDHI SEN v. MATHO SINGH. **1942 O.A. (Supp.) 491 (1)=1942 O.W.N. (B.R.) 712=1942 A.W.R. (Rev.) 465 (2).**

——**O. 20, R. 3**—*Judgment—Dating—Procedure.*

The dating of judgments must be complete in all respects (*i.e.*) it must give the date of the month and the number of the month as well as the year. Unless this is done the identification of the judgment in future years would become difficult. (*Sheriff, S.M. and Sathe, J.M.*) RAM CHAND v. HANUMAN DAS. **1942 O.A. (Supp.) 481 (1)=1942 O.W.N. (B.R.) 711=1942 A.W.R. (Rev.) 465 (1).**

——**O. 20, R. 3 and Oudh Rules Ch. II, R. 27**—Order for costs on dismissal—Subsequent direction as to taxation of costs of witnesses not examined—Validity—Circumvention O. 20, R. 3. *See* 1941 Dig., Col. 296. MAHABAL PRASAD v. LACHHO CHAMAR. **197 I.C. 760=14 R.O. 360=A.I.R. 1942 Oudh 128.**

C. P, CODE (1908), O. 20. R. 5.

——O. 20, R. 5—Procedure—Court disposing of suit on one issue only—Duty to record findings on all relevant issues, *See* 1941 Dig., Col. 297. DEVA PRA SANNA MUKHERJEE *v.* LAKHI NARAYAN MONDAL. **A.I.R. 1942 Pat. 108.**

——O. 20, R. 7—*Date of decree—Starting point of limitation for filing of appeal.*

Under O. 20, R. 7 the decree shall bear the date on which the judgment was pronounced and the date of the decree to be appealed against must therefore be taken to be the day on which the judgment was pronounced and not the date of the signing of the decree if that is later. (*Shirreff, S.M.*) SHIAM MOHAN NATH RAJA MISAR *v.* AMJAD ALI KHAN. **1942 R.D. 286 (2)=1942 O.W.N. (B.R.) 220 (2)=1942 A.W.R. (Rev.) 250 (2)=1942 O.A. (Supp.) 275 (2).**

——O. 20, R. 7—Decree—Date from which it operates—Limitation for execution. *See* 1941 Dig., Col. 297. HARBANS SINGH *v.* RAM CHANDRA. **A.I.R. 1942 Oudh 139.**

——O. 20 R.12—Appeal—Proceeding under—If one in suit or in execution—Appeal from order for mesne profits in preliminary decree—Maintainability. *See* C. P. CODE, SS. 2 (2) AND 47. **I.L.R. (1941) Kar. 563.**

——O. 20, R. 12—*Interest on mesne profits—Whether can be allowed.*

Interest is a part of mesne profits. If there are no special circumstances, simple interest at six per cent. per annum is a fair rate and can be allowed on the mesne profits. (*Mitter and Khundkar, JJ*) KALIDAS RAKSHIT *v.* SARASWATI DASSI. **I.L.R. (1942) 2 Cal. 268=75 C.L.J. 447=46 C.W.N. 982=A.I.R. 1943 Cal. 1.**

——O. 20, Rr. 12 and 18—*If exclusive.*

Rr. 12 and 18 of O. 20, C. P. Code, are not necessarily exclusive. The rules must be read together. (*Davis, C.J. and Weston, J.*) SAHIJRAM RUPCHAND *v.* ALU TUNDU. **I.L.R. (1941) Kar. 563=200 I.C. 74=14 R.S. 205=A.I.R. 1942 Sind 60.**

——O. 20, R. 12 (1) (c)—*Accidental omission to give direction regarding future mesne profits—Power of Court to remedy.*

If the omission to give an express direction in the decree in terms of O. 20, R. 12, sub-R. (1), Cl. (*c*), C. P. Code, regarding mesne profits *pendente lite* and thereafter is an accidental one, the Court assessing the mesne profits can supply the omission under the powers given by S. 152, C. P. Code. (*Mitter and Khundkar, JJ.*) KALIDAS RAKSHIT *v.* SARASWATI DASSI. **I.L.R. (1942) 2 Cal. 268=75 C.L.J. 447=46 C.W.N. 982=A.I.R. 1943 Cal. 1.**

——O. 20, Rr. 16 and 17—*Suit for accounts—Duty of Judge—Clear directions—Necessity.*

In a suit for accounts the Judge must first of all make up his mind whether the defendant is an accounting party. If he is, then the Judge must next determine whether the defendant has already accounted or is relieved from accounting. If he decides that an account has to be rendered, then he should pass a preliminary decree in accordance with R. 16 of O. 20 and when doing so it is of the utmost importance that he should bear in mind that in most cases special directions are necessary. (*Stone, C.J. and Bose, J.*) RADHIKA PRASAD *v.* NAND KUMAR. **1942 N.L.J. 355.**

——O. 20, R. 18—Powers of Court under—Partition decree—Contents—Execution by Collector—Discretion of Collector. *See* C. P. CODE, S. 54 AND O. 20, R. 18. **I.L.R. (1942) Kar. 162.**

——O. 21, R. 1—*Joint decree-holders—Shares not specified—Power of one to give discharge to extent of his own share.*

C. P, CODE (1908), O. 21, R. 2.

The word "decree-holder" in O. 21, R. 1, although in singular means, all the decree-holders jointly when there are more than one. In the case of joint decree-holders when there is no specification of shares in the decree, one decree-holder cannot separately settle up with the judgment-debtor even so far as his share of the decree is concerned. (*Mir Ahmad, J.*) KARTAR SINGH *v.* GURDIAL SINGH. **202 I.C. 59=15 R. Pesh. 32=A.I.R. 1942 Pesh. 58.**

——O. 21, R. 2—Adjustment—Assignment of decree to defendant's son benami for defendant—Effect of. *See* C. P. CODE, O. 21, R. 16. **A.I.R. 1942 Sind 83.**

——O. 21, R. 2—*Adjustment—What may amount to.*

By an agreement between the parties the original decretal amount of Rs. 38,786 was reduced to Rs. 38,000 which was to be paid by instalments. On default of payment of any instalment the whole of the balance was to become due.

Held, that the agreement was an adjustment within the meaning of O. 21, R. 2 as it had superseded any liability to pay the amount due under the original decree. (*Roberts, C.J. and Dunkley, J.*) KORBAN BIBI *v.* V. M. R. P. CHETTYAR FIRM. **A.I.R. 1942 Rang. 56.**

——O. 21, R. 2—Applicability—Application to scale down decree debt under S. 19, Madras Agriculturists' Relief Act—Uncertified payments—Proof of—Permissibility. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 19. **(1942) 2 M.L.J. 185.**

——O. 21, R. 2 (1)—*Application by decree-holder—If binding and final—Right to withdraw certificate.*

There is nothing in O. 21, R. 2 (1), C. P. Code, which would prevent a decree-holder from withdrawing his application before it is recorded. There is nothing in the sub-rule which says that the moment a certificate is presented it becomes binding for all time, and that the parties cannot change their minds and withdraw from the compromise. (*Beaumont, C.J. and Sen, J.*) DATTATRAYA KASHINATH *v.* BHAGWANDAS VITHALDAS. **I.L.R. (1942) Bom. 132=198 I.C. 557=14 R.B. 315=43 Bom. L.R. 1022=A.I.R. 1942 Bom. 59.**

——O. 21, R. 2 (1)—*Construction—Function and duty of Court under—Duty to consider whether adjustment is legal adjustment before recording same.*

Although in an application by the decree-holder under O. 21, R. 2 (1), C. P. Code, to record adjustment or satisfaction of the decree the Court is not concerned to consider the merits of the adjustment, it is concerned to consider whether the arrangement to be recorded is a legal adjustment. In a case where the judgment-debtors or some of them are minors the Court is bound under O. 32, R. 7, C. P. Code, to consider and satisfy itself that the compromise is for the benefit of the minors before recording it. It is undoubted that the Court has to satisfy itself that the adjustment which it is asked to record, is a legal adjustment; it is not a mere recording machine under O. 21, R. 2 (1). (*Beaumont, C.J. and Sen, J.*) DATTATRAYA KASHINATH *v.* VITHALDAS BHAGWANDAS. **I.L.R. (1942) Bom. 132=198 I.C. 557=14 R.B. 315=43 Bom. L.R. 1022=A.I.R. 1942 Bom. 59**

——O. 21, R. 2 (3)—Applicability—"Court executing the decree"—Assignee of decree—Application to Court which passed decree under O. 21, R. 16—If one for execution—Power of Court to recognise uncertified payment or adjustment. *See* 1941 Dig., Col. 298. KRISHNA GOVIND *v.* MOOLCHAND KESHAVCHAND. **I.L.R. (1941) Bom. 596.**

——O. 21, R. 2 (3)—*"Or"—If means "and".*

The disjunctive "or" between the words "certified, and "recorded" in O. 21, R. 1 (3), C. P. Code, must be

C. P. CODE (1908), O. 21, R. 7.

read as the conjunctive "and". (*Beaumont, C.J. and Sen, J.*) DATTATRAYA KASHINATH *v.* VITHALDAS BHAGWANDAS. **I.L.R. (1942) Bom. 132=198 I.C. 557=14 R.B. 315=43 Bom L.R. 1022=A.I.R. 1942 Bom. 59.**

——**O. 21, R. 7**—Applicability—Application by decree-holder under O. 21, R. 2 (1)—Duty of Court to consider whether adjustment is beneficial to minor judgment-debtor. *See* C. P. CODE, O. 21, R. 2 (1). **43 Bom.L.R. 1022.**

——**O. 21, R. 15**—Applicability—Decree—Assignment jointly to several persons—Application for execution by one assignee only—Competency—If in accordance with law—Limitation Act, Art. 182 (5). *See* 1941 Dig., Col. 299. SHANKAR HARI *v.* DAMODAR VYANKOJI. **I.L.R. (1942) Bom. 1=198 I.C. 238=14 R.B. 278=A.I.R. 1942 Bom. 29.**

——**O. 21, R. 15 and Limitation Act, Art. 182 (5)** —*Joint decree—Execution by one alone but not on behalf of all decree-holders—Certification of satisfaction—If valid as against other decree-holder—If saves limitation for execution by other decree-holder—Step in aid.*

It is not open to one of two joint decree-holders to certify satisfaction of the whole decree so as to bind the other decree-holder; he can only certify satisfaction in respect of his own interest in the decree. A decree in favour of two persons jointly cannot be executed by one of them in respect of what he considers his share of the decree, nor can the whole decree be executed by one of the decree-holders alone unless he complies with the provisions of O. 21, R. 15, C. P. Code, and applies for execution on behalf of all the decree-holders or for the benefit of them all. But an application for execution made by one of them can be taken into consideration on the question of limitation and will save limitation under Art. 182 (5) of the Limitation Act as regards a subsequent execution application by the other decree-holder. (*Fazl Ali, J.*) ADIKANDA PANIGRAHI *v.* NARAYANASWAMI. **8 Cut. L.T. 86.**

——**O. 21, Rr. 15, 1 and 2**—*Joint decree-holders—Power of one to give discharge for decretal amount.*

O. 21, Rr. 1, 2 and 15 indicate the intention of the Legislature that the execution Court should keep an eye on the way the decree is satisfied and that in the case of a joint decree the interests of all the decree-holders should be protected by the execution Judge. It follows that a joint decree holder cannot give a discharge for the decretal amount to the detriment and without the knowledge of the other decree-holders. (*Mir Ahmad, J.*) KARTAR SINGH *v.* GURDIAL SINGH. **202 I.C. 59=15 R. Pesh. 32=A.I.R. 1942 Pesh. 58.**

——**O. 21, R. 15**—*Right of one of several joint decree-holders to execute—Nature and extent of—Discretion of Court to grant relief.*

The right conferred on one out of several decree-holders to apply for execution of the decree by O. 21, R. 15, C. P. Code, is not an absolute one and as such it is open to the Court to entertain such an application if it is satisfied that it is really for the *benefit* of all the decree-holders or refuse to entertain it, if it is not so satisfied. (*Sathe, J. M.*) RAJ BAHADUR LAL *v.* BAJRANG BAHADUR. **1942 R.D. 742=1942 A.W.R. (Rev.) 395 (1)=1942 O.W.N. (B.R.) 614=1942 O.A. (Supp.) 421 (1).**

——**O. 21, R. 15**—*Scope—Joint decree—Execution by one decree holder—Satisfaction of whole decree entered—Subsequent application for execution by the other decree-holder ignoring entering up of satisfaction by one joint decree-holder—Maintainability.*

C. P. CODE (1908), O. 21, R. 16.

Where one of two joint decree holders executes the decree without acting under O. 21, R. 15, C. P. Code, and certifies satisfaction of the decree, the other decree-holder is not bound by the acts of his joint decree-holder and would be entitled to recover the amount due to him for his interest in the decree unless his application for execution is barred by limitation. But if the other decree-holder subsequently applies for permission to execute the decree under O. 21, R. 15, C. P. Code, on behalf of himself and the other decree-holder deliberately ignoring the fact that his joint decree-holder has already entered satisfaction, his application cannot be allowed. He can only execute for his share after the other decree-holder has already executed and obtained satisfaction. (*Fazl Ali, J.*) ADIKANDA PANIGRAHI *v.* NARAYANASWAMI. **8 Cut L.T. 86.**

——**O. 21, R. 16**—*Decree assigned to defendant's son benami for defendant—If adjustment of decree.*

Merely because the assignee of a decree is the son of the defendant and is benamidar for the defendant, the assignment cannot be said to be an adjustment of the decree. (*Weston, J.*) ISSO *v.* RATTAN CHAND. **I.L.R.(1942) Kar. 168=202 I.C. 296=15 R.S. 30=A.I.R. 1942 Sind 83.**

——**O. 21, R. 16**—"Operation of law"—Meaning of—Mortgage decree—Decree-holder adjudged insolvent by foreign Court—Receiver appointed by foreign Court—Right to execute decree without assignment in writing. *See* 1941 Dig., Col. 301. HARILAL PANNALAL *v.* VISHNU RAMCHANDRA. **I.L.R. (1941) Bom. 635=198 I.C. 27=14 R.B. 261.**

——**O. 21, R. 16**—*Scope—Benami decree-holder—Death of—Right of real owner to apply for execution—Question of title—If can be gone into—S. 47.*

Where a decree is held by one person as a benamidar for another, and the holder dies, the true owner can apply for execution, and if his title is disputed, the question can be decided in those proceedings. (*Leach, C. J., King and Lakshman Rao, JJ.*) BALASUBRAMANIAM CHETTY *v.* KOTHANDARAMA SWAMI NAYANIM VARU. **55 L.W. 623=1942 M.W.N. 657=A.I.R. 1942 Mad. 688=(1942) 2 M.L.J. 463 (F.B.).**

——**O. 21, R. 16**—*Scope and object of—Notice under—Contents—Notice issued under O. 21, R. 22 containing particulars required by R. 16—Sufficiency—Omission of judgment-debtor to raise objection to assignment on ground of invalidity or non-proof or inadmissibility of assignment deed—Effect*—Res judicata.

The purpose of giving a notice to the judgment-debtor under O. 21, R. 16, C. P. Code, is to acquaint him with the fact that the darkhast purports to execute the decree on behalf of the assignee from the judgment-creditor and to ask him to show cause why the assignee should not be allowed to execute the decree. Where on a darkhast filed by the decree-holder and the assignee jointly, a notice was issued to the judgment-debtor, purporting to be one under O. 21, R. 22, and the notice stated that the assignee had filed a darkhast on the ground that he had purchased the decree in writing from the decree-holder and asked the judgment debtor to show cause why the transferee should not be allowed to execute the decree along with the judgment-debtor, it must be held, that the notice is a good and sufficient notice both under O. 21, R. 16 and O. 21, R. 22. If the judgment-debtor does not raise any objection then to execution of the decree on the ground that the assignment should not be recognised, or that the assignment deed has not been produced in Court, or proved or that it is unregistered and hence inadmissible, and allows execution to proceed, he cannot afterwards in a subse-

C. P. CODE (1908), O. 21, R. 16.

quent darkhast raise these objections. The omission on his part to raise the objections would debar the judgment-debtor on the principle of constructive *res judicata*, from raising or urging the same, in a subsequent darkhast. (*Divatia, J.*) SUNDARABAI BALAPPANAIK *v.* GURUSHIDDAPPA GURUBASAPPA. **I.L.R. (1942) Bom. 190 = 200 I C 440 = 15 R.B. 4 = 44 Bom L.R. 164 = A.I.R. 1942 Bom. 134.**

——**O. 21, R. 16**—Scope of—Relief open to assignee of decree. *See* 1941 Dig., Col. 301. AJODHIYA NATH SETH, *In re*. **198 I.C. 706 = 14 R O. 429.**

——**O. 21, R. 16, Second proviso**—Scope—Decree—Assignment—Agreement between assignee and one of several judgment-debtors that execution should be taken only as against other judgment-debtors—If can be pleaded or set up. *See* 1941 Dig., Col. 301. NAINA MAHOMED ROWTHER *v.* PERIAPPA ROWTHER. **200 I C. 34 = 14 R.M. 672 = (1941) 2 M.L.J. 167.**

——**O. 21, R. 17 (Patna)**—*Application not mentioning principal amount of decree in Col. (g)—Defect not noticed by Court—Correction subsequently made by decree-holder—If deemed to have been made on date of application.*

O. 21, R. 17, C. P. Code, enjoins upon the Court the duty of ascertaining whether the requirements of Rr. 11 to 14 have been complied with, and, as amended by the Patna High Court, the rule further requires the Court to allow the defect, if any, to be remedied then and there or within a time to be fixed by it. Where the Court does not carry out the duties imposed upon it by this rule and fails to discover the fact that the principal amount of the decree has not been entered in Col. (*g*) of the execution petition, the fault of the Court in this respect should not be permitted to penalise the decree-holder. A subsequent application by him to amend the petition should be viewed as an intimation to the Court by him that the Court has inadvertently omitted to notice the defect in the petition and to give the decree-holder an opportunity of remedying it in proper time and, according to the provisions of para. (2) of R. 17, the date on which the correction is made must be deemed to be the date on which the petition for execution was first presented. (*Agarwala, J.*) BEDNARAIN SINGH *v.* BHUNESHWARI KUER. **8 B.R. 398 = 198 I.C. 311 = 14 R.P. 452 = A.I.R. 1942 Pat. 295.**

——**O. 21, R. 18**—*Execution of cross-decree stayed temporarily—Set-off, if can be allowed.*

A set-off cannot be allowed under O. 21, R. 18, C. P. Code, when the execution of one of the cross decrees has been stayed temporarily and it is not therefore capable of execution. (*Harries, C.J. and Manohar Lal, J.*) SIDHESHWAR PRASAD SINGH *v.* SONU LAL. **197 I.C 440 = 14 R.P. 300 = 22 Pat L T. 1031 = 8 B.R. 207 = A I R. 1942 Pat. 197.**

——**O. 21. R. 19**—Scope and applicability of—Claim to set off amount due jointly to a party and another—If can be allowed. *See* 1941 Dig., Col. 303. MAHOMED ABDULLAH *v.* KUNJ BEHARI LAL. **197 I.C. 407 = 14 R O. 312 = A.I.R. 1942 Oudh 177.**

——**O. 21, R 19**—*Scope and effect of—Decree for specific performance—Plaintiff to deposit certain amount and to get his costs from defendant—Extent to which creditor of defendant can attach amount deposited by plaintiff—Plaintiff's right to priority in respect of his costs.*

O. 21, R. 19, C. P. Code, provides that when two parties to a decree are given a right to recover sums of money under the decree against each other and the sums are unequal, then execution can only be taken out by the party who has to receive the larger amount and only in respect of the balance left after setting off the

C. P. CODE (1908), O. 21, R. 46.

smaller sum against the larger. It has the effect of extinguishing the smaller debt the moment the decree is passed which in turn has the effect of leaving only the balance available for attachment by any other person. Where in a decree for specific performance the plaintiff was directed to deposit Rs. 825 in Court and the defendant was directed to pay Rs. 473 to plaintiff for his costs and the plaintiff deposited the Rs. 825 it was held that a creditor of the defendant could attach that amount only to the extent of Rs. 825 minus Rs. 473 due to plaintiff for his costs for which he has a priority. (*Bose, J.*) GADIPANT GANUJI KUMBI *v.* PRATAP CHOTELAL. **1942 N.L.J. 346.**

——**O. 21. R. 22**—Decree for rent—No notice issued to legal representatives of deceased judgment-debtor—Execution sale—If void or voidable. *See* C. P. CODE, S. 50 AND O. 21, R. 22. **46 C.W.N. 631.**

——**O. 21, R. 22**—Scope—Non-compliance—Effect on sale. *See* 1941 Dig., Col. 303. OFFICIAL RECEIVER, NELLORE *v.* VENKIAH. **198 I.C. 417 = 14 R.M. 435 = (1941) 1 M.L.J. 569.**

——**O. 21, Rr. 35 and 36**—Symbolical possession—Effect of—If interrupts adverse possession of judgment-debtor—Transferee pending suit—If bound by such possession—Rule of *lis pendens*. *See* 1941 Dig., Col. 304. MAHOMED SAADAT ALI KHAN *v.* PUNJAB NATIONAL BANK, LTD., LAHORE. **199 I.C. 653 = 14 R.L. 408.**

——**O. 21, R. 41**—*Procedure for examination—Chamber summons—If essential—Notice to party against whom order is sought—Necessity.*

It is not necessary to take out a chamber summons in order to apply to the judge in chamber under O. 21, R. 41, for the oral examination of the judgment-debtor or any other person. But except in very exceptional circumstances the Court should never make an order without in the first instance giving a notice to the party against whom the order is sought. (*Chagla, J.*) BACHUBAI *v.* RAGHUNATH. **I.L.R. (1942) Bom. 128 = 199 I C 692 = 14 R.B. 375 = 44 Bom.L.R. 108 = A. I.R. 1942 Bom. 100.**

——**O. 21, R. 43 and Penal Code, Ss. 114 and 353**—Roving commission for seizure of property—Legality—Resistance—If an offence under S. 353 read with S. 114, I. P. Code. *See* 1941 Dig., Col. 304. HARI PRASAD *v.* BAILIFF, SMALL CAUSE COURT, RANGOON. **197 I.C. 886 = 14 R.R. 185 = 43 Cr. L. J. 292.**

——**O. 21, Rr. 46, 51**—*Cheque in favour of judgment-debtor—Attachment—Proper procedure—Prohibitory order on drawee Bank—If effective.*

A cheque being a negotiable instrument unless and until the money is paid to the payee the amount of the cheque cannot be considered to be his property. Hence the amount of a cheque in favour of a judgment-debtor not being money belonging to the judgment-debtor does not fall within the category of property declared to be liable to attachment in execution of a decree by S. 60 (1), C.P. Code. The attachment of a negotiable instrument according to R. 51 of O. 21 is by actual seizure of the instrument and bringing it into Court and holding it subject to further orders and not by issuing a prohibitory order on the drawee bank. (*Mya Bu, J.*) RAJARAM *v.* RESERVE BANK OF INDIA. **1941 Rang.L.R. 759 = A I.R. 1942 Rang. 59.**

——**O 21, R. 46**—*Debt attached before judgment—Garnishee not objecting—Adverse inference—If justified.*

Where a debt was attached before judgment from the garnishee the fact that the garnishee did not object to the attachment before judgment is as much evidence of his good faith as anything else, but that is no reason

C. P. CODE (1908), O. 21, R. 46.

why thereafter an advantage irregularly obtained should be unduly pressed against him (*Davies, C. J. and Weston, J.*) BEHARILAL TEKCHAND *v.* RAMGOPAL I.L.R. (1942) Kar. 173=202 I.C. 329=15 R.S. 31 =A.I.R. 1942 Sind 87.

——"O. 21, R. 46—"Debt"—Sale deed—Vendee retaining sale price for discharge of debts due by vendor —Vendor undertaking to pay off other debts but failing to do so—Attachment of unpaid purchase money in vendee's hands—Permissibility. *See* C. P. CODE, O. 21, RR. 58 TO 63. 55 L.W. 403=(1942) 2 M.L.J. 94.

——O. 21, R. 46 and S. 64—Effect of attachment under O. 21, R. 64—Proceedings for liquidation of debt after attachment—Competency—Rights of attaching creditor decree holder purchaser, if affected. *See* 1941 Dig., Col. 305. BHURA *v.* SADDILAL. I.L.R. (1942) Nag. 691=198 I.C. 665=14 R.N. 238=A.I.R. 1942 Nag. 36.

——O. 21, R. 46—Garnishee order—Court's order to pay—If necessary ingredient. *See* 1941 Dig., Col. 305. ANIL CHUNDER MITRA *v.* INDIAN ECONOMIC INSURANCE CO., LTD. 197 I.C. 437=14 R.C. 362.

——O. 21, R. 46—Garnishee—Parties knowing appointment of receiver to receive payment not informing Court and getting order passed by settlement—Payment by garnishee—If discharges him. *See* 1941 Dig., Col. 305. ANIL CHUNDER MITRA *v.* INDIAN ECONOMIC INSURANCE CO., LTD. 197 I.C. 437=14 R.C. 362.

——O. 21, Rr. 46 and 79—*Sale of usufructuary mortgage-debt in execution—Manner of delivery.*

A usufructuary mortgage is a debt within the meaning of O. 21, R. 46. When such a debt is sold delivery of it is made in the manner prescribed by O. 21, R. 79 by the issue of written order prohibiting the creditor from receiving the debt and the debtor from making payment thereof. Delivery cannot be made by putting the auction purchaser into possession of immovable property. (*Almond, J.C.*) DEVI DAS *v.* NATHU RAM. A.I.R. 1942 Pesh. 66.

——O. 21, R. 46—*Scope—Exact amount of debt—If to be specified.*

It is not necessary under O. 21, R. 46 for the purpose of attaching a debt that the exact amount should be ascertained or stated, but before the attached debt can be made the subject of execution, it must be ascertained. Moreover, where the debt is attached before judgment under O. 38, R. 5 (2), C. P. Code, at least the approximate value of the debt should be ascertained and specified. (*Davis, C.J. and Westop, J.*) BEHARILAL TEKCHAND *v.* RAMGOPAL. I.L.R. (1942) Kar. 173 =202 I.C. 329=15 R.S. 31=A.I.R. 1942 Sind 87.

——O. 21, R. 46—Unpaid purchase money left with vendee for payment to vendor's creditors—Attachment by vendor's decree-holder—*Locus standi* of such creditors to object. *See* C. P. CODE, S. 60 AND O. 21, R. 46. 44 P.L.R. 415 (F.B.).

——O. 21, R. 46 (2)—*Scope—Non-compliance—Effect on attachment.*

In order to make an effective attachment all the directions in O. 21, R. 46 appropriate to the particular attachment must be complied with. In the case of an attachment of a debt failure to affix the order under O. 21, R. 46 (1) to some conspicuous part of the Court house as required by O. 21, R. 46 (2) renders the attachment invalid. (*Weston and Tyabji, JJ.*) DECCAN CO-OPERATIVE BANK, LTD. *v.* PARSRAM TOLARAM. I.L.R. (1942) Kar. 203=202 I.C. 183=15 R.S. 25=A.I.R. 1942 Sind 96.

——O. 21, R. 46 (3)—*Scope—Attachment—Effect of—Order for payment—Failure of garnishee to pay*

C. P. CODE (1908), O. 21, R. 46-A.

money in Court—Remedy of decree-holder—Garnishee becoming insolvent before application for order under O. 21, R. 63-B—Effect—Right to preferential payment to levy execution against receiver or liquidator in insolvency.

Under O. 21, R. 46 (3), C. P. Code, the debtor of the judgment debtor is given the option to pay the amount into Court. There is nothing in the rule which authorises the Court to pass an order by which the garnishee can be compelled to deposit the amount of his debt in Court. What is attached is not the property of the garnishee but the money due by the garnishee to the judgment-debtor; and the effect of the attachment is only to prohibit the garnishee from making payment to the judgment-debtor. It does not confer on the decree-holder any higher right that the judgment-debtor himself had against the garnishee. If the garnishee does not pay the amount of the debt in accordance with O. 21, R. 46 (3) as ordered by the Court, the decree-holder may adopt the procedure laid down in Rr. 63 A and 63-B, inserted by the Patna High Court, to O. 21, C. P. Code. If no order is passed under R. 63-B, and the garnishee a bank, goes into liquidation, and the decree holder applies for the first time for an order under R. 63-B, after the bank goes into liquidation there is no valid order by which the garnishee-bank can be compelled to deposit the attached money in Court. In spite of orders by the Court to pay the debt in Court under O. 21, R. 46 (3), the position of the attaching decree-holder is still that of an unsecured creditor, as the attachment by itself gives no preferential right, and he cannot claim privity or proceed to levy execution against the liquidator. If he wishes to pursue his remedy he must proceed under the Companies Act and not under the C. P. Code and his rights would be controlled by S. 229 of the Companies Act. (*Chatterji and Shearer, JJ.*) KAMESHWAR SINGH *v.* KULESHWAR SINGH. 21 Pat. 287=202 I.C. 533=15 R.P. 124=9 B.R. 14= A.I.R. 1942 Pat. 508.

——O. 21, Rr. 46-A and 46-B (Sind)—*Scope—Application for notice under R. 46-A—Procedure to be followed.*

On an application for a notice under R. 46-A, the Court should require the decree-holder either to specify the debts or apply under O. 21, R. 41 for an examination of the judgment-debtor. R. 46-B is complementary to R. 46-A, and the order under R. 46-B must follow, so far as the debt is concerned, the terms of R. 46-A and must be capable of execution. An order to sell an unspecified or unascertained debt is not capable of execution. The debt must, therefore, at some stage of the proceedings be specified or ascertained, and it must be specified or ascertained independently of whether the garnishee should or should not appear and show cause. A debt, the amount of which is not specified or ascertained, may be made the subject of a valid attachment, but it cannot be made the subject of a valid execution in the terms of R. 46-B. In short, the notice under R. 46-A should, so far as the amount of the debt is concerned, be in such terms that an order pursuant to it made under R. 46-B must be capable of execution. A Court which directs execution to issue against a debt, which or the value of which, is not specified, wrongly exercises the power which R. 46-B confers. The fact that at some stage after notice under R. 46-A the decree-holder in the absence of the garnishees, by an application specified the amount of the debt does not make good the defects in the notices under R. 46-A, which did not give even the approximate value of the debts, and which were based upon applications not supported by affidavits as required by R. 46-B. (*Davis, C.J. and Weston, J.*) BEHARIL

C. P. CODE (1908), O. 21, R. 46-A.

TEKCHAND *v.* RAMGOPAL. **I.L.R. (1942) Kar. 173 = 202 I.C. 329 = 15 R.S. 31 = A.I.R. 1942 Sind 87.**

——**O. 21, R. 46 A**—*Scope—Notice under—Failure to show cause—Effect—Subsequent application under O. 21, R. 58—Maintainability.*

The failure on the part of a garnishee to show cause in response to a notice issued to him under O. 21, R. 46-A, C. P. Code, debars him from filing a subsequent application under O. 21, R. 58, C. P. Code. (*Weston, J.*) TAHILRAM *v.* G. VALANI BROS. **I.L.R. (1942) Kar. 153 = A.I.R. 1943 Sind 23.**

——**O. 21, R. 48**—Scope—If subject to S. 60 (*i*)—Attachment of salary exempt from attachment—Legality—Waiver of exemption by judgment-debtor—Effect—Right of disbursing officer to object—Agreement by judgment-debtor to deduct part of unattachable salary—If opposed to S. 23, Contract Act and S. 6 (*f*), T. P. Act—Public policy—C. P. Code, O. 21, R. 58. *See* 1941 Dig., Col. 307. POSTMASTER-GENERAL, BOMBAY *v.* CHENMAL MAYA CHAND. **197 I.C. 462 = 14 R.B. 222.**

——**O. 21, R. 49 (2)**—Rights of judgment-creditor of partner who has overdrawn—Priority of partners to reimbursement—Appointment of receiver — Effect. *See* 1940 Dig., Col. 293. PANMAL *v.* DHANALAL. **I.L.R. (1942) Nag. 248.**

——**O. 21, R. 50 and O. 30, R. 10**—Applicability—Joint Hindu family firm. *See* 1941 Dig., Col. 307. ALEKH CHANDRA *v.* KRISNHA CHANDRA GAJAPATI NARAYAN DEO. **197 I.C. 730 = 8 B.R. 280 = 14 R.P. 345.**

——**O. 21, R. 50 (1) (c) and (2)**—*Effect of—Partners served in suit against firm—Right of to contest liability subsequently.*

O. 21, R. 50 (1) fixes, by reason of cl. (*c*) personal liability on partners who have been served in a suit against the firm. The served partners are debarred from subsequently contesting their liability as partners. They will not come under the provisions of O. 21, R. 50 (2) where the liability of a person alleged to be a partner may be disputed. (*Davis, C.J. and Weston, J.*) RADHAKISHIN NATHURAM *v.* HARBHAGWAN & CO. **I.L.R. (1942) Kar. 218 = 203 I.C. 357 = A.I.R. 1942 Sind 97.**

——**O. 21, R. 50 (2)**—*Award against Hindu joint family business—Executability against member of joint family.*

An award against a Hindu joint family business carried on under a particular name is incapable of execution as a decree, and even if it is executable, it cannot be executed against a member of the joint family by invoking the aid of O. 21, R. 50, C. P. Code, which applies only to a decree passed against a contractual firm. The question whether the award is against a contractual firm or a joint family business cannot be set down for hearing as an issue in a suit under O. 21, R. 50 (2). (*Sen, J.*) MOTI LAL CHHAJU LAL *v.* GIRIDHARI LAL. **I.L.R. (1942) 1 Cal. 161 = 203 I.C. 576 = A.I.R. 1942 Cal. 613.**

——**O. 21, R. 50 (2) and (3)**—Construction—Proceedings under—If suit or proceedings in suit—Presidency Small Cause Court—Application for new trial against order in such proceedings—Jurisdiction of full Court to entertain. *See* PRESIDENCY SMALL CAUSE COURTS ACT, S. 38. **44 Bom.L.R. 120.**

——**O 21, R. 50 (2)**—*Jurisdiction—Scope of inquiry under—Question arising under—Jurisdiction of executing Court to decide.*

O. 21, R. 50 (2), C. P. Code, contemplates what is in effect the trial of a suit in which the person against whom execution is sought may contest not only his own

C. P. CODE (1908), O. 21, R. 58.

liability as a partner of the judgment-debtor firm but the plaintiff's claim upon its merits. The adjudication of questions of this kind is limited to the Court which passed the decree and the Court to which the decree has been sent for execution has no jurisdiction to decide them. (*King, J.*) POTTISWAMI *v.* SULAIMAN. **I.L.R. (1942) Mad. 688 = 202 I.C. 139 = 15 R.M. 449 = 55 L.W. 175 = 1942 M.W.N. 245 = A.I.R. 1942 Mad. 501 (2) = (1942) 1 M.L.J. 377.**

——**O. 21, R. 50 (2) and (3)**—*Proceedings under—Nature of—'Suit' in Presidency Small Cause Courts Act, S. 38.*

Proceedings under O. 21, R. 50 (2) and (3), C. P. Code, are proceedings in a suit as contemplated in S. 38 of the Presidency Small Cause Courts Act, and S. 38 therefore applies to such proceedings. (*Beaumont, C.J.*) RATILAL MANILAL *v.* SAKAR CHAND SHAH & CO. **44 Bom.L.R. 124.**

——**O. 21, R. 52**—Applicability—Immovable property—If excluded. *See* 1941 Dig., Col. 308. CENTRAL BANK OF INDIA, LTD. *v.* PRABHAKAR ANANDRAO. **198 I.C. 285 = 14 R.B. 288 = A.I.R. 1942 Bom. 53.**

——**O. 21, R. 52**—Scope—If permissive—Right of decree-holder to proceed under R. 54 merely after obtaining leave under R. 52. *See* 1941 Dig., Col. 308. CENTRAL BANK OF INDIA, LTD. *v.* PRABHAKAR ANANDRAO. **198 I.C. 285 = 14 R.B. 288 = A.I.R. 1942 Bom 53.**

——**O. 21, R. 53**—Adjustment of decree—Compromise presented to appellate Court. *See* 1941 Dig., Col. 308. SHANTI LAL *v.* HIRA LAL SHEO NARAIN. **I.L.R. (1942) Lah. 603 = 198 I.C. 726 = 14 R.L. 351.**

——**O. 21, R. 57**—*Applicability—Conditions of.*

O. 21, R. 57, C. P. Code, would apply only if there is a default on the part of the decree-holder or non-prosecution resulting in the dismissal of his darkhast. Where there is nothing on the record to show that the decree-holder failed to do anything which may be regarded as a default on his part and which would justify the inference that the darkhast was dismissed for default, O. 21, R. 57 will not apply especially when the darkhast is seen to have been disposed of on the merits and to have been partially successful, the decree-holder getting his costs as against the judgment-debtor. (*Wadia and Sen, JJ.*) VISHNU BALKRISHNA *v.* SHANKARAPPA GURLINGAPPA. **202 I.C. 392 = 15 R.B. 156 = 44 Bom.L.R. 415 = A.I.R. 1942 Bom. 227.**

——**O. 21, R. 57**—Scope—Application for attachment—Order for attachment—Subsequent dismissal for non-payment of process fee and for non-prosecution—Effect on attachment—Order continuing attachment—Validity—Subsequent alienation by judgment-debtor—If void against decree-holder. *See* 1941 Dig., Col. 309. VIJAYADAS HANUMANTDAS *v.* SHEKARAPPA ANANTAPPA. **I.L.R. (1941) Bom. 652 = 197 I.C. 422 = 14 R.B. 219.**

——**O. 21, Rr. 58 to 63**—*Applicability—"Debt"—Obligation in existence under sale deed—Debtor claiming right to defer payment until the happening of particular event—Attachability of debt—Executing Court raising attachment—Suit by decree-holder—Competency—T. P. Act, S. 55 (5) (b)—Right of vendee under.*

O. 21, Rr. 58 to 63, C. P. Code, would apply where the "existence of the debt" is admitted by the garnishee, the expression "existence of the debt" being interpreted to mean "existence of facts from a consideration of which it follows in law that the garnishee is indebted". Where the garnishee in essence claims that he was entitled not to refuse payment altogether but only to defer it, his debt is attachable, and if the executing

C. P. CODE (1908), O. 21, R. 58.

Court raises the attachment on a denial of liability by the garnishee, the decree-holder is entitled to bring a suit under O. 21, R. 63, C. P. Code. Defendants 2 to 4 sold certain properties to 1st defendant in December, 1929. Under the terms of the sale deed the consideration of Rs. 2050 was retained in the hands of the 1st defendant for discharging two debts due to the plaintiff, one on a 1st mortgage and the other on a promissory note. The property sold was also subject to two subsequent mortgages which the vendors themselves undertook to discharge. The 1st defendant did not discharge the debt due to the plaintiff under the promissory note and the plaintiff therefore sued in 19 1 on it and got a decree against defendants 2 to 4. In execution he attached the debt which he alleged to be due from the 1st defendant to defendants 2 to 4 as unpaid purchase money. The 1st defendant denied his liability to pay the amount until the vendors had cleared off the subsequent mortgages. The executing Court accepted this plea and raised the attachment on 1—8—1935. The plaintiff thereupon brought a suit under O. 21, R. 63, impleading all the 4 defendants,

Held, (1) that the suit was maintainable, since 1st defendant admitted that he had purchased the property and had not paid for it and in essence only claimed a right to defer payment; (2) that a vendee charged with the obligation of paying off an encumbrancer to a certain extent might defer doing so until the vendor was prepared to contribute the remainder of the sum due to pay him off completely; and the 1st defendant in 1935 was therefore not compelled to pay anything to the subsequent mortgagees unless defendants 2 to 4 joined with him in paying them off and the defendants 2 to 4 had no legal claim in 1935 upon 1st defendant for the amount of the purchase money : (3) that a debt not immediately payable might nevertheless be attachable if it be an obligation already in existence; (4) that the obligation to pay for the property purchased sprang into being by virtue of the very transaction of sale itself in 1929, and although the vendee had a right under S. 55 (5) (*b*), T. P. Act to postpone the discharge of that obligation, the obligation was a debt attachable in 1935. (*King. J.*) VEERABHADRAYYA *v.* SUBBARAYUDU. **55 L.W. 403=1942 M.W.N. 507=A.I.R. 1942 Mad. 650=(1942) 2 M.L.J. 94.**

——**O. 21, R. 58**—*Applicability—Property in possession of usufructuary mortgagee—Attachment in execution of money decree against mortgagor—Objection by mortgagee—Competency.*

A usufructuary mortgagee is not entitled to object under O. 21, R. 58, C. P. Code to the attachment of the property mortgaged to him, in execution of a money decree against the mortgagor, his rights under the mortgage cannot be affected by the attachment which will be confined to the mortgagor's interest in the attached property. (*Agarwala J.*) SHEO NARAIN PRASAD *v.* JAWAHIR LAL. **199 I C 312=14 R.P. 568=8 B.R, 536=23 Pat.L T. 135=A I.R. 1942 Pat. 293.**

——**O. 21, Rr. 58 and 63**—*Applicability—Property subject to mortgage with possession—Attachment in execution of money decree—Claim by mortgagee—Sustainability—Decree-holder contesting validity of mortgage—Order rejecting claim—Suit by mortgagee—Plea by decree holder that attachment was only of equity of redemption and suit is not maintainable—Estoppel.*

Where in execution of a decree for money the decree holder attaches property usufructuarily mortgaged by the judgment-debtor and not merely the equity of redemption in such property, the usufructuary mortgagee

C. P. CODE (1908), O. 21, R. 63.

is entitled to object to the attachment and apply under O. 21 R. 58, C. P. Code, for cancellation of the attachment or for the limiting of the attachment to the equity of redemption only. Where in such an application the decree holder challenges the mortgage and invites a decision on the merits, it is not afterwards open to him in a suit by the mortgagee under O. 21, R. 63, C. P. Code, to challenge the claim order adverse to him to contend that the attachment was only of the equity of redemption and that therefore the suit is not maintainable. (*Meredith and Shearer, JJ.*) MT. ANRAJO KUER *v.* RAMDEYAL SINGH. **21 Pat. 300=200 I.C. 557=15 R.P. 2=8 B.R. 713=A.I R. 1942 Pat. 406.**

——**O. 21, R. 58**—Claim—Competency—Failure to show cause on notice under O. 21, R. 46-A—Effect—If bars claim. *See* C. P. CODE, O. 21, R. 46-A. **I.L.R. (1942) Kar. 153.**

——**O. 21, Rr. 58 and 90**—Third party objecting to sale of his property for debt of another—Proper remedy. *See* 1941 Dig., Col. 310. JAGAT NARAYAN SINGH *v.* KHARTAR SAH. **I.L.R. (1941) Kar (P.C.) 88=1942 M.W.N. 328=(1941) 2 M.L.J. 227 (P.C.).**

——**O. 21, Rr. 58 and 100**—Scope of—Third party—Party not dispossessed—Failure to object to execution proceedings—If barred from claiming title, in Land Registration proceedings. *See* LAND REGISTRATION—TITLE. **8 B.R. 835.**

——**O 21, R 63**—*Applicability.*

O. 21, R. 63, C. P. Code, can apply only where an objection which could be made under O. 21, R. 58 is made and disallowed. But if a person is not entitled to apply under O. 21, R. 58 he is not bound to bring a suit under O. 21, R. 63. (*Thomas, C.J., Agarwal and Madeley, JJ.*) SHEORAJ SINGH *v.* GAJODAR PRASAD. **203 I.C. 131=15 R.O. 162=1942 A.W R. (C.C) 318 (2)=1942 O.W N. 607=1942 O.A. 404=A.I.R. 1942 Oudh 465 (F.B.).**

——**O. 21, R. 63**—*Applicability—Claim to attached property preferred before sale—Order after sale dismissing same as not tenable after sale—If against claimant—Suit within one year—If necessary—Limitation Act, Art. 11.*

The dismissal of a claim petition preferred under O. 21, R. 58, C. P. Code, on the ground that it was not tenable after the execution sale had taken place, is not an order falling under O. 21, R. 63, C. P. Code, and the failure to file a suit within one year as provided by Art. 11 of the Limitation Act, would not debar the claimant from setting up his rights afterwards. Where an order is passed either on the merits or on the acquiescence of the applicant or claimant, before the sale takes place, it is an order falling under R 63 of O. 21. But where, in the case of a claim presented before the sale, an order is passed after the sale has been held and proceeds on the ground that the application is not tenable because the attachment has come to an end or that the claim cannot be adjudicated upon after the sale, R. 63, of O. 21 can have no application. An order, to fall under R. 63, must relate to the merits of the claim and must not be passed on the preliminary ground that the Court cannot enquire into the merits of the claim. (*Divatia, J.*) NINGAUDA GIRI MALLAPPA *v.* NABISAHIB ABALAL. **I.L.R. (1942) Bom 636=202 I C 416=15 R.B. 163=44 Bom.L.R. 543=A.I.R. 1942 Bom. 263.**

——**O. 21, R. 63**—*Applicability—Execution transferred to Collector—Collector or Mamlatdar ordering sale—If "Court"—Application to Collector to make sale subject to mortgage—Rejection—If against applicant—*

C. P. CODE (1908), O. 21, R. 63.

Suit within one year—If necessary—Limitation Act, Art. 11.

Where a proceeding for execution is sent to the Collector, the Collector or a Mamlatdar executing the decree is not a Court and hence O. 21, Rr. 58 and 63, C. P. Code, will not apply, and R. 63 of O. 21, C.P. Code, cannot therefore be invoked so as to make the rder passed by the Collector or Mamlatdar final. Though the Collector or Mamlatdar may be said to act under the Code when exercising the powers conferred by the Code, he has no power to consider objections to an attachment. Where a person applies to the Collector and Mamlatdar to make a sale subject to a mortgage in his favour and that application is dismissed by the Collector or Mamlatdar without investigation, the order is not one against the applicant under R. 63 of O. 21, C.P. Code, or within the meaning of Art. 11 of the Limitation Act. The applicant is not therefore bound to bring a suit under O. 21, R. 63, C.P. Code, within one year of the order as prescribed by Art. 11, Limitation Act. (*Broomfield and Macklin, JJ.*) GANESH RAM CHANDRA *v.* GOPAL LAKSHMAN. **44 Bom.L.R. 819 = A.I.R. 1943 Bom. 12.**

——O. 21, R. 63—Claim petition objecting to attachment 'not pressed and dismissed'—Subsequent suit for declaration—Limitation. *See* 1941 Dig., Col. 310. CANNANORE BANK LTD. *v.* MADHAVI. **I.L.R. (1942) Mad. 336 = 198 I.C. 197 = 14 R.M. 407 = A.I.R. 1942 Mad. 41 = (1941) 2 M.L.J. 956 (F.B.).**

——O. 21, R. 63—*Decision of executing Court—How far conclusive.*

The effect of O. 21, R. 63, C. P. Code, is to render a summary decision of an executing Court conclusive only for the purposes of the proceedings in connection with which it is given and not for all purposes. There is no valid reason for holding that this interpretation should be applied only so far as the interests of an outside claimant are concerned and should not be applied to a decree holder. (*Tek Chand and Beckett, JJ.*) UDHO DAS *v.* KHAIR MAHOMED. **201 I.C. 647 = 15 R.L. 62 = 44 P.L.R. 258 = A.I.R. 1942 Lah 192.**

——O. 21, R. 63—Effect of order—If conclusive against judgment-debtor. *See* 1941 Dig., Col. 310. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal. 169 = 200 I.C. 216 = 14 R.C. 685 = 46 C.W.N. 245 = A.I.R. 1942 Cal. 92.**

——O. 21, R. 63—*Onus of proof,*

In a suit to set aside the decision of an executing Court under O. 21, R. 63, C. P. Code, it is for the plaintiff to prove his title; and if it is found that there is no conclusive evidence on the question of title the plaintiff's suit must fail. (*Tek Chand and Beckett, JJ.*) UDHO DAS *v.* KHAIR MAHOMED. **201 I.C. 647 = 15 R.L. 62 = 44 P.L.R. 258 = A.I.R. 1942 Lah. 192.**

——O. 21, R. 63—*Order "against" party—Order dismissing claim for default—If to be made subject of suit within one year—Limitation Act, Art. 11.*

An order dismissing a claim for default is an order against the claimant within the meaning of O. 21, R. 63, C. P. Code, so as to form a proper foundation for a suit under the rule. The fact of the claim being dismissed for default and not on contest makes no difference whatever. (*Rowland, J.*) BADRI DAS *v.* CHOWDHURY MANGARAJ DAS. **8 Cut. L.T. 93.**

——O. 21, R. 63—Parties to suit—Suit by attaching decree-holder—Judgment-debtor, if necessary party. *See* 1941 Dig., Col. 311. RADHARANI DASSI *v.* BINODAMOYEE DASSI. **I.L.R. (1942) 1 Cal. 169 = 200 I.C. 216 = 14 R.C. 685 = 46 C.W.N. 245 = A.I.R. 1942 Cal. 92.**

C. P. CODE (1908), O. 21, R. 63.

——O. 21, R. 63—Revision—Erroneous claim order—Remedy—Revision application—Competency. *See* C. P. CODE S. 115. **I.L.R. (1942) Kar. 160.**

——O. 21, R. 63—*Scope and form of relief contemplated by—Suit by mortgagees on dismissal of claim—Express declaration of mortgagor's title—If can and should be asked.*

O. 21, R. 63, C. P. Code, does not lay down any specific form of the relief that a person whose claim or objection is dismissed is entitled to claim. All that it requires is that he should institute a suit to establish the right which he claims to the property in dispute. It does not contemplate that there should be a suit for declaration simpliciter. The words 'to establish his right to the property' in the rule are wide enough to cover a suit not only for a declaration but a suit for a declaration and consequential relief. Where in a suit by the mortgagees on the dismissal of their claim in respect of the mortgaged property, they maintained that they had a right to enforce the mortgage against the auction purchaser on the distinct averment that the property comprised in the mortgage was owned by the mortgagor and nobody else but failed to ask for an express declaration of their mortgagor's title to the property, it was held that such an omission was only an error of form and a technical defect which could not and ought not to affect the substance of the claim. It was further held that though ordinarily mortgagees could not raise an issue of title of their mortgagors, in view of the peculiar nature of the suit they could raise it. (*Niyogi, J.*) GANPATI KOSHTI *v.* YADAO. **I.L.R. (1942) Nag. 166 = 199 I.C. 564 = 14 R.N. 293 = 1942 N.L.J. 76 = A.I.R. 1942 Nag. 61.**

——O. 21, R. 63—*Scope—Decree against father and son—Execution—Attachment of properties—Father's insolvency—Claim by Official Receiver on ground of properties being self acquisitions—Order rejecting on ground of delay—Son not party to order—Order if conclusive against Official Receiver.*

In execution of a decree obtained against a father and his son, certain properties were attached as joint family properties. The father had been adjudicated an insolvent, and the Official Receiver put in a claim petition alleging that the properties were the self acquisitions of the insolvent (father) and that the son had no share in them. This was dismissed on the ground of undue delay. The Official Receiver did not file a suit within one year but sold the property. In a suit by the son claiming partition, the Official Receiver pleaded that the properties were self acquisitions of the insolvent. The son pleaded that the question as to the properties being self-acquisitions was concluded against the Official Receiver by reason of the order on the claim petition, in view of O. 21, R. 63, C. P. Code. It appeared that no notice was served on the son in the claim proceedings, and that the decree holder alone was served.

Held, that since no notice was served on the son at the time when the order on the claim petition was made, he could not be considered to be a party to that order, and therefore the order on the claim petition did not preclude the Official Receiver or the purchaser from him raising the question of the self acquisitions against the son in the suit by the latter. (*Venkataramana Rao and Somayya, JJ.*) RAVANJI *v.* JANAKIRAMAYYA. **55 L.W. 35 = 1942 M.W.N. 338 = A.I.R. 1942 Mad. 330 = (1942) 1 M.L.J. 318.**

——O. 21, R. 63—Scope—If controlled by S. 42, Specific Relief Act. *See* SPECIFIC RELIEF ACT, S. 42. **21 Pat. 300.**

——O. 21, R. 63—*Scope of enquiry—Decree against firm sought to be executed against joint family property of its members—Claim by third party asserting title to that*

C. P. CODE (1908), O. 21, R. 63.

property in himself on basis of purchase allowed—Suit by decree holder against claimant—Latter, if can question executability of decree against joint family.

The words "the right which he claims to the property in dispute" as used in O. 21, R. 63, C. P. Code, refer to the right which the party claims in the execution proceedings. Where a holder of a decree obtained against a firm sought to execute it against a property belonging to the joint family of the members of the firm, and a claim preferred by a third party who asserted a title to the property in himself on the basis of a purchase was allowed, and the decree-holder thereupon filed a suit under O. 21, R. 63, C. P. Code, against the claimant.

Held, that the plaintiff decree-holder was entitled to succeed in the suit, on establishing the right which he claimed to the property in dispute in his execution case and that therefore the only relevant point for decision in the suit was whether the property belonged to the joint family or to the defendant claimant, and that the latter should not be allowed to raise the question whether the decree could be executed against that joint family, particularly when the members themselves did not contest the claim of the plaintiff decree-holder, although he was alleged to be the benamidar of the execution-debtors named in the execution case. (*Akram and Pal, JJ.*) HIRANMOY *v.* PROBAL KUMAR. **46 C.W.N. 289 = A.I.R. 1942 Cal. 338.**

——O. 21, R. 63—Scope—Mandatory character of—Order on claim becoming final—Later decision in separate proceedings—If prevails over former—*Res judicata*—Conflicting decision—Rule. *See* C. P. CODE, S. 11. **55 L.W. 511 = (1942) 2 M.L.J. 315.**

——O. 21, R. 63—*Scope of suit—Suit by decree-holder—If limited to determination of right of particular claimant.*

Where a decree-holder files a suit under O. 21, R. 63, C. P. Code, after a claim petition in respect of the property in suit preferred by the judgment debtor as shebait of a deity was allowed, the scope of his suit is not limited to the determination of the question whether that particular claimant has any right or not. The right which the plaintiff asserts is that the property belonged to the judgment-debtor and was consequently saleable in execution of the decree obtained by him. If it is held by the Court that the property is trust property and does not belong to the judgment-debtor personally, then also the plaintiff's suit must fail. The deity in that event would be regarded as one of the beneficiaries under the trust and it is enough that one of the beneficiaries preferred a claim under O. 21, R. 58 of the Code and disputed the alienability of the property which was attached by the decree-holder. (*Mukherjea and Blank, JJ.*) PURNA CHANDRA CHAKRABARTY *v.* KALIPADA ROY. **201 I.C. 557 = 15 R.C. 234 = 46 C.W.N. 477 = A.I.R. 1942 Cal. 386.**

——O. 21, R. 63—Scope of suit—Validity of decree under execution—Claimant, if can question. *See* 1941 Dig., Col. 311. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. **200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.**

——O. 21, R. 63—Scope—Usufructuary mortgagee—Objection to attachment—Rejection—Suit to set aside order—Maintainability—Plea by decree-holder that suit is not maintainable—Sustainability. *See* C. P. CODE, O. 21, RR. 58 AND 63. **21 Pat. 300.**

——O. 21, R. 63—*Successive attachments—If give rise to fresh causes of action for claim and suit against adverse order.*

A defeated claimant who has instituted a suit under O. 21, R. 63, C. P. Code, is entitled to let his suit be dismissed when the execution petition in which he

C. P. CODE (1908), O. 21, R. 85.

preferred the claim is dismissed, because the property is no longer in danger of being sold, and he can completely ignore the decision against him under O. 21, R. 63. When a fresh attachment is thereafter made, he can institute a fresh claim and a fresh suit on a new cause of action. (*Rowland, J.*) BADRI DAS *v.* CHOWDHURY MANGARAJ DAS. **8 Cut. L.T. 93.**

——O. 21, R. 63—Suit under—Nature and scope of—If in the nature of appeal from order on claim petition proceeding independent of claim. *See* C. P. CODE, S. 144. **1942 M.W.N. 689.**

——O. 21, Rr. 63-A and 63-B, (Patna)—Scope—Debtor of debtor failing to pay under O. 21, R. 46 (3)—Procedure—Failure to apply under O. 21, R. 63 B—Garnishee bank going into liquidation—Subsequent application by decree-holder for order against liquidator of bank—Sufficiency—Right to preferential payment or to levy execution against liquidator. *See* C. P. CODE, O. 21, R. 46 (3). **21 Pat. 287.**

——O. 21, Rr. 64 and 65—*Applicability—Sale by Receiver or Commissioner—If sale by Court—Levy of poundage—Practice—Sind Chief Court Rules.*

A sale made by a private person who was appointed Receiver or Commissioner for the purpose by the Court at the request of the parties is not a sale by the Court. Rr. 64 and 65 of O. 21, C. P. Code, are not applicable to such a sale. No poundage can be levied on the sale proceeds in such a sale as in the case of a Court sale under the Rules of the Court. The levy of poundage is not justified by Item V in the Table of Process Fees under the Rules. (*Weston, J.*) BRIJRATTAN JITMAL *v.* KALLIANJI. **I.L.R. (1942) Kar 196 = 202 I.C. 631 = 15 R.S. 52 = A.I.R. 1942 Snd 112.**

——O. 21, R. 64—Discretion—Valuation of property—Executing Court—If bound to value property and order sale of only part—Judgment-debtor not asking for exercise of discretion—If can raise objection in second appeal. *See* 1941 Dig., Col. 312. BADRI NARAIN SINGH *v.* CHANDER MAULESHWAR PRASAD. **197 I.C. 361 = 8 B.R. 194 = 14 R.P. 296 = A.I.R. 1942 Pat 152**

——O. 21, R. 66 (2) (e)—*Sale proclamation—Contents—Inclusion of estimated value according to both parties—Desirability.*

It is desirable that the sale proclamation shall include the estimate, if any, given by either or both the parties. It would be a reasonable method to enable the purchaser to judge the value of the property. (*Shirreff, S.M. and Sathe, J.M.*) SAJJABI BEGUM *v.* DWARKA DAS. **1942 R.D. 697 = 1942 O.W.N. 569 = 1942 A.W.R. (Rev.) 431 = 1942 O.A. (Supp.) 457.**

——O. 21, Rr. 69 and 90—Sale held on date not specified in sale proclamation and to which it was not adjourned—If nullity. *See* 1941 Dig., Col. 312. ASHA LATA BASU *v.* MANINDRA NATH BASU. **I.L.R. (1941) 2 Cal. 570 = 201 I.C. 150 = 15 R.C. 141 = A.I.R. 1942 Cal. 275.**

——O. 21, R. 69—*Scope—Breach of—Adjournment sale beyond 14 days—Sale—If null and void.*

A breach of the provisions of O. 21, R. 69, C. P. Code, *e.g.*, adjournment of a sale for more than 14 days does not involve any question of jurisdiction of the Court to hold the sale so as to render the sale void and a nullity. (*Faul Ali and Meredith, JJ.*) SHEO DAYAL NARAIN *v.* MOTI KUER. **21 Pat. 281 = 200 I.C. 782 = 15 R.P. 9 = 8 B.R. 720 = 1942 P.W.N. 202 = 23 Pat.L.T. 139 = A.I.R. 1942 Pat. 238.**

——O. 21, Rr. 85 and 86—*Decree-holder purchaser—Right to property sold—Conditions—Non-compliance with—Effect.*

C. P. CODE (1908), O. 21, R. 89.

A decree-holder purchaser is entitled to the property sold at the auction only if he pays the purchase price or if he gives a receipt in full for the decretal amount. Where he does neither he is not entitled to the property and under R. 86 of O. 21, C. P. Code, the Court itself is bound to order re-sale of the property. (*Sathe, J.M.*) KHEDU *v.* KALIKA. **1942 A.W.R. (Rev.) 119=1942 R.D. 274=1942 O.W.N. (B.R.) 208=1942 O.A. (Supp.) 136.**

——**O. 21, R. 89**—*Deposit under—Withdrawal by decree-holder—Suit by depositor for refund—Maintainability.*

A person who makes a deposit under O. 21, R. 89, C. P. Code, after an execution sale, cannot subsequently institute a suit for refund of the amount deposited from the decree-holder who has withdrawn it from Court. (*Agarwala, J.*) NARSINGH MISSIR *v.* BABUI SHAMA KUER. **1942 P.W.N. 172.**

——**O. 21, R. 90**—*Any person entitled to share in rateable distribution—Meaning*—Interim *receiver in insolvency—Right of to apply to set aside sale on behalf of creditors.*

"Any person entitled to share in the rateable distribution of assets" in O. 21, R. 90, C. P. Code, means any of those persons to whom the right to share in the rateable distribution of assets realised in execution is given by S. 73, C. P Code. Creditors proving in insolvency do not come within the category of such persons, and an *interim* receiver in insolvency who represents the creditors is not entitled to apply to set aside an execution sale under O. 21, R. 90, C.P. Code. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) OFFICIAL RECEIVER, RAMNAD *v.* VEERAPPA CHETTIAR. **(1942) M.W.N. 766.**

——**O. 21, R. 90**—Applicability and scope—If exhaustive. *See* 1941 Dig., Col. 315. BHAN KUMAR CHAND *v.* LACHMI KANTA RAI. **8 B.R. 507=199 I.C. 169=14 R.P. 557.**

——**O. 21, R. 90**—Applicability—"Any person whose interests are affected by the sale"—Person claiming by title adverse to and paramount to that of judgment-debtor—Right to apply. *See* 1941 Dig., Col. 315. CHERAPPAN *v.* SANKARA AYYAR. **197 I.C. 419=14 R.M. 361=(1941) 2 M.L.J. 63.**

——**O. 21, R. 90**—Applicability—Application to set aside sale on ground of non-compliance with S. 13, Bihar Mnney-Lenders Act—Limitation. *See* LIMITATION ACT, ART. 166. **23 Pat.L.T. 139.**

——**O. 21, R. 90**—Applicability—Application to set aside sale on ground of want of jurisdiction—If falls under rule—Order—Second appeal. *See* C. P. CODE, S. 47 AND O. 21, R. 90. **22 Pat.L.T. 1018.**

——**O. 21, R. 90**—Failure to apply provisions of Madras Act IV of 1938 before sale under mortgage decree—If material irregularity vitiating sale. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 19. **55 L.W. 812.**

——**O. 21, R. 90**—*Order passed on compromise—Order not in terms thereof—If can be set aside.*

Although an order passed on a compromise in a proceeding under O. 21, R. 90, C. P. Code, is wrong in that it is not exactly in terms thereof, it cannot be set aside except by proper proceeding taken by the parties. (*Rowland and Chatterji, JJ.*) SRI NARYAN SINGH *v.* POSAN SINGH. **199 I.C. 465=14 R.P. 580=23 Pat. L.T. 602=8 B.R. 567=A.I.R. 1942 Pat. 344.**

——**O. 21, R. 90**—"*Person whose interests are affected by the sale*"—Interim *receiver appointed in insolvency after sale but before confirmation thereof*—Locus standi *to apply to set aside sale.*

C P. CODE (1908), O. 21, R. 90.

A person applying to set aside a sale under O. 21, R. 90, C.P. Code, must possess an interest which can be said to have been affected at the date of the sale and not by reason of any subsequent event or act. "Sale" in O. 21, R. 90 refers to the auction sale and not to its confirmation by Court. An *interim* receiver in insolvency appointed after an execution sale but before its confirmation is not a person whose interests are affected by the sale (as representing the creditors) and has therefore no *locus standi* to apply under O. 21, R. 90, C. P. Code. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) OFFICIAL RECEIVER, RAMNAD *v.* VEERAPPA CHETTIAR. **(1942) M W.N. 766.**

——**O. 21, Rr. 90 and 92**—*Right of rightful owner to apply under R. 90—Bar of suit on dismissal of such application.*

The provisions of O. 21, R. 90 are sufficiently wide to permit of an application being made by the rightful owner of the property sold in execution on the allegation that the publication of the sale was materially irregular. It is a material irregularity in the publishing of a sale and one also causing substantial injury if the name of the person with the true title to the property is wrongly given. When such an application is made and dismissed, no suit will lie according to R. 92, O. 21. (*Davies.*) BENI GOPAL *v.* MADARI RAM. **1942 A. M.L.J. 9.**

——**O. 21, Rr. 90 and 92**—*Saleability of property—Objection as to—Judgment-debtor if can raise after sale.*

If property is attached in execution proceedings and if the judgment-debtor has objections to raise on the ground that the property is not liable to attachment or sale he is not entitled to wait until sale has taken place and then have the sale set aside on the ground that the Court has no jurisdiction to sell the property. (*Tek Chand, Bhide and Beckett, JJ.*) GAURI *v.* UDE. **I.L. R. (1942) Lah. 559=203 I.C. 166=44 P.L.R. 302=A.I.R. 1942 Lah. 153 (F.B.).**

——**O. 21, R. 90 (as amended in Madras), Proviso**—*Power of Court—Order for security to be furnished by specified date—Tender of draft security bond—Sufficient notice to respondent—Objection by latter as to adequacy of security offered—Security tested and found inadequate—Dismissal of application for failure to furnish security—If justified—Issue of notice—If amounts to admission of application.*

In an application for setting aside a sale under O. 21 R. 90, C. P. Code, the applicant was ordered to furnish security under the proviso to R. 90, and he was ordered to furnish the security by a certain date. On that date, the applicant tendered a draft security bond and without testing the security or considering its adequacy, the Court ordered notice to the respondent who appeared and took the objection that the property offered as security was not sufficient. The Court thereupon ordered the security to be tested. Since it was found to be wholly inadequate, the Court dismissed the application without considering it on the merits, on the ground that the applicant had failed to furnish security. On appeal from the dismissal the applicant (appellant) contended that by issuing the notice to the respondents the Court had admitted the application and had thereby precluded itself from dismissing it except after consideration on the merits.

Held, that there was no principle of law by which the Court should be deemed to have done what it consciously did not intend to do. The security having been called for before issue of notice to the respondent, the subsequent issue of notice before the security was tested should be deemed to be provisional and in issuing

C. P. CODE (1908), O. 21, R. 91.

the notice in the circumstances, the Court did not intend to deprive itself of its power of deciding whether the security to be eventually furnished was adequate or not, and when it was found to be inadequate the Court was entitled under O. 21, R. 90, as now amended, to dismiss the application without any consideration of the merits. (*King and Happell, JJ.*) VENKATALINGAMA NAYANIM *v.* VENKATA NARASIMHA NAYANIM. **202 I.C. 294=15 R.M. 476=55 L.W. 245=1942 M.W.N. 250=A.I.R. 1942 Mad. 509=(1942) 1 M.L.J. 403.**

——**O. 21, R. 91**—*Scope—Power of Court—Sale—Subsequent loss or deterioration of property before confirmation—If ground for setting aside sale—Inherent powers.*

If there is any loss or deterioration to the property sold in Court auction between the date of sale and the date of its confirmation, such loss or deterioration must be borne by the auction-purchaser. The Court has no jurisdiction to set aside an execution sale either under O. 21, R. 91, C. P. Code, or in exercise of its inherent powers under S. 151, on the ground of loss or deterioration of the property sold between the dates of sale and confirmation. (*Wassoodew, J.*) GORDHANDAS RANCHHODDAS *v.* ISHVARBAI CHHANULAL. **203 I.C. 535 =44 Bom.L.R. 638=A.I.R. 1942 Bom. 306.**

——**O. 21 R. 92**—Order confirming sale without disposing of application under R. 90—Appeal—Revision. *See* C. P. CODE, O 43, R. 1 (*j*). **46 C.W.N. 773.**

——**O. 21, R. 92**—Scope—Sale in execution—Purchase by stranger—Subsequent cancellation of decree in appeal—Power of executing Court to confirm sale. *See* 1941 Dig., Col. 317. AMBUJAMMAL *v.* THANGAVELU CHETTIAR. **199 I.C. 895=14 R.M. 654.**

——**O. 21, R. 92 (3)**—*Bar of suit.*

A suit to set aside an execution sale on the ground of material irregularity is plainly excluded by the provisions of O. 21, R. 92(3), C. P Code. (*Davies.*) GHULAM DASTGIR *v.* VILLAYT HUSSAIN. **1941 A.M.L.J. 81.**

——**O. 21, R. 93**—*Discretion to award interest.*

The executing Court has full discretion under O. 21, R. 93, C. P. Code, to order interest or refrain from doing so. (*King and Happell, JJ.*) MALLIKARJANA RAO *v.* OFFICIAL RECEIVER, KISTNA. **I.L.R. (1942) Mad. 691= 201 I.C. 693=15 R.M. 376=55 L.W. 117=1942 M.W.N. 146=A.I.R. 1942 Mad. 423= (1942) 1 M.L.J. 238.**

——**O. 21, R. 93**—*Scope—Exhaustive character—Power of Court to award interest under S. 151—Inherent powers.*

R. 93 of O. 21, C. P. Code, deals with the whole question of what is to happen to the money which has been deposited by an auction-purchaser when a sale has been set aside, and the fact that R. 93 permits the Court to make a particular order against a party only if that party has received the money is exhaustive and means that no order can be made against him in any other circumstances. S. 151, C. P. Code, cannot be invoked to award interest as against a decree-holder who has not drawn the amount out of Court. (*King, J.*) GANGARAJU *v.* VENKATARAJALU NAIDU. **1942 M.W.N. 676=55 L.W. 811=(1942) 2 M.L.J. 716.**

——**O. 21, R. 93 (as amended in Madras), Proviso**—*Applicability—Sale void ab initio—Failure to furnish security in time—Power of Court to dismiss application.*

If an execution sale is void from its very inception, the judgment debtor is entitled to have it set aside under S. 47, C. P. Code, irrespective of whether he furnishes security or not under O. 21, R. 90, C. P. Code. In such a case the failure to furnish security will not entail dismissal of the application to set aside the sale. (*King and Happell, JJ.*) VENKATALIMGAMA NAYANIM *v.* VENKATA NARASIMHA NAYANIM **202 I.C. 294=15 R.M. 476=55 L.W. 245=1942 M.W.N. 250=A.I.R. 1942 Mad. 509=(1942) 1 M.L.J 403.**

C. P. CODE (1908), O. 22, R. 1.

——**O. 21, Rr. 95 and 97**—Right to apply under—Limitation—Failure to apply under R. 97, if can affect period of limitation to apply under R. 95. *See* 1941 Dig., Col. 318. GANPATI SINGH *v.* RAMGOPAL. **I.L.R. (1942) Nag. 633=198 I.C. 284=14 R.N. 209.**

——**O. 21, R. 97**—*Applicability—Conditions—Prior fulfilment of R. 95—If condition precedent—Private conveyance by judgment-debtor—Obstruction—Application by decree-holder for removal—Competency.*

O. 21, R. 97, C. P. Code, only applies when property has been sold by Court in execution proceedings and the requirements of R. 95 of O. 21 have been complied with or fulfilled. In a case where there has been no sale certificate and no order for delivery of possession an application under O 21, R. 97, is incompetent. Rules 95 and 97 of O. 21 must be read in conjunction. In the case of a conveyance by private agreement between the decree-holder and judgment-debtor, if there is obstruction, an application under R. 97 will not lie. (*Leach, C. J. and Byers, J.*) NILADRI RAO *v.* VENKATARAMA IYER. **I.L.R. (1942) Mad. 749=202 I.C. 73=15 R.M. 431=1942 M.W.N. 358=55 L.W. 277=A.I.R. 1942 Mad. 505=(1942) 1 M.L.J. 538.**

——**O. 21, R. 100**—Applicability—Delivery of symbolical possession to decree-holder—Dispossession under the rule—What may not amount to. *See* 1941 Dig., Col. 318. MA AYE TIN *v.* ELLERMAN'S ARRACAN RICE AND TRADING CO., LTD. **197 I.C. 777=14 R.R. 150.**

——**O. 21, R. 112 (1) and (2) (Oudh)**—*Right of appeal against orders in proceedings against garnishee.*

According to sub rules (1) and (2) of R. 112 of O. 21, C.P.Code, where a garnishee disputes his liability, and there has been an adjudication of such liability, the determination or the decision of that liability will amount to a 'decree'; but where the garnishee does not dispute his liability and deposits the money without any objection when called upon to do so, it will be an 'order' and no second appeal is permissible. (*Thomas, C.J.*) C. D. LINCOLN *v.* NOOR ELAHI. **1942 O.A. 626=1942 O.W.N. 801.**

——**O. 22, R. 1**—*Death of father during pendency of suit for damages for seduction of daughter—Suit, if abates—Continuation of suit by other members, if possible—Right of daughter to relief.*

Where during the pendency of a suit for damages for the seduction of his daughter, the father dies, the right of action dies with the father and does not survive him and hence the suit abates. It cannot be continued by the other members of the family. Though the daughter may have a right of action, the genesis of the action would not be seduction. (*Stone, C. J. and Bose, J.*) BABOO THAKUR DHOBI OF NAGPUR *v.* MST. SUBANSHI. **I.L.R. (1942) Nag 650=202 I.C. 101=15 R.N. 64=1942 N.L.J. 199=A.I.R. 1942 Nag. 99.**

——**O. 22, R. 1**—*Suit to declare plaintiff unaffected by ex-communication—Decree on appeal—Death of plaintiff pending second appeal by defendant—Appeal if abates—Applicability of the maxim* actio personalis moritur cum persona.

Where a plaintiff's suit to declare a certain panchayatnama ex-communicating him from the *biradari* was not genuine and that he is unffected by it was dismissed by the trial Court but was decreed on appeal and pending second appeal by the defendants, the plaintiff died it was held that the cause of action did not survive to the heirs of the plaintiff respondent

C. P. CODE (1908), O. 22, R. 1.

as the right agitated for did not relate to or affect the estate of the deceased plaintiff and did not involve any right to property which might be considered to be a heritable asset. It was further held that no right to sue in respect of the status of the plaintiff accrued to the legal representatives and the suit being one for vindication of a mere personal right, the maxim *actio personalis moritur cum persona* applied and that the right to sue must be deemed to have been extinguished on the plaintiff's death and that hence the appeal abated. (*Ghulam Hasan and Madeley, JJ.*) KALLOO CHAUDHARI *v.* RAMZAN. 203 I.C. 253=15 R.O. 184=1942 O.W.N. 631=1942 O.A. 524=A.I.R. 1943 Oudh 14.

——O. 22. R. 1—Survival of right to sue—Test—Suit for account in respect of defendant's management of plaintiff's property during his minority—Death of defendant—Suit, if can be continued against the legal representatives—Limits to the application of the maxim "actio personalis moritur cum persona." *See* 1941 Dig., Col. 319. MAHOMED ABDUL RAB *v.* GHULAM RASHID I.L.R. (1941) All 642.

——O. 22, Rr. 2, 4 and 11—*Appeal filed by tenant against order settling rent in suit by landlord under S. 105, Bengal Tenancy Act—Landlord granting putni pending appeal—Putnidar added party respondent—Death of landlord respondent—Appeal, if abates.*

During the pendency of an appeal filed by a tenant against an order settling rent in respect of his tenure in a suit by the landlord under S. 105 of B. T. Act, the landlord granted to another person a putni which included the suit lands also. The putnidar was then added as Respondent No. 2, the landlord being retained as Respondent No. 1. Thereafter landlord respondent died and no substitution was made in his place. It was contended by the surviving respondent that the appeal became incompetent as against him, it having abated as against the deceased respondent.

Held, that the right to appeal survived the deceased respondent and survived against the surviving respondent alone within the meaning of O. 22, R. 2, C. P. Code, and that, therefore, the appeal was competent without the legal representative of the deceased respondent being brought on the record. (*Sen and Pal, JJ.*) HARADHONE *v.* PANCHANAN. 46 C.W.N. 963.

——O. 22, Rr. 2 and 3—Applicability—Test—Legal representative already on record—Application for substitution—If necessary. *See* 1941 Dig. Col. 319. BHUDEB CHANDRA ROY *v.* BHIKSHANKER PATTANAIK. A.I.R. 1942 Pat. 120.

——O. 22, Rr. 2 and 3—*Legal representatives of one of the deceased appellants already on record as respondents—Failure to formally apply for their substitution, if fatal.*

The object of filing an application for substitution of heirs of a deceased party is to intimate to the Court the fact of death of the party and to place the legal representatives on record in time, If such persons are already parties to the case, the mere non-filing of an application is not fatal to the maintainability of the suit or appeal Hence where one of the appellants died, but his heirs were on record already as respondents, and no application for substitution was made within time it was *held* that it was not fatal to the maintainability of the appeal. (*Grille, C.J. and Pollock, J.*) SHEORAM SITARAM *v.* ATMARAM RAGHOJI. 1942 N.L.J. 557=A.I.R. 1943 Nag. 13.

——O. 22, R. 3—*Addition of one of two heirs—If on behalf of the entire inheritance.*

Where on the death of plaintiff appellant in a suit for the recovery of mesne profits from a trespasser only one

C. P. CODE (1908), O. 22, R. 3.

of the two heirs is brought on record as the legal representative, the appeal does not abate as regards the share of the other heir, because, when one of the heirs is added as legal representative, it must be taken to be for the benefit of the entire inheritance which opened on the death of plaintiff appellant. (*Allsop and Verma, JJ.*) RAM CHARAN *v.* BANSIDHAR. 203 I.C. 223=1942 A.L.J. 411=1942 A.W.R. (H.C.) 278=1942 A.L.W. 380=A.I.R. 1942 All 358.

——O. 22, Rr. 3 and 4—*Applicability—Execution proceedings—Death of decree-holder pending execution application—Power of Court to substitute his legal representatives.*

Per *Sen, J.*—Execution proceedings do not abate by reason of the death of the decree-holder pending his application for execution or by reason of the failure to substitute his legal representatives. Although O. 22, Rr. 3 and 4, C. P. Code, are not applicable to execution proceedings, the Court may in the exercise of its inherent powers substitute the legal representatives of a deceased decree-holder in such proceedings. They can after substitution continue the old proceedings and a fresh application by them is not necessary. (*Mukherjea and Sen, JJ.*) ANNADA PRASAD MITRA *v.* SUSHIL KUMAR MANDAL. 201 I.C. 479=15 R.C. 207=75 C.L.J. 114=46 C.W.N. 326=A.I.R. 1942 Cal. 390.

——O. 22, Rr. 3, 4 and 10—*Death of defendant after preliminary and before final mortgage decree—Substitution of legal representatives—Procedure.*

If a defendant dies after the passing of a preliminary decree in a mortgage suit and before the final decree, no final decree can be passed without his representative being brought on the record. R. 10, and not Rr. 3 and 4 of O. 22 C. P. Code, are to be regarded as governing the procedure for making the necessary substitution. (*Rowland and Chatterji JJ.*) SANTI DEVI *v.* KHODAI PRASAD SINGH. 199 I.C. 511=14 R.P. 590=23 P.L.T. 615=8 B. R. 550=1942 P. W. N. 62=A.I.R. 1942 Pat. 340.

——O. 22, R. 3—Death of party—Number of heirs taking definite share in the inheritance—One of them not added—Abatement if *in toto*. *See* 1941 Dig., Col. 319. TAJAMMUL HUSAIN KHAN *v.* AMIRUDDIN. 17 Luck. 297=197 I.C. 471=14 R.O. 314=A.I.R. 1942 Oudh 189.

——O. 22, Rr. 3 and 10—*Relative scope and applicability—Order for substitution of legal representative on plaintiff's death—Appeal—Revision.*

R. 3 of O. 22, C. P. Code, contemplates the substitution of a legal representative upon the death of a plaintiff or plaintiffs while R. 10 of the same Order deals with cases other than those covered by R. 3. Hence when substitution is ordered on the death of a plaintiff or plaintiffs the order is one passed under R. 3 of O. 22 and hence is not appealable. Nor can it be interfered with in revision. (*Ghulam Hasan and Agarwal, JJ.*) RAM NARAIAN *v.* MST PHULA. 203 I.C. 125=15 R.O. 159=1942 A.W.R. (C.C.) 344 (2)=1942 O.W.N. 636=1942 O.A. 517=A.I.R. 1943 Oudh 24.

——O. 22, R. 3—Scope—If qualified by O. 41, R. 4—Appeal—All appellants not alive—Power of Court to vary decree. *See* C. P. CODE, O. 41, R. 4. I.L.R. (1942) Kar. 435.

——O. 22, Rr. 3 and 11—*Scope—Partition suit—Several plaintiffs claiming share jointly—Shares of each not specified—Dismissal—Second appeal—Death of one appellant (plaintiff)—Legal representative not impleaded—Effect—Appeal—If abates as a whole.*

In a suit by several plaintiffs, one of them being a Hindu claiming to be the purchaser of a half share of the interest of the other plaintiffs who were all Mahomedans,

C. P. CODE (1908), O. 22, R. 3.

for partition, the share of none of the plaintiffs except that of one was specified. It was not clear on the plaint what share any of the other plaintiffs claimed; it appeared from the plaint that the plaintiffs were claiming jointly to have joint shares in ten annas eight pies share of the land in suit. In the prayer clause a share was claimed for plaintiffs 1 to 5, 7 and 8 as also for the purchaser; but it was nowhere stated, nor could it be ascertained from the plaint, what the shares of the plaintiffs were. The suit was dismissed by the trial Court and by the first appellate Court as barred by limitation. A second appeal was preferred against the dismissal. One of the appellants, a necessary party, died, and his legal representatives were not brought on the record and suit therefore abated at least as regards him. It was contended that this abatement operated to make the appeal incompetent as a whole.

Held, that the cause of action of all the plaintiffs was joint and the same and that to a proper decision of the dispute all the co-owners were necessary parties both to the suit and to the appeal, and the whole appeal therefore became incompetent. (*Davis, C.J. and Weston, J.*) GHULAM MAHOMED *v.* SHERDILKHAN. **I.L.R. (1942) Kar. 435 = A.I.R. 1942 Sind 157.**

——**O. 22 R. 3**—Scope—Suit on behalf of deity—All shebaits parties to suit—Death of one pending suit—Decree without effecting substitution in time limited—Validity—Abatement—If caused. *See* 1941 Dig., Col. 320. SADHU CHARAN PARIJA *v* KRISHNAMANI DEI. **197 I.C. 674 = 8 B.R. 269 = 14 R.P 338 = 23 P.L.T. 457 = A.I.R. 1942 Pat 181.**

——**O, 22, Rr. 3 and 11 and O. 41, R. 4**—*Suit by joint tenants for declaration of rate of rent—Death of one—His heirs not substituted—Entire suit, if abates—Appeal by such tenants—Death of one appellant—His heirs not substituted—Entire appeal, if abates.*

If in a suit by the plaintiffs as joint tenants of a single tenancy for a declaration of the rate of rent payable by them, one of them dies and his heirs are not substituted in time, the suit will abate as a whole. But it does not necessarily follow that an appeal by the plaintiffs will also abate as a whole if one of the plaintiff-appellants dies pending the hearing of the appeal and his heirs are not substituted. Under O. 41, R. 4, C. P. Code, the appellate Court has the power to reverse or vary the decree in favour of all the plaintiffs including a plaintiff who has not been made a party to the appeal, if the decree in the Court below has proceeded on a ground common to all the plaintiffs. It can exercise the same power in favour of the heirs of a plaintiff who was an appellant and who has died pending the appeal, although such heirs have not been made parties to the appeal. The position is essentially the same as if that deceased plaintiff had not appealed at all. (*Sen, J.*) SARAT CHANDRA NARAYAN *v.* FEZURAM NATH. **46 C.W.N. 281.**

——**O. 22, R. 4**—Abatement of appeal—Total or partial—Test—Suit for declaration against person attaching property and against persons claiming rateable distribution—Appeal—Death of a respondent—Failure to add legal representative—Appeal if abated *in toto*. *See* 1941 Dig., Col 321. LACHMI NARAIN *v.* MUSADDI LAL. **17 Luck 327 = 197 I.C. 247 = 14 R.O. 287 = A.I.R. 1942 Oudh 155.**

——**O. 22. R. 4**—Applicability—Insolvency—Order of adjudication—Right to contest—If personal to insolvent—Death of insolvent pending appeal—Abatement. *See* PROVINCIAL INSOLVENCY ACT S. 17. **44 Bom. L.R. 132.**

——**O. 22, Rr. 4 and 11**—*Death of one of several respondents pending appeal—Failure to add legal representative—Abatement, if whole—When interests of respondents are separable—Test.*

C. P. CODE (1908), O. 22, R. 6

Where in an appeal one or several respondents dies and his legal representative is not brought on record the test whether an appeal abates as a whole or not should be (1) whether the interests of the respondents are joint and inseparable and (2) whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two conflicting decrees in the same case with respect to the same subject-matter. Hence where the interests of certain respondents were separable and there was no danger of them coming into conflict with any recognized principle of law if the appeal were allowed against the remaining respondents, it was held that the appeal did not abate as a whole. (*Bennett and Agarwal, JJ.*) SARFARZ AHMAD *v.* ASGHAR ALI. **203 I C. 71 = 15 R O 156 = 1942 A.W.R. (C.C) 342 (4) = 1942 O.W.N. 620 = 1942 O.A. 502 = A.I R. 1943 Oudh 11.**

——**O. 22, Rr. 4 and 5**—*Impleading of only one of the heirs as legal representative of a deceased respondent—Decision against him, if binds others—Appeal if abates against others—Position of Mahomedan heirs.*

Where a Court appoints one of the heirs of deceased respondent to represent the interests of the deceased during the pendency of the appeal, he represents the estate of the deceased and any decree that may be passed against him would be binding on all those who claim the property in suit through the deceased. Where some of the heirs have been impleaded as the representative of a deceased respondent the appeal does not abate against the heirs who had not been so impleaded. Though Mahomedan heirs succeed to separate shares in an estate and one litigating about his share could not produce any effect on the share of another who was not impleaded where one of the heirs is impleaded not as owner of a share in his own right but in a representative capacity as the person best suited to represent the estate, any decision against him would bind the others also. (*Allsop and Verma, JJ.*) MOHAMMAD HAMMAD *v* TEJ NARAIN LAL. **I.L.R. (1942) A. 448 = 202 I C. 611 = 15 R A. 176 = 1942 A.W.R. (H C.) 164 = 1942 A L.W. 390 = 1942 A.L.J. 329 = A.I.R. 1942 All. 324.**

——**O. 22, Rr. 4 (3) and 11**—*When whole appeal can abate—Failure to add heirs of one of several trespassers.*

It is only when it is not possible to go on with the appeal in the absence of the heirs of a deceased party that the whole appeal must fail. The mere fact that one of the trespassers had died and his heirs had not been made parties does not make it impossible to pass a decree in favour of the other party against the trespassers and hence in such case the whole appeal does not abate. (*Shirreff, S.M.*) GOPAL *v* DEOKI. **1942 O A. (Supp.) 161 = 1942 A W.R. (Rev.) 141 = 1942 O W.N (B R.) 391 = 1942 R.D. 480.**

——**O. 22, R. 5**—Applicability—Dispute between party and representative of another party—Decision on—*Res judicata*. *See* C. P. CODE, S. 47 (3). **44 Bom. L.R. 678.**

——**O. 22, R. 5**—*Effect of finding that a person is an heir of the deceased.*

A finding under O. 22, R. 5 that a person is the heir of a deceased person is one settled summarily and it cannot determine that person's right to any portion of the holding finally. (*Sathe, J.M.*) JAISRI KEWAL *v.* SUKHRAJ. **1942 O A. (Supp.) 372 = 1942 A.W R. (Rev.) 318 = 1942 O W.N. (B.R) 573 = 1942 R D. 701.**

——**O. 22, R. 6**—*Applicability—Application to set aside execution sale—Death of applicant after hearing*

C. P. CODE (1908), O. 22, R. 8.

and before delivery of judgment—Order pronounced after death—If void.

A judgment-debtor who had applied to have an execution sale set aside died after arguments were heard on his application and before judgment was delivered. Subsequently judgment was delivered dismissing the application to set aside the sale and confirming the sale.

Held, that O. 22, R. 6, C. P. Code, applied to proceedings in execution by reason of R 12 of O. 22 C. P. Code, and therefore the order refusing to set aside the sale and confirming the sale was not void. (*King, J.*) MEER SHAFI SAHIB *v.* ABDUL KHARIM. **202 I C. 725 = 1942 M W N. 505 = 55 L.W. 402 = A.I R. 1942 Mad. 608 = (1942) 2 M.L.J. 89.**

——**O. 22. R. 8**—Construction and scope—Appeal against money decree—Insolvency of appellant—Abatement. *See* 1941 Dig., Col. 323 CHANDRAKANT DEVJI *v.* NAROTTAMDAS. **I L.R. (1941) Bom 603.**

——**O. 22, R. 8 (1)**—Security for costs—Grounds—Poverty of appellant. *See* 1941 Dig., Col. 323. CHANDRAKANT DEVJI *v.* NAROTTAMDAS. **I.L.R. (1941) Bom 603.**

——**O. 22, R. 9 (2)**—Right to apply under—Heirs not coming on record—Administrator, if can apply to set aside abatement. *See* 1941 Dig., Col. 324. KO PO HNIT *v.* KO SIT ON. **198 I.C. 791 = 14 R.R. 228 = A I.R. 1942 Rang. 15.**

——**O. 22, R. 10**—Applicability—Mortgage suit—Preliminary decree—Death of defendants—Non-substitution—Effect—Limitation for substitution—Procedure. *See* C. P. CODE, O. 22, RR. 3, 4 AND 10. **8 B.R. 550**

——**O. 22, R. 10**—Applicability to execution proceedings—Order under—Appeal and second appeal—O. 43. R. 1 (1) and S 104 (2). *See* 1941 Dig., Col. 325. KRISHNAJI RAMCHANDRA *v.* BHIKCHAND RAMKARAN. **I L R (1941) Bom. 629 = 200 I.C. 160 = 14 R.B. 395 = A I R. 1942 Bom. 82.**

——**O 22, R. 10**—Scope of—Assignment of interest during pendency of litigation—Right to prosecute litigation, if lost—Assignment after decree and before appeal—If can affect right to appeal. *See* 1941 Dig., Col. 325. MAUNG BA THAW *v.* MA SAW MAY. **198 I.C. 785 = 14 R.R. 223 = A.I.R. 1942 Rang. 13.**

——**O. 23, R. 1**—Applicability—Withdrawal by one of several plaintiffs—Dismissal of suit—Absence of decree—Appealability. *See* 1941 Dig., Col. 326. VILAYATALI KHAN *v.* KHAIRUNNISSA. **197 I.C. 275 = 14 R.N 155.**

——**O. 23, R. 1**—*Bar of suit—Plaint on request returned to be presented to the proper Court—Fresh suit.*

Where on the request of the plaintiff the plaint is returned for presentation to the proper Court, but there was no application for withdrawal of the suit, a fresh suit is not barred by O. 23, R. 1, C. P. Code (*Ghulam Hasan and Agarwal, JJ.*) GUDAN DUBE *v.* PURBIDIN. **203 I C 587 = 1942 A.W R (C.C.) 344 (1) = 1942 O.W.N. 590 = 1942 O.A. 515.**

——**O. 23, R. 1**—*Mortgage suit—Stage between preliminary and final decree—Adjustment of payment out of Court—Whether can be recorded—Pendency of suit after preliminary decree—Limits of rule.*

An adjustment or payment out of Court between the preliminary and final decrees in a mortgage suit cannot be gone into by the Court when a petition is filed under O, 23, R. 1, Civil Procedure Code, for recording the adjustment between the parties, (1935) 69 M.L J. 785: I.L.R. 59 Mad. 188 (F. B.), distinguished. After the passing of the preliminary decree the suit is pending only for a particular purpose, namely, for the purpose of enforcing the right declared by the preliminary decree

C. P. CODE (1908), O. 23, R. 1.

in the manner set out in the decree and not for any other purpose. And after the passing of the final decree the suit is pending for ascertaining, if personal remedy is available, whether any money remains due after paying the sale proceeds to the plaintiff or after giving credit to any payment or adjustment made subsequent to the passing of the final decree. (*Kuppuswami Ayyar, J.*) VEERABAHU PILLAI *v.* CHITTIRAM PILLAI. **55 L.W. 670 = (1942) 2 M.L.J. 535.**

——**O. 23, R. 1**—*Order allowing withdrawal and also dismissing suit—Effect of—Appeal—Revision.*

Where on an application by the plaintiff under O. 23, R. 1, C. P Code, asking for permission to withdraw the suit with liberty to bring a fresh suit, the Court after holding that "the plaintiff was entitled to withdraw from proceeding with the suit" allows him to do so with liberty to bring a fresh suit, and also adds that "the suit of the plaintiff be consequently dismissed", the order is in fact and substance one allowing the suit to be withdrawn under O. 23, R. 1, and its real character cannot be changed by these words. These words are a mere surplusage and have no real meaning. Obviously a suit cannot be allowed to be "withdrawn" and "dismissed" at the same time Consequently such an order is not appealable, and a revision lies from that order. (*Tek Chand and Blacker, JJ.*) KAHN SINGH SOMA SINGH *v.* BALDEV SINGH. **199 I.C. 695 = 14 R.L. 420 = 44 P.L.R. 41 = A.I R. 1942 Lah. 81.**

——**O. 23, R. 1**—*Order under—Appeal—Withdrawal of suit in appeal—Party being handicapped in production of evidence in trial Court—If a sufficient ground.*

No appeal lies from an order allowing a suit to be withdrawn with permission to file a fresh suit under O, 23. R. 1. C. P. Code. The fact that the plaintiffs were handicapped in producing their oral evidence before the trial Court and were unable to file their full documentary evidence is no ground for permitting a suit to be withdrawn in appeal with liberty to file a fresh one and such an order is likely to be set aside in revision. (*Shirreff, S.M. and Sathe, J.M.*) POORAN MAL *v.* LAL SINGH. **1942 R.D 494 = 1942 O W.N. (B.R.) 405 = 1942 A.W.R. (Rev.) 278 = 1942 O.A, (Supp.) 304.**

——**O. 23, R. 1**—*Powers of High Court—Application to withdraw suit with liberty to bring fresh suit in Letters Patent Appeal—If to be allowed.*

There is no doubt that the High Court has power in appeal to allow an appellant to withdraw his suit; but where a suit has reached the stage of a Letters Patent Appeal, it would not be right to allow the plaintiff to withdraw the suit in order to bring a fresh suit. (*Harries, C.J., and Fazl Ali, J.*) DOMI RAM *v.* LIQUIDATOR, NAWADAH B. CO-OP. SOCIETY. **197 I.C. 215 = 14 R P. 286 = 8 B.R. 172 = 22 Pat.L.T. 947 = A.I.R. 1942 Pat. 148.**

——**O. 23, R. 1**—Scope and effect—Order permitting wihdrawal of suit with liberty—Subsequent application for revival of suit on ground of non-compliance of terms or to alter or vary terms—Maintainability. *See* 1941 Dig., Col. 327. JAIJIBAI *v.* BHIKHIBAI. **I.L.R. (1941) Bom 570.**

——**O. 23, Rr. 1 and 2**—*Scope—Suit under O. 21, R. 63—Leave refused to amend by insertion of prayer for possession—Order permitting withdrawal with liberty to file fresh suit—Court saying that S. 14, Limitation Act, applied and awarding costs—Fresh suit beyond time—Plea of limitation—Sustainability—Estoppel—Acceptance of costs awarded in first suit—Effect.*

C. P. CODE (1908), O. 23, R. 1.

The respondent whose claim to a property attached in execution of a decree was rejected filed a suit under O. 21, R. 63 to establish his title. When the suit came on for hearing, realising that the suit was not competent without a prayer for possession applied for leave to amend his plaint, but his application was refused. The Court however, gave him leave to withdraw the suit under O. 23, R. 1, C. P. Code, with permission to file a fresh suit within one month and awarded costs to the appellant (defendant). The Court also expressed its opinion that S. 14 of the Limitation Act would apply to the case and that the respondent would not be prejudiced on the question of limitation. The respondent paid the cost to the appellant and filed a fresh suit which was beyond one year of the dismissal of his claim petition. The appellant pleaded limitation but his plea was overruled.

Held, (1) that S. 14 of the Limitation Act did not apply to the case; (2) that any statement made by the Court granting leave to withdraw the suit under O. 23, R. 1, could not operate to repeal O. 21, R. 2, which provided that the fresh suit was barred by the law of limitation; (3) that the Court granting leave to withdraw had no power to impose a condition and the fact that it did, did not relieve the respondent from the responsibility of filing his suit in time; (4) that the appellant was not estopped from raising the plea of limitation by reason of his having accepted costs awarded to him in the first suit. (*Leach, C.J. and Byers, J.*) VIRUPAKSHAPPA *v.* VEERABHADRA GOWD. **55 L.W. 622 = 1942 M W.N. 622 = A.I.R, 1943 Mad. 80 = (1942) 2 M.L.J. 442.**

——**O. 23, R. 1**—*Suit for accounts—Withdrawal after preliminary decree—Permissibility.*

A suit for rendition of accounts by the principal against the agent cannot be allowed to be withdrawn under O. 23, R. 1, C. P. Code, if a preliminary decree had been passed in the suit and no appeal had been filed from it. (*Tek Chand and Blacker, JJ.*) KAHN SINGH SOMA SINGH *v.* BALDEV SINGH. **199 I.C. 695 = 14 R L. 420 = 44 P.L.R. 41 = A.I R. 1942 Lah. 81.**

——**O. 23 R. 1 (1) and (4)**—*Construction and scope—Several plaintiffs—Right of one to withdraw from suit without consent of others—Question of prejudice—Inconvenience to other plaintiffs—Relevancy*

Sub-R. (4) of R. 1 of O. 23, C. P. Code, does not govern an application for the unconditional withdrawal of a suit under sub R. (1) of R. 1. But it does not follow that one of several plaintiffs has an unconditional right to withdraw from a suit though it may be that for such a purpose the consent of the other plaintiffs may not be necessary. The question of prejudice has to be considered by the Court. The 1st and 2nd plaintiffs along with the third plaintiff—a financier—brought a suit for specific performance of an agreement to re-convey property by the defendants. The 3rd plaintiff deposited in Court the necessary amount of money, but owing to differences among the plaintiffs the 3rd plaintiff filed a petition for leave to withdraw from the suit so far as he was concerned and also to withdraw from Court the amount which he had deposited.

Held, (1) that since the 3rd plaintiff was not a necessary party to the suit for specific performance of an agreement to which he was not a party, though the grant of leave to him to withdraw from the suit might cause inconvenience to the other plaintiffs, yet such inconvenience was not a legal obstacle to the continuation of the suit and cannot be regarded as a prejudice to the other plaintiffs which should prevent the Court from granting the petition to withdraw; (2) that the withdrawing plaintiff could take back from Court the money deposited by him, which was still his, and his right to withdraw the money could scarcely be doubted. (*Krishnaswami Ayyangar, J.*) TULSIDAS SAIT *v.* SETHURAMASWAMI IYER. **55 L W. 385 = 1942 M.W. N. 58 = A.I .R. 1942 Mad. 373 = (1942) 1 M L.J. 190.**

C. P. CODE (1908), O. 23, R. 3.

——**O. 23, R. 1 and United Provinces Tenancy Act (1939), S. 275**—*Withdrawal—Proper stage—If can be allowed in appellate Court—Revision.*

An appellate Court is not justified in allowing a withdrawal of a suit when the application is made for it, for the first time in appeal. Its order is liable to be revised under S. 275, U. P. Tenancy Act as amounting to an exercise of jurisdiction with material irregularity. (*Harper, S.M. and Sathe, A.M.*) SHABBIR *v.* ZABAR UDDIN. **1941 R D. 1115 = 1941 O.A. (Supp.) 925 (2) = 1941 A.W.R. (Rev.) 1156.**

——**O. 23, R. 1 (2)**—*'Formal defect'—What is—Defect of non-inclusion of certain necessary parties if a 'formal' one.*

A 'formal defect' within the meaning of O. 23, R. 1 (2) would seem to connote every kind of defect which does not affect the merits of the case. It cannot be said that the defect of non-inclusion of certain necessary parties is a 'formal defect'. (*Bajpai, J.*) MUKTANATH TEWARI *v.* VIDYASHANKER DUBE. **1942 A.W.R. (H.C.) 378 = 1942 A.L.W. 713 = 1942 A.L.J. 631.**

——**O 23, R. 1 (3)**—Applicability—Application under Para. 20, Sch. 2—If "suit" for purposes of O. 23, R. 1—Withdrawal without liability—If bars subsequent suit to enforce award or suit on original cause of action apart from award—"Subject-matter". *See* 1941 Dig. Col. 328. GANPAT KINUSHET *v.* VITHAL BHIKAN. **I.L.R. (1942) Bom 94 = 14 R B. 824 = 198 I.C. 575 = A.I.R. 1942 Bom. 57.**

——**O. 23, R. 1 (4) and Agra Tenancy Act, S 44**—*When can O. 23, R. 1 (4) apply—Suit against co-sharer under S. 44, Agra Tenancy Act, by lambardar and another co-sharer—Withdrawal by lambardar—Effect.*

O. 23, R. 1 (4), C. P. Code, can apply only when all the plaintiffs have equal interest in the suit Hence where in a suit under S. 44 of the Agra Tenancy Act a co sharer is sued by the lambardar and another, the lambardar being the only person entitled to sue, can be permitted to withdraw the suit and on such withdrawal the suit has to be dismissed. (*Shirreff, S.M. and Sathe, J.M.*) AJODHIYA PRASAD *v.* BISHWANATH PRASAD. **1942 O A (Supp) 88 = 1942 A.W R. (Rev.) 82 = 1942 O W N (B R) 270 = 1942 R.D 359.**

——**O. 23, R. 1 (4)**—*Withdrawal—Regularity—Withdrawal by original plaintiff without the consent of the subsequently added co-plaintiff.*

When a *pro forma* defendant is transposed as a plaintiff on his application, he is entitled to all the rights of a plaintiff and can object to the withdrawal of the suit by the original plaintiff without his consent. (*Shirreff, S. M. and Sathe, J.M.*) MURLIDHAR *v.* BANNA. **1942 R D. 350 = 1942 O W.N. (B.R.) 261 = 1942 A W.R. (Rev.) 261 (2) = 1942 O.A. (Supp.) 287 (2).**

——**O. 23, R. 3**—*Adjustment—Award in arbitration out of Court during pendency of suit—Recording of.*

An award made during the pendency of a suit between the parties and concerning the matters or some of the matters in that suit as a result of an arbitration out of Court may constitute an adjustment by lawful agreement or compromise within the meaning of O. 23,

C. P. CODE (1908), O. 23, R. 3.

R. 3, C. P. Code and can be recorded as such. (*Collister, Baipai and Braund, JJ.*) DULAR KOERI *v.* PAVAG KOERI. **I.L.R 1942 A. 357=199 I.C. 607=14 R A. 392=1942 A.W R (H C.) 67=1942 A.L.W 142=1942 O.W N. 120=1942 O.A. (Supp.) 113=1942 A.L.J. 137=A.I R. 1942 All. 145 (F.B.).**

——**O. 23, R. 3 and S. 115**—Adjustment—Award in arbitration with permission of Court—Supersession—Appeal—Revision—If lies. *See* 1941 Dig., Col. 328 HANSRAJ *v.* SHANKERLAL. **I.L.R (1942) Nag. 414.**

——**O. 23, R. 3**—*Compromise—Whether relates to suit or goes beyond scope of suit—Test to decide—Suit for possession of land—Compromise containing term as to terms on which land is to be possessed and cultivated—Effect of.*

There is nothing in O. 23, R. 3, C. P. Code, which restricts the relief granted in a compromise decree to the relief prayed for in the plaint. The fact that a compromise relates to property not the subject matter of the suit is not in all cases decisive of the question whether the compromise does or does not relate to the suit. Where a suit relates to possession of a specified plot of land, and the compromise effected by the parties relates to terms on which the same land shall be possessed and cultivated, it cannot be said that because the plaintiff is given a relief he did not ask for, that necessarily brings the compromise outside the scope of the suit. The proceedings must be looked at as a whole. The frame of the suit, the plaint, the written statement, the consideration for the compromise, etc., have to be looked at as a whole. (*Davis, C.J. and Tyabji, J.*) GODHUMAL *v.* MST. BHAMBHO. **I.L.R. (1942) Kar. 326=A.I.R. 1943 Sind 11.**

——**O. 23, R. 3**—Plea of adjustment by payment out of Court in application for passing of final decree—If can be gone into. *See* C. P. CODE, O. 34, R. 5 AND O. 23, R. 3. **1942 O.W N. 276.**

——**O. 23 R. 3**—Procedure under—Agreement recorded—Decree, if can be passed any time. *See* 1941 Dig., Col. 329. V. M. R. M. P. CHETTYAR FIRM *v.* HAJEE MAHOMED SULTAN. **1941 Rang L R. 774=198 I.C. 404=14 R.R. 198.**

——**O. 23 R. 3 and O. 21, R. 2**—Relative applicability—Mortgage suits—Compromise relating to whole subject-matter before end of proceedings. *See* 1941 Dig., Col. 329. V. M. R. M. P CHETTYAR FIRM *v.* HAJEE MAHOMED SULTAN. **1941 Rang.L.R. 774=198 I.C. 404=14 R.R. 198.**

——**O. 23, R 3**—Terms of decree under—Marters not forming subject-matter of suit—If can be included in decree. *See* 1941 Dig., Col. 329. V. M. R M. P. CHETTAR FIRM *v.* HAJEE MAHOMED SULTAN. **1941 Rang.L R. 774=198 I C 404=14 R.R. 198.**

——**O 26, R. 1**—Pardanashin lady—Right to be examined on commission. *See* 1941 Dig., Col. 330. KISSINLAL *v.* PURSHOTTAMDAS. **199 I.C. 150=14 R.C. 521=A.I R. 1942 Cal. 143.**

——**O. 26, R. 4**—Refusal to issue commission—If revisable. *See* C. P. CODE, S. 115 AND O. 26, R. 4. **1942 O.A. 215=1942 O.W.N. 307.**

——**O. 26, Rr. 7 and 8**—*Construction—Deposition of witness examined on commission—If automatically becomes evidence in the case—Party examining witness on commission not tendering it in evidence—Right of other party to tender same—High Court Original Side—Practice.*

R. 7 of O. 26, C. P. Code, cannot be construed as meaning that the evidence taken on commission automatically becomes evidence as soon as the commission is returned and it forms part of the record, whether part of it is inadmissible, or irrelevant or not. Under R. 7 of O. 26, the evidence taken on commission only forms part of the record in the same way as pleadings, affidavits, and other documents of a suit form part of the record of that suit. Both on the proper construction of Rr. 7 and 8 of O. 26, and according to the long and well-established practice on the Original Side of the High Court, the depositions of witnesses taken on commission have got to be tendered as evidence and admitted by the Court as evidence before they become evidence in the case. A party who examines a witness on commission is not bound to and cannot be compelled to tender the evidence of the witness examined on commission. No Court can compel a party or his counsel to lead any particular kind of evidence or tender any evidence if he does not wish to do so. If such party does not wish to tender the evidence taken on commission, the other party is entitled to tender that evidence and make that as part of his own case. (*Chagla, J.*) VITHALDAS DAMODAR *v.* LAKHMIDAS HARJIWAN. **I.L.R (1942) Bom 680=202 I.C. 430=15 R.B. 167=44 Bom.L.R. 609=A.I.R. 1942 Bom. 266.**

C. P. CODE (1908), O. 30.

——**O. 27, R. 3**—*Suit by Crown—Necessity to consult Governor-General—Suit "by Governor General in Council through the Post Master-General"—If brought in name of correct plaintiff.*

Under the provisions of O. 27, R. 3 in suits by the Crown it is sufficient to insert as plaintiff the words "Governor-General in Council." It is not necessary that the Governor-General should be consulted as to whether such a suit should be brought. Where a suit was brought by the Governor-General in Council through the Post Master-General,

Held, that the words in the plaint "through the Post Master-General" were merely surplusage and the suit was brought in the name of the correct plaintiff. (*Almond, J.C. and Mir Ahmad, J.*) GUJJAR MAL *v.* GOVERNOR-GENERAL OF INDIA. **200 I.C. 429=15 R. Pesh. 1=A I R. 1942 Pesh. 33.**

——**O. 29, R 1**—*Nature of provision.*

The provision under O. 29, R. 1, C. P. Code, is only an enabling one, and does not prohibit a suit in the form of O. 1, R. 8, C. P. Code, when such form is appropriate. (*Davis, C.J. and Weston, J.*) MOTIRAM NATHOMAL *v.* MANGHARAM TIRATHDAS. **I.L.R. (1942) Kar. 56=201 I.C. 711=15 R.S. 16=A.I.R. 1942 Sind 130.**

——**O. 30**—*Power of Court—Suit against firm—Personal decree against partner—When to be passed.*

In a suit against a firm, the Court cannot pass any personal decree against a partner unless he is sued personally along with the firm, in which case it would be open to the plaintiff to withdraw the suit against the firm, if he chose and to proceed with his alternate or additional remedy against the partner. (*Davis, C.J. and Weston, J.*) AHMED MOOSA BROS. *v.* LILARAM TIKAMDAS. **I.L.R. (1942) Kar. 210=A.I.R. 1942 Sind 93.**

——**O. 30**—*Suit against firm and suit against individual members composing that firm—Distinction.*

The nature of a suit against a firm is different from the nature of a suit filed against individual members composing that firm There are substantial points of difference in the consequences of the two suits. In a suit against a firm, where one partner has been served under O. 30, R. 3, a decree may be made against the firm and such a decree under O. 21, R. 50 may be executed immediately against any property of the partnership. In a suit against the individuals, on the other

hand, before execution could be taken against their joint property, it would be necessary that the decree had been made against all those individuals after proper service in the suit. (*Davis, C.J. and Weston, J.*) AHMED MOOSA BROS. *v.* LILARAM TIKAMDAS. **I.L.R. (1942) Kar. 210 = A.I.R. 1942 Sind 93.**

——**O 30, R. 1**—*Applicability — Joint Hindu family trading firm.*

O 30, R. 1, C. P. Code, applies to a joint Hindu family trading firm in the Punjab by reason of the Explanation added to the Rule by the Lahore High Court (*Gentle, J.*) MADAN THEATRES, LTD. *v.* RAM KISSEN KAPOOR. **I.L.R (1942) 1 Cal. 562.**

——**O. 30, R. 1**—*Scope—If imperative or exhaustive—Suit against individual partners without naming firm—Competency.*

O. 30, R. 1, C. P. Code, is permissive and not mandatory. It provides one mode of procedure but it does not take away any existing right of suit. Since the partners in a firm are jointly and severally liable for the debts of the firm, they can be sued individually even without naming the firm as one of the defendants. The Code, while it merely provided a new procedure, did not affect in the slightest degree the right of a plaintiff to bring on record the different members of the firm. (*Meredith and Shearer, JJ.*) MUSAMMAT JAGPATI KUAR *v.* DAMRI SAHU HALKHORI RAM. **20 Pat. 811 = 198 I.C. 521 = 14 R.P. 460 = 8 B.R. 421 = 23 P. L.T. 588 = A.I.R. 1942 Pat. 204.**

——**O. 32**—*Applicability—Plaintiff not competent to sue.*

Order 32 merely contains procedural rules. These rules are applicable to a plaintiff who is competent to sue, but they can have no application where he is not so competent under the substantive law. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. **I.L.R. (1942) A. 518 = 202 I.C. 227 = 15 R.A. 104 = 1942 A.L.J. 197 = 1942 A.L.W. 245 = A.I.R. 1942 All. 267 (2).**

——**O. 32, R. 2**—*Minority of plaintiff disclosed on enquiry—Proper procedure—Failure of next friend to sign and verify plaint—Effect.*

Where the question of the minority of the plaintiff is put in issue and it is found that the plaintiff was a minor the Court should not dismiss the suit at once but should allow a reasonable time for a next friend to come on record and go on with the suit and it is only if no one comes forward that it should reject the plaint. Where a next friend so brought on record fails to sign and verify the plaint it is a mere irregularity which could not, in any case, justify the dismissal of the suit (*Yorke, J.*) RAM SEWAK *v.* RAM SAHAI. **1942 A.L.W. 225 = 1942 O.W.N. 281.**

——**O. 32, R. 2**—*Minor suing without next friend—Procedure for Court—Minor attaining majority during inquiry—Right to continue suit.*

When after inquiry a Court finds that a plaintiff is a minor and has sued without a next friend, the correct procedure is not to dismiss his suit forthwith but to give him a reasonable opportunity of remedying the defect If during the course of the inquiry the minor attains majority, he can elect either to disown the proceedings which have been taken during his minority or ratify them and continue the suit. (*Almond, J.C. and Mir Ahmad, J.*) ABDUL HAKIM KHAN *v.* MAHOMED ALI JAN. **202 I.C. 668 = 15 R.Pesh. 50 = A.I.R. 1942 Pesh 73.**

——**O. 32, R. 2**—Suit by minor—No objection by defendant—Plea of proceedings being a nullity if open

to such a defendant. *See* 1940 Dig., Col 319. SULEMAN *v.* ABDUL SHAKOOR. **I.L.R. (1941) Nag. 735.**

——**O. 32 Rr. 3 and 4**—Guardian—Absence of valid appointment—Binding nature of decree. *See* 1941 Dig., Col. 331. SHAH UDEY RAM *v.* KANCHAN SINGH. **1942 O.W.N. 118 = 1942 A.L.W. 135.**

——**O. 32, R. 3 (Nagpur)**—Suit against minor as major—Subsequent amendment and appointment of guardian—If affects limitation. *See* 1941 Dig., Col. 331. ABDUL AZIZ *v.* SHEIKH AMIR. **I.L.R. (1942) Nag. 322.**

——**O. 32, R. 3 (4) and Agra Tenancy Act, S. 86**—*Failure to serve notice on minor tenant in a suit under S. 86, Agra Tenancy Act—Absence of prejudice—Proceedings, if affected.*

The mere absence or failure to serve notices on minor tenants in a suit under S 86 of the Agra Tenancy Act against the heirs of a statutory tenant will not affect or render the proceedings null and void if as a matter of fact there has been no prejudice to the interests of the minors. (*Sathe, J.M.*) KARAMDAR *v.* RAM KISHORE, **1942 A.W.R. (Rev.) 355 = 1942 O.A. (Supp.) 381 = 1942 O.W.N. (B.R.) 599 = 1942 R.D. 727.**

——**O. 32, R. 3 (5)**—*Court-guardian—Appointment—Effect and duration of—Mortgage suit—Court guardian appointed for three minor defendants—Preliminary decree—Two minors becoming majors—Final decree with Court guardian on record showing all three as minors—If null and void.*

A decree cannot be regarded as a nullity merely because certain defendants who were minors continued to be shown as minors represented by their guardian *ad litem* though they had attained majority at the time of the decree. The appointment of a guardian *ad litem*, unless terminated earlier by some order of Court, would continue to be in force for appellate and execution proceedings under O. 32, R. 3 (5), C. P. Code. Three of the defendants in a mortgage suit were minors represented by a Court guardian at the time of the preliminary decree. In an appeal on behalf of the defendants the minors were represented by one of them who was the father of two of the minors and a relation of the third. He also represented the minors in a second appeal. Subsequently in the final decree proceedings the minors (two of whom had then become majors) were again represented by the Court guardian and final decree was passed with the Court guardian on record as representing the three defendants. The two who had become majors did not apply to be declared minors or to discharge the Court's guardian. In execution proceedings it was contended that the final decree passed in such circumstances was a nullity.

Held, that the decree could not be regarded as a nullity merely because the parties who had become majors continued to be shown as minors. (*Harries, C. J. and Dhavle, J.*) GULAB CHAND *v.* KISHORI KUER. **199 I.C. 625 = 14 R.P. 591 = 8 B.R. 584 = 23 Pat.L.T. 162 = A.I.R. 1942 Pat. 348.**

——**O. 32, R. 4 (3)**—Applicability—Non-contentious probate proceedings. *See* 1941 Dig., Col 331. PASHUPATI SADHUKHAN *v.* JANKI NATH MUKHERJEE. **200 I.C. 588 = 15 R.C. 60 = A.I.R. 1942 Cal. 236.**

——**O. 32 R. 4 A, (Allahabad)**—*Non-observance of provisions of—If a mere irregularity.*

The failure to observe the provisions of R. 4-A of O. 32, C. P. Code, by a Court in appointing a person other than the guardian appointed by competent authority to represent a minor in the course of a suit or other proceedings is a mere irregularity and does not vitiate the whole proceedings. It is one thing to say that a

C. P. CODE (1908), O. 32, R. 6.

minor is not represented at all if represented by a person who is absolutely disqualified from representing him and quite another to say that he is not represented at all if represented by a person whom the Court in its discretion could appoint to represent him but might not have appointed, if it had been aware of all the relevant facts. It would throw an impossible burden upon the parties to proceedings in which a minor was involved if those proceedings were to be regarded in certain circumstances as void if the person appointed to represent the minor was not the person appointed by competent authority to be the guardian of the minor under the Guardian and Wards Act. (*Allsop and Verma, JJ.*) DHARAMPAL SINGH *v.* MOOL CHAND. **I.L.R. (1942) All 509=202 I.C. 143=15 R.A. 96=1942 A.W.R. (H.C.) 190=1942 A.L.W. 310=1942 A.L.J. 276= A.I.R. 1942 A. 248.**

——**O. 32, R. 6**—Hindu joint family—Decree obtained by manager in suit brought in name of joint family firm on behalf of himself and as next friend of minor—Power of manager to give discharge—Execution application by him dismissed as time barred—Subsequent application by minor on attaining majority—If barred—Rule of *res judicata*. *See* LIMITATION ACT, S. 7. **44 P.L.R. 368.**

——**O. 32 R. 6**—*Scope and applicability*—Karta's *position in joint Hindu family, how affected.*

The provisions of R. 6 of O. 32, C. P. Code, are mandatory and the Court is directed to take certain precautions for the protection of the interest of a minor litigant. It is true that in a joint Hindu family a *karta* is vested with very wide powers over the property of the joint family. He may bring a suit for money due to the joint family without even impleading the other coparceners but once a minor member of the family is joined as a party and a guardian *ad litem* is appointed to represent him the directions laid down in R. 6 of O. 32 have to be followed The ordinary rule of Hindu Law which empowers the manager of the family to deal with the property of the entire joint family is subject to the restrictions laid down in R. 6 of O. 32, C. P. Code. (*Ismail and Mulla, JJ.*) JAWAHAR LAL *v.* BENIRAM UTTAMCHAND. **1942 A.L.W. 535.**

——**O. 32, Rr. 7 and 15**—Applicability—Agreement to refer to arbitration where minor or lunatic is concerned—Leave of Court—Materials to be furnished. *See* 1941 Dig., Col. 332. RAM GOPAL *v.* SHANTI LAL. **I.L.R. (1941) All. 807=199 I.C. 346= 14 R. A. 383=A.I.R. 1942 All. 85.**

——**O. 32, R. 7**—*Applicability to proceedings under S. 36 of the U. P. Land Revenue Act.*

By virtue of para. 93 of the Revenue Court Manual, O. 32, R 7, C. P. Code, applies to proceedings under S. 36 of the U. P. Land Revenue Act and hence a compromise in such proceedings on behalf of minors entered into by the guardian without the consent of the Court is altogether null and void. (*Shirreff, S. M. and Sathe, J.M.*) NAWAB ALI *v.* BAJI. **1942 A.W.R. (Rev.) 183=1942 O.W.N. (B.R.) 310=1942 O.A. (Supp.) 203=1942 R.D. 399.**

——**O. 32, R. 7**—Application for leave under—Duty of Court—Materials to be placed before Court. *See* 1941 Dig., Col. 333. AKBAR HUSSAIN KHAN *v.* BUDHU. **I.L.R. (1941) All. 677=197 I.C. 814=14 R.A. 245.**

——**O. 32 R. 7**—*Compromise by guardian—Previous sanction of Court not obtained—Court, if can give effect to it.*

The Court cannot give effect to a compromise which has been entered into by a guardian of a minor without its previous sanction. (*Rowland and Chatterji, JJ.*) SRI NARAYAN SINGH *v.* POSAN SINGH. **199 I.C. 465 =14 R.P. 580=8 B.R. 567=23 P.L.T. 602=A.I.R. 1942 Pat. 344.**

C. P. CODE (1908), O. 33, R. 1.

——**O. 32, R. 7**—Leave to refer to arbitration on behalf of minor—Form of order granting—Failure to give reasons—Effect—Suit to avoid agreement offending against O. 32, R. 7—Maintainability. *See* 1941 Dig., Col. 333. MADANLAL *v.* RAMCHANDRASWAMI. **I.L.R. (1942) Nag. 642=198 I.C. 749=14 R.N. 240=A.I.R. 1942 Nag. 26.**

——**O. 32, R. 7**—*Next friend and guardian* ad litem *—Distinction—Application by mother for substitution of minor transferee under O. 21, R. 16—Subsequent compromise—Leave of Court—Necessity.*

There is a distinction drawn throughout O. 32, C. P. Code, between a 'next friend' and 'the guardian for the suit'. While the latter is constituted by an order of the Court, the former automatically constitutes himself by taking steps in the suit. It is too narrow a view to take that the expression 'next friend' in O. 32, R. 7, is confined to a person who is acting on behalf of a minor who has already assumed the position of a plaintiff. It applies to any person who makes an application to the Court on a minor's behalf in relation to a suit. Where on the transfer of a decree to a minor, the mother applies to the Court under O. 21, R. 16 for his substitution, she becomes his 'next friend' by that very act and hence any compromise of the matter after that date if it should bind the minor must be with the sanction of the Court. (*Braund, J.*) AMARCHAND *v.* NEMCHAND. **I.L.R. (1942) A. 144=200 I.C. 434= 14 R.A. 435= 1942 O.A. (Supp.) 99 (1)=1942 A.L.J. 89=1942 A.L.W. 44=1942 A.W.R. (H.C.) 37=A.I.R. 1942 A. 150.**

——**O. 32 R. 15**—Duty of Court—Application for appointment of guardian *ad litem* for judgment-debtor alleged to be insane and mentally infirm for purpose of applying for scaling down decree under Madras Act IV of 1938—Dismissal without judicial inquiry and without opportunity to produce Medical Certificate. *See* 1941 Dig., Col. 334. RAMANATHAN CHETTIAR *v.* SOMASUNDARAM CHETTIAR. **200 I.C. 648=15 R.M. 97.**

——**O. 32, R. 15**—Procedure—Suit on behalf of person of unsound mind—Enquiry into competency of next friend—Where to be held. *See* 1941 Dig., Col. 334. GOVINDAYYA *v.* RAMAMURTHI. **200 I.C. 77= 14 R.M. 698= (1941) 1 M.L.J. 354.**

——**O. 33, R. 1**—*'Means'—Claim for dower.*

A claim which a Mahomedan lady might have against her husband to realise her dower cannot be deemed to be 'means' within the meaning of O. 33, R. 1, C. P. Code, for this reason that it depends entirely upon the option of the lady to prefer a claim for it or surrender it and she cannot by any means be forced to exercise that option. (*Ismail and Mulla, JJ.*) CHANDA BEGUM *v.* MAQSOOD HUSAIN KHAN. **202 I.C. 620= =15 R.A. 175=1942 A.W.R. (H.C.) 256=1942 A.L.W. 416=1942 A.L.J. 340=A.I.R. 1942 A. 319.**

——**O. 33, R. 1**—*Scope—Appeal—Review of judgment—Application by respondent—Power of Court to admit in* forma pauperis—*Court Fees Act, S. 4*

A Court has no power to admit an application by a respondent in an appeal for review of judgment in *forma pauperis*, having regard to S. 4 of the Court-Fees Act. There is no procedure which will entitle the Court to make an inquiry in regard to a respondent's pauperism after the appeal in regard to which he is to make the application has been brought to a close. The

C. P. CODE (1908), O. 33, R. 1.

words of O. 33, R. 1, C. P. Code, are unambiguous and cannot be construed so as to cover a defendant (or respondent) or a defence. There is nothing in O. 33, which can help a defendant (or a respondent) in asking for the indulgence granted to persons who wish to file suits in *forma pauperis*, except perhaps in cases where the defendant or respondent may, for the purposes of the suit or appeal, be regarded as a plaintiff (or an appellant). The Court has no powers to exempt a defendant or a respondent from paying the necessary Court-fee, even temporarily, when they are required to pay the same at the time when proceedings are initiated by them except perhaps when they really stand in the position of plaintiffs or appellants. A petition for review by a respondent in an appeal cannot be regarded to be in the nature of a continuation of the suit at least up to the time that it is not granted. (*Abdur Rahman, J.*) ANANTHAKRISHNA BALIGA, *In re.* **1942 M.W.N. 742=(1942) 2 M.L.J. 707.**

——**O. 33, R. 1, Expl.** — *Construction and scope—"Means"—Subject-matter of suit—Mortgage bond—Application for leave to sue on mortgage* in forma pauperis—*Value of claim—If can be taken into account as assets of applicant.*

The word "means" in the Explanation to O. 33, R. 1, C. P. Code, means income, estate or wealth. In estimating the means of an applicant for leave to sue *in forma pauperis* the subject-matter of the suit can be taken into consideration in so far as the applicant is found to be in possession of it or any portion of it. But a man cannot be said to be able to prosecute his suit, if he can only secure the wherewithal to do so by parting with his claim. The value of the claim itself, which it is sought to prosecute *in forma pauperis* cannot be taken into account. A person cannot be held disentitled to sue *in forma pauperis* merely because he has a claim, possibly a valuable claim, which he wants to prosecute as such. Where a person seeks to enforce a simple mortgage in a suit, it cannot be said that he is in possession of any portion of the subject-matter of the suit. He is only in possession of the mortgage document which, though the basis of his claim, is not the subject-matter of the suit. The claim under the mortgage cannot be taken into account as part of the assets of the applicant for permission to sue on the mortgage *in forma pauperis*, and his application cannot be rejected on the ground that he is not a pauper merely because his claim is a valuable claim. (*Meredith, J.*) MST. RAMNANDI KUER *v.* KUPNARAIN SINGH. **201 I.C. 13=15 R.P. 24=8 B.R. 762=23 Pat.L.T. 97=A.I.R. 1942 Pat. 290.**

——**O. 33, R. 1, Expl.**—"Possessed of sufficient means"—Meaning of—Applicant having share in inheritance though not in possession thereof—Grant of leave to sue without considering whether money cannot be raised with it—Revision—Material irregularity. *See* 1941 Dig., Col. 335. JAINATUNNISSA BIBI *v.* IDRAKUNNISSA. **197 I.C. 631=8 B.R. 258=14 R.P. 324.**

——**O. 33, R. 1, Explanation and S. 115**—*Subject-matter, if and when can be taken into consideration—Granting of leave—Interference.*

Cases which come under the first part of the explanation of R. 1 are not trammelled by the restriction of the second part excluding the subject-matter of the suit from consideration. In cases coming in the first category the subject-matter of the suit cannot always and of necessity be excluded from consideration. Whether it should or should not be excluded is a matter for the consideration of the Court in each case. The words "possessed of sufficient means to enable him to pay the fee" in the

C. P. CODE (1908), O. 33, R. 4.

Explanation merely mean that he is able to pay the fee. Although a person is entitled to property it is not a realizable asset so that he cannot be said to be possessed of sufficient means when the property is out of his reach. The applicant claimed a half share in a joint family estate on the ground that he was adopted by *K*, the widow of one of the deceased coparceners *A*. The non-applicant 1 who was *A's* brother and non-applicant 2 who was *A's* son both denied the applicant's adoption and title and alleged that three fields and a kotha out of the estate were given to *K* for her maintenance in 1929 but that since 1939 plaintiff had taken possession of this property. The Court found that the applicant was not in possession of any part of the family property, either of the fields granted to his adoptive mother or of the remainder of the estate. His very title to be a member of the family was denied. The only interest he had was his alleged title which he had to prove in the suit which he sought to institute *in forma pauperis*. The lower Court held that the fact that the applicant was entitled to claim a share in the fields held by his adoptive mother did not constitute "sufficient means" and granted the application,

Held, that the Court was not wrong in granting the application and even if wrong it would not justify revision as the error would not amount to material irregularity. (*Gruer, J.*) AMRITRAO ATMARAM *v.* NARSINGRAO. **I.L.R. (1942) Nag. 625=199 I.C. 702=14 R.N. 296=1942 N.L.J. 106=A.I.R. 1942 Nag. 47.**

——**O. 33 Rr. 2 and 5 (a)**—*Scope—Duty of applicant—Fraudulent disclosure—Effect—If fatal.*

It is the bounden duty of an applicant in *forma pauperis* under O. 33, R 2, read with R. 5 (*a*), C. P. Code, to make a full and accurate verified statement about his properties. Where there is a fraudulent suppression, the fact that, if the particular asset which had come to light had been disclosed it would not have affected the question of the alleged pauperism of the applicant, has no relevance inasmuch as any intentional departure from good faith, whatever the motive might be, must lead to a dismissal of the application for leave to sue in *forma pauperis*. (*Chandrasekhara Ayyar, J.*) KUPPUSWAMI NAIDU *v.* VARADAPPA NAIDU. **1942 M.W.N. 553=55 L.W. 561 (1)=A.I.R. 1943 Mad. 11=(1942) 2 M.L.J. 345.**

——**O. 33, R. 2**—Substantial compliance with—Sufficiency. *See* C. P. CODE, S. 115 AND O. 33, R. 2. **1942 O.W.N. 95.**

——**O. 33, Rr. 4, 5 (d) and S. 115**—*Power of Court to examine applicant as to cause of action subsisting—Decision as to existence of cause of action—Revision.*

Under R. 4 of O. 33, C. P. Code, a Court is entitled to examine the applicant for leave to sue as a pauper not only as regards the property of the applicant with a view to determining whether he is or is not a pauper but also to examine him as regards the merits of claim. This examination must necessarily be directed to ascertain whether the allegations in the plaint do or do not show a cause of action for the suit. The Court is hence justified in taking into consideration the applicant's statement in addition to the plaint allegations for determining whether the applicant had a subsisting cause of action. An order rejecting the application on the ground that there is no subsisting cause of action is not revisable under S. 115. (*Thomas, C.J. and Ghulam Hasan, J.*) MST. HIRA DEI *v.* GOKUL CHAND. **199 I.C. 364=14 R.O. 480=1942 O.A. 129=1942 O.W.N. 195=1942 A.W.R. (O.C.) 150=A.I.R. 1942 Oudh 361.**

C. P. CODE (1908), O. 33, R. 5.

——O. 33, R. 5—Rejection of pauper application—Revision, if lies. *See* C. P. CODE, S. 115 AND O. 33, R. 5. 1942 A.L.J. 340.

——O. 33, R. 5 (Oudh)—*Scope.*

The additional words added to R. 5 of O. 33 by the Oudh Chief Court imply that if there is any defect in the application, the applicant should be given time to amend it and his application should be rejected only if he fails to amend it within the time allowed. (*Bennett, J.*) RAM DULARI *v.* ALIAN BIBI. 17 Luck 628=199 I.C. 614=14 R.O. 503=1942 A W.R. (C.C.) 79=1942 R D 181=1942 O.A. 57=1942 O.W.N. 106 =A.I.R. 1942 Oudh 240.

——O. 33 R. 5 (a)—Scope—Schedule of property—Omissions—If fatal. *See* 1941 Dig., Col. 335. JAINATUNNISSA BIBI *v.* IDRAKUNNISSA. 197 I C. 631=8 B.R. 258=14 R.P. 324.

——O. 33, R. 5 (d) and S. 115—Dismissal on ground of cause of action being barred—Propriety—Revision—Competency. *See* 1941 Dig., Col. 335 DARGAH OF SAINT MISKEENSHAH BARENA PIR *v.* HARDAYAL PRASAD. I L.R. (1942) Nag. 459=197 I.C. 716=14 R.N. 190.

——O. 33, Rr. 5 (d) and 7—Scope—Duty of Court—Jurisdiction to go into evidence and to dismiss application on ground of suit being barred by *res judicata*—Dismissal—Interference in revision. *See* 1941 Dig., Col. 336. PERUMAL IYER *v.* SRINIVASA AYYANGAR. 200 I.C. 10=10 R.M 5=(1941) 1 M L.J. 31.

——O. 33, R. 7—*Application converted into suit on payment of Court-fee—Institution of suit—Date of.*

Unless it is proved that the application to sue *in forma pauperis* was fraudulent the payment of court-fee makes the institution of the suit date back to the day on which the application to sue *in forma pauperis* was presented. The mere fact that the applicant is possessed of some property would not make the presentation of the application to sue *in forma pauperis* fraudulent. 2 All. 241 (P.C.) Appl. (*Mir Ahmad, J.*) HAIDER AMIR KHAN *v.* HARNAM SINGH. 200 I.C. 704=15 R. Pesh. 11=A.I.R. 1942 Pesh. 27 (1)

——O. 33, R. 7—Granting of leave to sue as pauper—If revisable. *See* C. P. CODE (1908), S. 115 AND O. 33, R. 7. 1942 A.L.J. 419=1942 A.W.R. (H.C.) 257.

——O. 33, R. 7 and S. 149—*Refusal of leave to sue* in forma pauperis—*Payment of court fee subsequently, if can be allowed.*

After refusing to allow an applicant to sue in *forma pauperis* the Court cannot by a separate and subsequent order allow him to pay the requisite court-fee under S. 149, C. P. Code, and treat the application as a plaint (*Collister and Baipai, JJ.*) TEJ SINGH *v.* JAGAT SINGH. 1942 A.L.W. 602.

——O. 33, Rr. 7 and 15—*Scope and applicability of—Dismissal of application as withdrawn after notice and prior to hearing—Second application—Maintainability.*

R. 7 of O. 33, C. P. Code, contemplates an enquiry into the fact of pauperism upon the evidence that may be produced by the parties and after hearing their arguments. Until the stage contemplated by R. 7 is reached and an order is passed by the Court under that rule, the provisions of R. 15 of that order do not come into operation. The crucial test for determining the applicability of R. 15 of O 33 is whether the previous order dismissing the application for pauperism was passed under R. 7 (3) of O. 33 after satisfying the conditions laid down in that rule. Where it is prayed that a pauper application may be permitted to be withdrawn for the removal of certain formal defects and it is dismissed as withdrawn after issue of notice to the opposite party but before the actual date fixed for the hearing of the application, it cannot operate as an order refusing to allow the applicant to sue as a pauper within the meaning of R. 15 of O. 33, so as to constitute *res judicata*. There is no enquiry into the merits of the application, and much less any adjudication of the matter by the Court and hence a second application is maintainable (*Thomas, C.J. and Ghulam Hasan, J.*) UMRAO JAHAN BEGAM *v.* HAKIMUNNISSA. 17 Luck. 462=198 I C. 467=14 R.O. 399=1941 O. W N. 1335=1941 A W.R. (C.C.) 414=1941 O.A. 1015=A.I.R. 1942 Oudh. 169.

C. P. CODE (1908), O. 34, R. 1.

——O. 33, Rr. 10 and 11—*Scope—Mandatory character—Duty of Court.*

Rr. 10 and 11 of O 33 C. P. Code, are mandatory. According to those rules the Court has to pass an order, for the payment of Court-fees in a pauper's suit, *suo motu*. (*Wassoodew, J.*) GOVERNMENT OF BOMBAY *v.* BAI BAIBA KANDHABHAI. I.L R (1942) Bom. 456=202 I.C 781=15 R B. 191=44 Bom.L.R. 518=A.I. R. 1942 Bom. 274.

——O. 33, R. 12—*Applicability—Court passing decree making order for payment of Court-fees—Application by Government for fresh order—Competency.*

R. 12 of O. 33, C. P. Code, is intended to enable the Government to ask the Court to make an order for the payment of Court fees where no such order has been made. But it does not enable the Government to dictate to the Court in what terms the order should be passed or to apply for such an order again when the Court has already made an order. R. 12 is confined in its application to cases in which there is a distinct omission to pass orders under Rr. 10 and 11 *suo motu* by the Court which passed the decree (*Wassoodew, J.*) GOVERNMENT OF BOMBAY *v.* BAI BAIBA KHANDABHAI. I L R (1942) Bom. 456=202 I.C. 781=15 R B 191=44 Bom L.R. 518=A.I R. 19 2 Bom. 274.

——O. 33, R 15—Applicability—Notice served only on some of the respondents—Dismissal of application for default—If order refusing to allow applicant to sue as pauper—Fresh application—If barred. *See* 1941 Dig., Col. 337. PROVINCE OF ORISSA *v.* DIBYA SINGH NAND. 197I.C. 726=14 R.P. 348=8 B.R. 283.

——O. 33, R. 15—Scope and applicability. *See* O. 33 RR. 7 AND 15—SCOPE AND APPLICABILITY. 1941 O.A. 1015.

——O. 34 R. 1—*Failure to implead puisne mortgagee—If would entail dismissal of suit.*

A mortgage suit is not liable to be dismissed if a puisne mortgagee is not impleaded as a party (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARKASH RANI. 1942 O.A. 567=1942 A.W.R. (C.C.) 355=1942 A L.J. 766.

——O. 34, R. 1—*Mortgage executed by receiver—Suit on—Receiver made party—Owners of mortgaged property—If necessary parties.*

In a suit to enforce a mortgage executed with the sanction of Court by a receiver appointed under O. 40, R. 1, C.P. Code, the receiver may be a proper party, but the owners of the property who have interest in the right of redemption are also necessary parties. In view of the provisions of O. 34, R. 1, C. P. Code, it is doubtful whether it would be within the competence of the Court appointing the receiver to make an order directing him to represent fully the right of redemption. Even assuming that the receiver would normally represent the owners in a suit of this character, he cannot do so if collusion is proved between him and the mortgagee. A decree obtained in such circumstances against the

C. P. CODE (1908), O. 34, R. 1.

receiver, in the absence of the owners of the property will not affect their right of redemption. (*Akram and Pal, JJ.*) ANNAPURNA DASI *v.* SARAT CHANDRA. **46 C.W.N. 355 = A.I.R. 1942 Cal. 394.**

——**O. 34, R. 1**—Necessary and proper party—Distinction—Suit on mortgage against one of several heirs of mortgagor—Other heirs impleaded after limitation—Effect. *See* 1941 Dig., Col. 338. GURCHARAN *v.* RAM CHANDRA SINGH. **7 Luck. 482 = 197 I.C. 411 = 14 R.O. 310 = A.I.R. 1942 Oudh 197.**

——**O. 34, R. 1**—*Parties to mortgage suits—Rule as to discharge or non-joinder of person claiming title paramount, if absolute.*

Though it is a general rule that a person setting up a paramount title should be discharged from or not joined in a mortgage suit, it is not an absolute one. Questions of title may be investigated in a mortgage suit where it is necessary to give complete relief to the plaintiff or secure to him as a result of the decree in the mortgage suit, a quiet and unobstructed possession. In a suit on mortgage, a lambardar who had subsequently obtained a decree for arrears of land revenue against the property mortgaged and in execution of which he had purchased the field himself and obtained possession can be joined as a party and questions of priority in respect of land revenue and redemption of charge by mortgagee on payment could be decided in the mortgage suit. (*Gruer, J.*) LAXMANRAO *v.* MADHO PRASAD. **I.L.R. (1942) Nag. 701 = 200 I.C. 35 = 14 R.N. 314 = 1942 N.L.J. 156 = A.I.R. 1942 Nag. 60.**

——**O. 34 R. 1**—*Prior mortgage declared not genuine in suit on it—Prior mortgagee, not a necessary party in suit on subsequent mortgage.*

Where in a suit on a prior mortgage against the mortgagor and puisne mortgagee it is declared that the mortgage sued on was not genuine, the prior mortgagee ceases to be interested either in the mortgaged security or in the right of redemption and hence is not a necessary party in a subsequent suit by the puisne mortgagee on his mortgage and need not be joined. (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARKASH RANI. **1942 O.A. 567 = 1942 A.W.R. (C.C.) 355 = 1942 A.L.J. 766.**

——**O. 34, R. 1**—*Scope—Sale of property of mortgagor—Suit on mortgage without impleading purchaser—Decree and execution sale—Purchase by mortgagee—Subsequent suit by him against private purchaser for possession subject to latter's right to redeem—Maintainability.*

A mortgaged his property to *B* and afterwards sold it to *C* who took possession. *B*, then sued on his mortgage not making *C* a party, got a decree, brought the property to sale and purchased it himself. He failed to get possession from *C*, and therefore brought a suit to evict *C*, subject to *C's* right to redeem him. At the date of *B's* suit against *C*, a suit to recover the mortgage suit by sale of the mortgaged property was barred by limitation.

Held, that the suit was not maintainable and the auction purchaser, *B*, had no right to recover the property from *C*, unless *C* was willing to redeem him (*Broomfield and Macklin, JJ.*) GANAPA RAMA HEDGE *v.* TIMMAYA NARAYAN. **201 I.C. 123 = 15 R.B. 56 = 44 Bom L.R. 111 = A.I.R. 1942 Bom. 146.**

——**O. 34, R. 4**—*Applicability—Suit to enforce charge.*

In view of the provisions of O. 34, R. 15 read with O. 34, R. 4, a preliminary decree for sale should be made in a suit instituted to enforce a charge. (*Weston, J.*) ISSO *v.* RATTAN CHAND. **I.L.R. (1942) Kar. 168 = 202 I.C. 296 = 15 R.S. 30 = A.I.R. 1942 Sind 83.**

C. P. CODE (1908), O. 34, R. 5.

——**O. 34, R. 5**—*Applicability—Sale by Registrar under Chap. 27, Calcutta High Court, Original Side Rules and Orders—Procedure as to costs.*

In sales by the Registrar under Chap. 27 of the Calcutta High Court Original Side Rules and Orders, the judgment-debtor seeking relief should as far as possible observe the provisions of the C. P. Code. The provisions of O. 34, R. 5 apply to sales by the Registrar. It is not necessary to deposit costs with the application by the mortgagor under O. 34, R. 5 but it is desirable that O. 34, R. 5 should be complied with as far as possible. The mortgagee can furnish an estimate of his costs which can be accepted or modified by the Court and the Court can direct that a sufficient sum should be deposited when the application under O. 34, R. 5 is made or before an order is made on the application provided the attorney of the mortgagee gives the usual undertaking to refund any balance that may ultimately be found due. But this course is unnecessary where in an application under O. 34, R. 5 both the mortgagor and the mortgagee agree that the mortgagee should retain the title deeds which were deposited as security until the costs have been taxed and the amount is paid to him. In such a case the provisions both of the Civil Procedure Code, and Original Side Rules and Orders must be taken to have been observed (*McNair, J.*) SHAMANGINI ROY *v.* MAHALAKSHI RAKSHIT. **201 I.C. 464 = 15 R.C. 203 = A.I.R. 1942 Cal. 44.**

——**O. 34, R. 5**—Decree for sale—Application of sale proceeds—Subsequent interest and costs—If can have priority. *See* 1941 Dig., Col. 339. JIA RAM *v.* SULAKHAN MAL. **I.L.R. (1941) Lah. 740 (F.B.).**

——**O. 34, R. 5**—Final decree—If must invariably be in accordance with preliminary decree—Power to order sale of property not available for sale, though included in preliminary decree. *See* 1941 Dig. Col. 339. KUNJA BEHARI MISRA *v.* BENDUDHAR PANDA **197 I.C. 739 = 14 R.P. 350 = 8 B.R. 291 = 23 P.L.T. 412 = A.I.R. 1942 Pat. 185 (2).**

——**O. 34, R. 5**—Mortgage suit—Application for final decree—Dismissal of, decree having been satisfied under S. 19, Madras Act IV of 1938—If terminates suit—Right to apply for final decree for balance due. *See* 1941 Dig., Col. 340. SUBBAYYA *v.* VENKATA HANUMANTHA BUSHANA RAO. **I.L.R. (1942) Mad. 60 = 200 I.C. 520 = 15 R.M. 69 = (1941) 2 M.L.J. 125.**

——**O. 34, R. 5 and O. 23, R. 3**—*Scope and effect of O. 34, R. 5—If will override O. 23, R. 3—Plea of payment out of Court, if can be gone into when an application for passing a final decree is made.*

Sub-R. (3) of R. 5 of O. 34, C. P. Code, provides that where payment is not made in accordance with sub-R. (1), the Court shall on an application made by the plaintiff in this behalf pass a final decree. Sub-R. (1) provides for a payment being made into Court. As provision for an application for preparation of a final decree is made under O. 34, R. 5, it being a specific provision on that particular subject it would override the general provisions of O. 23, R. 3. Hence when an application for final decree is made on failure to deposit the decree amount in Court as provided in the preliminary decree and a payment out of Court is pleaded which is not admitted by the other side, it cannot be recognized and no inquiry as to such payment need be made. (*Bennett and Agarwal, JJ.*) MADAN THEATRES, LTD. *v.* DINSHAW AND COMPANY. **200 I.C. 465 = 15 R.O. 6 = 1942 O.A. 211 = 1942 A.W.R. (C.C.) 199 = 1942 A.L.W. 237 = 1942 O.W.N. 276 = A.I.R. 1942 Oudh 358.**

C. P. CODE (1908), O. 34, R. 5.

——O. 34 R. 5 (3)—Scope—Power of Court—Mortgaged property already sold for prior claim—Surplus sale proceeds—Final decree declaring mortgagee's right to surplus proceeds—Power of Court to pass—C. P. Code, S. 151. *See* 1941 Dig., Col. 340. KUNJA BEHARI MISRA *v.* BENDUDHAR PANDA. **197 I.C. 739=14 R. P. 350=8 B.R. 291=23 P.L.T. 412=A.I.R. 1942 Pat. 185 (2).**

——O. 34, Rr. 6 and 15—*Applicability—Simple money decree with declaration of charge—Effect of—Procedure for sale—Suit to enforce charge—No decree made for sale—Effect—Right of decree-holder.*

A charge does not create an interest in immovable property, and a declaration of a charge in a decree really does not do more than obviate the necessity for attachment of the property if and when the decree-holder chooses to proceed against that property. The charge secures the decree-holder against other creditors. In the case of a simple money decree with a declaration of charge it is open to the decree-holder to execute it in any manner allowed by law for the execution of money decrees. The decree-holder is not bound to proceed by sale of the property charged. If in a suit instituted to enforce a charge a preliminary decree for sale is passed then no doubt under O. 34, R. 6 the sale of property must precede any personal decree. But when no decree for sale was asked for by the debtor as he is entitled to do and there has been no decree for sale, and the decree passed is really a money decree with a declaration of a charge for the amount decreed, there is no room for the operation of R. 15 for the decree is not in a form contemplated by the earlier rules of O. 34. (*Weston, J.*) ISSO *v.* RATTAN CHAND. **I.L.R. (1942) Kar. 168=202 I.C. 296=15 R.S. 30=A.I.R. 1942 Sind 83.**

——O. 34, R. 6—*Personal decree before mortgaged property is exhausted—Validity.*

Normally, a personal decree should not be passed at all until the mortgaged property has been exhausted, but if such decree is passed it is not invalid. (*Almond, J.C. and Mahomed Ibrahim, J.*) HAJI NATHU *v.* NIKKI DEVI. **A.I.R. 1942 Pesh. 85.**

——O. 34, R. 6—*Preliminary decree in suit on mortgage against mortgagor and transferee of the equity—Liberty to apply for personal decree clause—Transferee of equity, if can plead that he is not a person from whom the 'balance is recoverable.'*

Where a preliminary decree in a suit on a mortgage against the mortgagor and a transferee of the equity provided that the 'plaintiffs shall be at liberty to apply for a personal decree for the amount' if the sale proceeds are insufficient, it was held that the liberty to apply clause did not prejudge or decide what will happen when application was made, at any rate, where the application could be against either of two (*B.* or *C.*) and must in law fail as against *C.* but would succeed, *prima facie* against *B.* and that it was open to the transferee of the equity to contend that he is not a person from whom the balance is recoverable. (*Stone, C.J. and Bose, J.*) BAIJNATH *v.* ANANDRAO. **1942 N.L.J. 144.**

——O. 34, R. 7—*Decree for sale—Only mortgagee can apply.*

Under O. 34, R. 7 it is only the mortgagee and not the mortgagor who is entitled to apply for a decree for sale. (*Almond, J.C.*) ZUHRA BEGAM *v.* SALIM KHAN. **A.I.R. 1942 Pesh. 96.**

——O. 34, R. 10—*Costs—Rule—Deposit under S. 83, T. P. Act, by subsequent mortgagee—Deposit not of full amount—Mortgagor not made party—Prior mortgagee refusing to accept deposit in full settlement—Costs in later redemption suit—Right to.*

C. P. CODE (1908), O. 34, R. 14.

In a redemption action the Court is bound to give the mortgagee his costs of the suit unless the Court is of opinion that his conduct has been vexatious or unreasonable so as to disentitle him thereto. Nor can he, when his conduct was neither vexatious nor unreasonable, be made to pay the costs of the person suing for redemption. The fact that a prior mortgagee refused to accept a deposit made by a subsequent mortgagee under S. 83, T. P. Act, when it is found that the deposit under S. 83 was not full and correct and that the mortgagors were not made parties to the application under S. 83 cannot amount to vexatious or unreasonable conduct on the part of the prior mortgagee so as to disentitle him to costs in a later suit for redemption by the subsequent mortgagee. (*Abdur Rahman and Somayya, JJ.*) MINAKSHI AYYAR *v.* JANAKI R ACHALIER. **55 L.W. 413=A.I.R. 1942 Mad. 592=(1942) 2 M.L.J. 124.**

——O. 34, R. 11—*Discretion of Court—Mortgagee's inaction—Delay in suing—If ground for disallowing interest before suit.*

O. 34, R. 11, C. P. Code, does not deprive the Court of its discretion to refuse interest in appropriate circumstances. Where a mortgagee has been inactive for a long time and has not satisfactorily explained such inaction for several years, the Court in a suit for sale can properly refuse interest prior to suit. (*Weston and Tyabji, JJ.*) HUNDALDAS *v.* BALUKHAN. **I.L.R. (1942) Kar. 452.**

——O. 34, Rr. 11 and 4—*Rate at which pendente lite and future interest are to be awarded.*

It is only at the contractual rate that the *pendente lite* and future interest should be allowed under O. 34, Rr. 4 and 11. The interest may altogether, for good reasons, be disallowed, but if interest is allowed it must be at the contractual rate. (*Allsop and Verma, JJ.*) BRIJ JIWAN DAS *v* SRIMATI KAWAL BIBI. **1942 A.W.R. (H.C.) 330=1942 A.L.J. 616=1942 A.L.W. 596=A.I.R. 1942 All. 444.**

——O. 34, R. 12—Sale of property free from prior mortgage—When may be ordered *See* 1941 Dig., Col. 342. KAISER KHAN *v* ABDUL GHANI. **202 I.C. 308=15 R.C. 318=A.I.R. 1942 Cal. 138.**

——O. 34, R. 13 (1)—*Person "interested in property"—Calcutta Corporation having statutory charge for unpaid taxes—Liability to pay such taxes.*

The fact that the Calcutta Corporation has a statutory charge upon the property sold for the unpaid taxes does not give them an interest in that property within the meaning of sub-S. (1) of R. 13 of O. 34, C. P. Code. The liability to pay the taxes does not rest on the mortgagee but lies on the mortgagor who is in possession of the property, and the auction-purchaser after his purchase will take the property subject to this statutory charge. The Court has, therefore, no jurisdiction to order the retention in Court of a portion of the sale proceeds in a mortgage sale for payment to the Calcutta Corporation. (*Ghose and Mukherjea, JJ.*) SATISH CHANDRA DAS *v.* KAMALA BALA DEVI. **75 C.L.J. 363.**

——O. 34, R. 14—Applicability—Bombay Land Revenue Code, Ss. 86 and 87—Sale of mortgaged property at instance of mortgagee to recover arrears of rent under rent note by mortgagor—Validity. *See* BOMBAY LAND REVENUE CODE, SS. 86 AND 87. **44 Bom L.R. 597.**

——O. 34, R. 14—Applicability—Conditions—Mortgage suit for sale—Decree for sale refused—Attachment and sale of mortgaged property in execution of money decree—If barred. *See* 1941 Dig., Col. 342. SITARAM *v.* LACHMAN LAL GOSWAMI. **199 I.C. 22=14 R.P.**

C. P. CODE (1908), O. 34, R. 14.

519=8 B.R. 481=23 Pat.L.T. 267=A.I.R. 1942 Pat. 50.

——**O. 34, R. 14**—*Applicability and scope—Mortgagee purchasing one item of mortgaged property directed to be sold first under decree at sale for Government revenue—If trustee for purchaser of other items—Purchase if invalid under O. 34, R. 14—Trusts Act, S. 90.*

The only limitations which fetter the power of a mortgagor to purchase the mortgaged property are those contained in O. 34. R. 14, C. P. Code and S. 90 of the Trusts Act. The former aims at affording to the mortgagor a measure of protection against the mortgaged property being sold at a disadvantage, while the latter is much wider in scope preventing, as it does, persons standing in a special relationship to certain others, from taking advantage of their position to secure a benefit to themselves in derogation of the rights of those others. Where a mortgagee who has obtained a decree for sale of two items of mortgaged properties, the decree directing that the first property should be sold first and then only if it is necessary the second property should be sold, purchases the first property at a sale for arrears of revenue for a very low price it cannot be said that the purchase by him at such sale can be ignored either on the ground of its being prohibited by O. 34, R. 14, C. P. Code, or on the ground that the mortgagee in purchasing it is only a trustee for owner the purchaser of the second item from the mortgagor. It cannot be said that the mortgagee owes a legal duty to the purchaser of the second item which would stand in the way of his acquiring the property for himself at the revenue sale with the object of getting round the restrictions placed on him by the decree. The mortgagee decree holder is in no sense in a fiduciary position in so far as the purchaser of the second item is concerned, and in purchasing the first property he cannot be deemed to have availed himself of any special position he held. When these two conditions are not satisfied, the fact that he gains an advantage to the prejudice of the purchaser of the second item cannot afford any ground of relief to the purchaser of the second item. So long as the revenue sale is not due to any wrongful conduct on his part, there is no reason why the mortgagee should be held to be in a worse position than a stranger purchasing at the revenue sale and obtaining a clear title incapable of being assailed by anybody. When he is under no duty to pay the revenue due on the first property and when he does not scheme to bring about a default in its payment, his position is not different from that of a second mortgagee, who purchases the mortgaged property at a sale by the first mortgagee in exercise of a power of sale. The law does not, subject to certain well-known exceptions, prevent the wary and the diligent from taking advantage of their less fortunate fellowmen, if the latter do not exhibit that degree of alertness which is necessary for the protection of their interests. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) GOVINDARAJAM PILLAI *v.* ALAGAPPA CHETTIAR. 55 L.W. 735=1942 M.W.N. 828.

——**O. 34, R. 14**—*Applicability— Usufructuary mortgagor withholding possession of* khudkasht *plots from mortgagee—Decree for possession and damages—Equity of redemption, if can be sold in execution.*

Where after the execution of a usufructuary mortgage the mortgagor does not deliver possession of the *khudkasht*, though he had not acquired any exproprietary rights in them and the mortgagee thereupon obtains a decree for his ejectment and also damages, the damages merely represents compensation for the usufruct to which the mortgagee was entitled and hence he cannot bring

C. P. CODE (1908), O. 40, R. 1.

the equity of redemption to sale in execution of the decree for damages by virtue of O. 34, R. 14, C. P Code. (*Shirreff, J.M and Sathe, A.M.*) ATAL SINGH *v.* ANAND SWARUP. **1941 R.D. 1134=1941 O.A. (Supp) 942=1941 A.W.R. (Rev.) 1173.**

——**O. 38, Rr. 5 and 6**—Applicability—Conditions—Disposal of property subsequent to suit—If condition precedent—Disposal made before suit—If may be relied on in support of application for attachment. *See* 1941 Dig., Col. 343. BISHAMBARDAS & CO. *v.* SACHOOMAL KOTOOMAL. **197 I.C. 291=14 R.S. 99**

——**O. 38, R. 5**—*Attachment without calling upon judgment debtor to furnish security—Legality.*

Under O. 38, R 5 the Court cannot order attachment before judgment without first calling upon the judgment debtor to furnish security. (*Mir Ahmad, J.*) BHAG CHAND *v.* SUJAN SINGH. **199 I.C. 209=14 R. Pesh. 79=A.I.R. 1942 Pesh 17.**

——**O. 38, R. 5 and O. 34, R. 6**—*Mortgage suit—Personal decree not passed—Jurisdiction to order attachment.*

The words "any decree that may be passed" in O. 38, R. 5 (1) are wide enough to cover a possible decree and in a mortgage suit the Court has jurisdiction to order an attachment before judgment under the last clause of O. 38, R. 5 although a personal decree has not been passed under O. 34, R. 6. (*Mir Ahmad, J.*) BHAG CHAND *v.* SUJAN SINGH. **199 I.C. 209=14 R. Pesh. 79=A.I.R. 1942 Pesh 17.**

——**O. 39 R. 9**—*Mortgage suit—Order in favour of mortgagee—It can be made after final decree and sale.*

An order under O. 39, R. 9, C. P. Code, can be made in favour of a mortgagee after a final decree is passed in the mortgage suit, and even after the sale before its confirmation. (*Nasim Ali and Blank, JJ.*) PASHUPATI NATH PAL *v.* DURJODHAN ROY. **46 C.W.N. 893.**

——**O 40 R. 1**—Bank appointed receiver—Moneys realised as receiver put into its current account under Court's order—If become assets of Bank. *See* BANKER AND CUSTOMER. **46 C.W.N. 910.**

——**O. 40 R. 1**—Mortgage suit—Appointment of receiver—Payment of revenue—Liability of mortgagor. *See* 1941 Dig., Col. 346. HARIDAS SAHA *v.* DULAL CHANDRA. **199 I.C. 728=14 R.C. 620.**

——**O. 40, Rr. 1 and 2 and O 43, R. 1 (S)**—*Order fixing remuneration of receiver—Appealability.*

Though the Court has the power to make the order fixing the remuneration of a receiver appointed by it at any time, nevertheless it must be regarded as part of the order of appointment. When it is made subsequent to the order of appointment it is really a continuation of the original order of appointment, at any rate it is so closely connected with the original order that it must be regarded as part and parcel of that order and hence such an order as to remuneration would be appealable under O 43, r. 1 (S.) (*Stone, C.J and Bose, J.*) BUDHULAL JAGANNATH *v.* THE HIRDAGARH COLLIERIES LTD. **I.L.R (1942) Nag 671=199 I C 874=14 R.N. 305=1942 N.L.J. 191=A.I.R. 1942 Nag. 64.**

——**O. 40 R. 1**—*Partition suit—Proceedings under O. 20 R. 12—Plaintiff declared entitled to specific share but property not divided—Appointment of receiver—Right of plaintiff to apply for.*

It is open to the Court in proceedings under O. 20, R. 12, C.P. Code, in a partition suit to appoint a receiver of the whole property pending division, at the instance of the plaintiff who is entitled to a specified, though undivided share in the suit property and who is entitled to a considerable sum of money as mesne profits. He is entitled to ask that his share should be safe-

C. P. CODE (1908), O. 40, R. 1.

guarded. (*Davis, C.J. and Weston, J.*) SAHIJRAM RUPCHAND *v.* ALU TUNDU. I.L.R. (1941) Kar. 563=200 I. C. 74=14 R. S 05=A.I.R. 1942 Sind 60.

——O. 40, R. 1—Powers of receiver—Right to sue for debt due to deceased person—Succession certificate, if necessary. *See* 1941 Dig., Col. 346. ANIL CHUNDER MITRA *v.* INDIAN ECONOMIC INSURANCE CO., LTD. 197 I.C. 437=14 R.C. 362.

——O. 40, R. 1—*Receiver—Appointment—Effect—If creates charge—Charge created by decree of competent Court—Receiver not made party to suit—Validity of charge.*

Where a person is granted a charge in a decree passed by a Court of competent jurisdiction, and that decree stands, he is in a better position than a person who has no title to the property in question. The fact that the official trustee as representing him is appointed receiver in a suit by him on behalf of the latter for partition does not give the latter a charge. The receiver is an officer of the Court appointed to hold the property in suit for the benefit of the person who could show a title to it. When the officer gets a decree in the suit on behalf of the person whom he represents, the latter would have no greater rights than are conferred by the decree. The fact that the party who got a charge over the property did not make the official trustee a party to his suit would not affect the validity of the charge created by a decree of a competent Court. (*Leach, C.J. and Byers, J.*) SUBRAMANIA IYER *v.* THANDAVAMURTHI CHETTY. I.L.R. (1942) Mad. 933=55 L.W. 433=1942 M.W.N. 453=A.I.R. 1942 Mad. 670=(1942) 2 M.L.J. 115.

——O. 40, R. 1—Receiver in execution—Appointment—Prior attachment of property—If condition precedent to validity of appointment. *See* C. P. CODE. S. 51 AND O. 40. 1942 M.W.N. 116.

——O. 40, R. 1—Receiver in respect of right to future maintenance—If can be appointed. *See* C. P. CODE, SS. 51, 60 (1) AND O. 40, R. 1. 1942 O.W.N. 359.

——O. 40, R. 1—Receiver in respect of waqf property—Execution of personal decree against mutawalli—Propriety—Powers. *See* 1941 Dig., Col. 347. TAQI HUSAIN *v.* SHYAM BEHARI. 197 I.C. 467=14 R.O. 319=A.I.R. 1942 Oudh 205.

——O. 40, R. 1—Receiver—Position of—Mortgage suit—Appointment of Receiver at instance of mortgagor—Effect—Receiver—If represents mortgagee alone—Payment of property tax by receiver—If payment on behalf of mortgagor. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 3 (*ii*), PROVISO (*c*). 55 L.W. 298=(1942) 1 M.L.J. 561.

——O. 40, Rr. 1 and 2—*Rule as to remuneration of party proposing himself as receiver.*

The English rule is that when a party interested proposes himself as receiver, he is usually required to act without salary unless by consent. There is nothing to show that the rule is different in India. But the Court may at some later stage if necessary make an order allowing remuneration to such a receiver. (*Stone, C.J. and Bose, J.*) BUDHULAL JAGANNATH *v.* THE HIRDAGARH COLLIERIES LTD. I.L.R. (1942) Nag 671=199 I.C. 874=14 R.N. 305=1942 N.L.J. 191 =A.I.R. 1942 Nag. 64.

——O. 40, R. 1—Scope—If controls S. 51 (*d*)—"Just and convenient"—Discretion of Court in appointing receiver in execution. *See* C. P. CODE S. 51 (*d*). 23 Pat.L.T. 191.

——O. 40, R. 1—Title of receiver—Receiver appointed in respect of contingent debt—Receiver giving notice to debtor and latter admitting claim—Title of receiver, if perfected. *See* 1941 Dig., Col. 347. ANIL CHUNDER MITRA *v.* INDIAN ECONOMIC INSURANCE CO., LTD. 197 I.C. 437=14 R.C. 362.

C. P. CODE (1908), O. 41, R. 1.

——O. 40 R. 1 (1) and (2)—*Relative scope—Appointment of receiver in respect of judgment-debtor's raiyati holding—Power of Court.*

The general power under O. 40, R. 1 (1) is curtailed by O. 40, R. 1 (2) and therefore O. 40, R. 1 (2) is a clear bar to the appointment of a receiver of the judgment debtor's raiyati holding the sale of which is prohibited by S. 46, Chota Nagpur Tenancy Act, as the decree-holder cannot be said to have a present right to remove the judgment-debtor from the possession of the raiyati holding. (*Agarwala, J.*) PARMESHWAR RAM *v.* CHARU RAM. 198 I.C. 818=14 R.P. 504=8 B.R. 464=A.I.R. 1942 Pat. 52 (2).

——O. 40, R. 1 (2)—*Applicability—Property in possession of party to litigation.*

Their Lordships left the question, whether O. 40, R. 1 (2), C. P. Code, has application only to properties in the possession of third parties or is also applicable to properties in the possession of one of the parties to the litigation, undecided and observed that the rule should be so amended as not to leave any doubt as to the true interpretation. (*Iqbal Ahmad, C.J., Bajpai, Dar, Yorke and Mathur, JJ.*) TULSHA DEVI *v.* SHAH CHIRONJU LAL. 1942 A.W.R. (H.C.) 337 (2)=1942 A.L.W. 646=A.I.R. 1943 A. 1 (F.B.).

——O. 40, R. 1 (2)—*Scope and effect of—Receiver in respect of property in possession of parties to litigation—Power of Court to appoint.*

O. 40, R. 1 (2), C.P. Code, is intended only for the protection of persons who are not parties to the litigation; the sub-rule does not debar the Court from removing one of the parties to the litigation from the possession of property of which he is in possession, by the appointment of receiver. Where the dispute is between parties to the suit or litigation, if it is just and convenient for the purpose of enforcing or carrying out the directions in a decree, a receiver may be appointed even where the party in possession is not liable to be removed. (*Agarwala, J.*) BANWARI LAL SAHU *v.* BALDEO SAH. 200 I.C. 649=14 R.P. 670=8 B.R. 710=23 Pat.L.T. 91=A.I.R. 1942 Pat. 240.

——O. 40, R. 3—*Security—If mandatory.*

O. 40, R. 3, C. P. Code, is not mandatory in respect of security. (*Shireff, S.M. and Sathe, J.M.*) SURAJ BUX SINGH *v.* GAYA PRASAD. 1942 O.A. (Supp.) 257 (1)=1942 A.W.R. (Rev.) 231 (1)=1942 O.W.N. (B.R.) 372=1942 R.D. 461.

——O. 41, R. 1 and O. 43, R. 2—*Combined effect of—Failure to file copy of formal order in appeal from an order—Effect.*

The combined effect of O. 41, R. 1 and O. 43, R. 2, C. P. Code, is that the procedure laid down in R. 1 of O. 41 to the effect that the memorandum shall be accompanied by a copy of the decree appealed from, must be held to apply in the case of appeals from orders as distinguished from decrees. Hence in an appeal from an order it is obligatory upon the appellant to file along with the memorandum of appeal a copy of the formal order also without which the appeal is clearly not competent. (*Thomas, C.J. and Ghulam Hasan, J.*) DURGA PRASAD *v.* RAMPAL. 200 I.C. 479=14 R.O. 607=1942 A.L.W. 221=1942 O.A. 158=1942 A.W.R. (O.C.) 161=1942 O.W.N. 213=A.I.R. 1942 Oudh 349.

——O. 41, R. 1—Compliance—Amendment of decree under S. 19, Madras Act (IV of 1938)—Appeal accompanied by copy of order directing amendment alone—Neither original decree nor amended decree produced—

C. P. CODE (1908), O. 41, R. 4.

Appeal—If can be treated as one against amended decree. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 19. **55 L.W. 668.**

——**O. 41, Rr. 4 and 33**—*Applicability and scope—Powers of appellate Court under.*

The provisions of O. 41, Rr. 4 and 33 are wide and give the appellate Court ample powers to pass such orders, as it may deem just and proper and necessary, to do full justice having regard to all the circumstances of the case. But these powers must not be so applied as to disregard other provisions of law, such as the Court-Fees Act and the Limitation Act. Where there is a distinct and separate decree against some defendant or persons who have not chosen to appeal, neither R. 4 nor R. 33 should be applied. In the absence of good and sufficient reasons, a right of appeal should not, after it has lapsed, be handed out gratuitously to persons who have themselves neglected to avail of it, especially when they have not asked for it, and the interests of the case do not require it for the purpose of doing justice to the persons who have appealed. (*Meredith and Shearer JJ.*) MUSSAMAT JAGPATI KUER *v* DAMRI SAHU HALKHORI RAM. **20 Pat. 811=198 I C. 521=14 R.P 460=8 B.R. 421=23 P.L.T. 588=A.I.R. 1942 Pat. 204.**

——**O. 41, R. 4**—*Applicability—Powers of Court—O. 22, R. 3—If qualified by O. 41, R. 4—Power to vary decree in favour of dead person whose legal representative is not brought on record.*

The provisions of O. 22, R. 3, C. P. Code, are not qualified by O. 41, R. 4, C. P. Code. O. 41, R. 4 does not apply to a case where all the plaintiffs and all the defendants are not alive, and it gives no power to a Court to vary or reverse a decree in favour of a person who is dead and whose legal representative has not been brought on the record. (*Davis, C.J. and Weston, J.*) GHULAM MAHOMED *v.* SHERDIL KHAN. **I.L.R. (1942) Kar. 435=A.I.R. 1942 Sind 157.**

——**O. 41, R. 5**—*Applicability—Appeal from order refusing to set aside* exparte *decree—Power to order stay of execution of decree—Order for stay—Execution sale held in spite of order—If illegal or without jurisdiction.*

An appellate Court hearing an appeal from an order refusing to set aside an *exparte* decree under O. 9, R. 3, C. P. Code, cannot order stay of execution of the decree itself. O. 41, R. 5, C.P. Code, does not apply and it is not therefore competent to the appellate Court to stay proceedings in execution of a decree merely by reason of an appeal having been preferred from the order of the trial Court refusing to set aside the decree passed *ex-parte*. If the appellate Court in such a case orders stay of execution of the decree, it is wholly without jurisdiction and is null and void. If execution is proceeded with and a sale takes place in spite of the illegal order of stay, the sale cannot be held to be illegal or without jurisdiction. The sale is valid and will stand. (*Harries, C.J. and Dhavle, J.*) MOHAN LAL MAHTO *v.* SHIBDHARI CHAUBE. **197 I.C. 651=14 R.P. 327=8 B.R. 273=22 Pat.L.T. 1018=A.I.R. 1942 Pat. 146.**

——**O. 41, R. 5 and S. 47**—Stay of execution in transferee Court pending appeal—Dismissal of appeal—Fresh execution application, if necessary—Effect of decree being affirmed in appeal—Merger—Limits to doctrine of. *See* 1941 Dig., Col. 348 SAROOP NARAIN *v.* SURAJ MOHAN DAYAL. **A.I.R. 1942 Oudh 84.**

——**O. 41, R. 5**—Stay—When takes effect—Sale after stay order but before communication—Validity. *See* 1941 Dig., Col. 348. RAJ BAHADUR SINGH *v.* PIRTHVIPAL SINGH. **17 Luck. 189=202 I.C. 273=15 R.O. 119=A.I.R. 1942 Oudh 22.**

C. P. CODE (1908), O. 41, R. 19.

——**O. 41, R. 10** Appeal—Order directing security to be furnished within a specified time—Security tendered in time—Rejection of appeal before testing—Propriety. *See* 1941 Dig., Col. 349. RANGASWAMI NADAR *v.* PITCHAIMANI NADAR. **A.I.R. 1942 Mad. 29=(1941) 2 M.L.J. 291.**

——**O. 41, R. 10**—*Security for costs deposited by appellant—Application for payment by successful respondent—Forum—Practice of Peshawar Court.*

It is the practice of the Peshawar Court that the successful respondent entitled to the money lying in the Court as security for costs furnished by the appellant under O. 41, R. 10 should apply for payment of the same to the original Court and not to the J. C.'s Court. (*Mir Ahmad, J. C.*) PARTAP SINGH *v.* HARKISHAN SINGH. **199 I.C. 46=14 R. Pesh. 78=A.I.R. 1942 Pesh. 14.**

——**O. 41, R. 14 (as amended in Peshawar)**—*Effect of—If enjoins appellant to implead as respondents all persons who were parties to original suit.*

O. 41, R. 14 lays down the procedure as to the service of notice on the respondents and the proviso added by the Peshawar Chief Court makes it possible for the appellate Court to dispense with the service of notice on those respondents who were not interested in the result of the appeal. Beyond this the rule does not go. It does not necessarily lead to the conclusion that all the persons who were parties to the suit should *de rigueur* be made parties to the appeal. There is no provision of law which denies to the appellant the right to implead only those persons whom he considers necessary and proper for the appeal. The appellant certainly runs a risk, but then he is to suffer if he commits a mistake. 5 P.R. 1892, Rel on. (*Mir Ahmad, J.*) MAHOMED ALI *v* ABDUR GHAFUR. **203 I.C. 91=15 R. Pesh. 53=A.I.R. 1942 Pesh 79.**

——**O. 41, R. 19**—*Scope and applicability of.*

An application under O. 41, R. 19 is the only way in which an order under O. 41, R. 18 can be questioned, except possibly in revision. Under O. 41, R. 19 the Court is given no discretion. Where the necessary proof is forthcoming, the Court is bound to readmit the appeal. It is a condition of the Court readmitting the appeal that, the appellant's 'excuse' has to be 'proved and the Court has to be satisfied that his excuse, constituted a 'sufficient cause' why he did not do what he ought to have done. (*Braund, J.*) RATAN LAL *v.* ZAHOOR-UL-HASAN. **1942 A.L.W. 56.**

——**O. 41, R. 19**—*Scope—If exhaustive—Appeal—Dismissal for non-payment of costs of paper book—Jurisdiction to restore—Inherent powers.*

O. 41, R. 19, C. P. Code, does not exhaust the powers of the Court in a proper case to re-admit an appeal or an application dismissed for default or want of prosecution. The Court has inherent powers under S. 151, C. P. Code, to make an order restoring an appeal or application for the ends of justice or to prevent an abuse of the process of the Court, without any reference to the period of limitation fixed for applications to re-admit appeals or to restore any other proceeding dismissed for default. Where an appeal is dismissed for non-prosecution, for failure of the appellant to deposit within time the costs for the preparation of the paper book of the appeal the Court can under its inherent powers under S. 151, C. P. Code, restore the appeal. (*Divatia, J.*) NINGAPPA NARASINGAPPA *v.* CHANDRA JAKAPPA. **201 I.C. 653=15 R.B. 103=44 Bom. L.R. 367=A.I.R. 1942 Bom. 198.**

C. P. CODE (1908), O. 41, R. 20.

——**O. 41, R. 20**—Addition of parties—Parties against whom right of appeal is barred by limitation. *See* 1941 Dig., Col. 350. KAMESHWAR *v.* AJUDHIYA PRASAD. 17 Luck. 175.

——**O. 41, R. 20**—*Scope and applicability.*

O. 41, R. 20, is discretionary and not mandatory. The discretion must also be used subject to any rights which the party may have acquired owing to its non-impleadment. (*Sathe, J.M.*) RAM DAYAL *v.* SHRIMATE DEVI. 1942 A W.R. (Rev.) 26=1942 O A. (Supp.) 26=1942 O.W.N. (B R.) 15=1942 R D. 15.

——**O. 41, R. 22**—Applicability—Appeals under Provincial Insolvency Act. *See* 1940 Dig., Col. 341. JAIKRISHNA *v.* SAWATRAM. I.L.R (1942) Nag 156 =201 I C. 439=15 R N. 47.

——**O. 41, R. 22**—Limitation—Appeal to High Court from original decree of Subordinate Court—Date of service of notice on respondent or pleader—Affixing to office of respondent's advocate—If due service. *See* C. P. CODE, O. 3, R. 5. (1942) 1 M L J. 245.

——**O. 41, R. 22**—*Right of respondent to attack lower Court's decision.*

O. 41, R. 22, C. P. Code, gives a respondent power only to support the decision of the lower Court and not to attack it, when he has not appealed against it or even put in cross-objections. (*Tek Chand and Blacker, JJ.*) RAJA RAM *v.* LEHNA. 199 I C. 700=14 R.L. 412=44 P.L R. 80=A.I R. 1942 Lah. 87.

——**O. 41, R. 22 and Court Fees Act, S. 6 A (1) (as amended by U. P. Act XIX of 1938)**—*Right to file cross objection, when there is no right to appeal—Appeal under S. 6-A (1), Court-Fees Act—Cross Objections if can be filed in.*

Where the law confers no right on a party to file an appeal, it follows that he is precluded from filing cross-objections to the appeal. A defendant is not entitled to file any appeal under S. 6-A (1), Court Fees Act as he is not a person who had been called upon to make good a deficiency in Court-fee. It follows that he is not entitled to file cross objections in an appeal filed by the plaintiff under that section. (*Bennett and Ghulam Hasan, JJ.*) ABHLAKH BAKHSHI SINGH *v.* THAKUR PRASAD. 200 I.C. 860=15 R O 46=1942 A.W.R. (C C.) 258=1942 O.A. 286=1942 O.W.N. 382=A I.R 1942 Oudh 391 (1).

——**O. 41, R. 22**—*Scope—Cross-objections as against party to suit not made party to appeal—Permissibility.*

O. 41, R. 22, C. P. Code, cannot be read as precluding a respondent from filing cross-objections directed not against the appellant but against a party to the suit who has not been made a party to the appeal. (*Venkataramana Rao and Abdur Rahman, JJ.*) KRISHNASWAMI NAIDU *v.* SECRETARY OF STATE. 55 L.W. 578=A I R 1943 Mad. 15=(1942) 2 M L J 431.

——**O. 41, R. 22**—*Scope—Right of respondent to claim relief not granted by lower Court without filing cross-objections.*

Under O. 41, R. 22, C. P. Code, a respondent can support the decree granted to him on any ground decided against him in the Court below, but if he wants a decree for a higher right which he prayed in the plaint but which has not been granted to him, it is incumbent on him to file cross objections. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNA DAS. I L.R. (1942) Bom 357=201 I.C. 420=15 R. B. 76=44 Bom.L.R. 295=A I R 1942 Bom 161.

——**O. 41, R. 23 and S. 151**—Appeal—Order of remand under inherent power. *See* 1941 Dig., Col. 351. GOPAL CHANDRA CHANDA *v.* DWARIKA NATH BEPARI. 74 C.L.J. 535.

C. P. CODE (1908), O. 41, R. 23-A.

——**O. 41, R. 23**—*Applicability—All questions decided.*

Rule 23 of O. 41, C. P. Code, applies where an appellate Court has reversed a decree and all the questions arising in the case have not been decided by the Court of first instance. Where all the questions are decided by the Court of first instance R. 23 would have no application. (*Ghulam Hassan and Agarwal, JJ.*) NOOR MOHAMMAD *v.* SULEMAN KHAN. 203 I.C. 236=15 R. O. 166=1942 O. A. 430=1942 O. W. N. 520=1942 A.W.R (C.C.) 322 (2).

——**O. 41, R. 23**—Decision on merits—Order of remand—Appeal. *See* C. P. CODE, S. 151 AND O. 41, R. 23. 197 I.C 13.

——**O 41. R. 23 (Allahabad) and Court-Fees Act, S. 13**—*Ex parte* decree after striking off defence—No finding recorded on issues—Reversal in appeal—Remand, if one under O. 41, R. 23—Refund of court-fee. *See* 1941 Dig., Col. 352. SHIAM SUNDER *v.* VENNEY PRAKASH. I.L.R. (1942) All. 84.

——**O. 41, R. 23 (Allahabad)**—*Interpretation—'Have not been decided by it', meaning of—Remand for retrial after reframing of issue—If falls under R. 23—Appeal—Inference of remand under R. 23 in preference to remand under inherent jurisdiction.*

The words 'have not been decided by it' in O. 41, R. 23, C. P. Code as amended by the Allahabad High Court must be taken to mean 'have not been properly decided by it'. Where an appellate Court sets aside a decree dismissing a suit on the ground that an issue had not been properly tried by the trial Court and remands that issue for retrial after reframing it, it is a remand under the Code and not under the Court's inherent jurisdiction and is hence appealable. Ordinarily a remand under O. 41, R. 23 will be readily inferred in preference to an assumption being made that the remand was under the inherent jurisdiction. (*Braund, J.*) RAM PRASAD SINGH *v.* SABZ ALI SHAH. 1942 A.L W. 48.

——**O. 41, R. 23 and O. 7, R. 11**—Order dismissing suit after deciding preliminary issue as to its maintainability—Nature of—Remand by appellate Court for further proceedings—Appeal. *See* C P. CODE, O. 7, R. 11 AND O. 41, R. 23. 44 P.L.R. 236.

——**O. 41 R. 23**—Order under—If revisable. *See* C. P. CODE, S. 115 AND O. 41, R. 23. 1942 O W.N. 236 =1942 A.W.R (C.C) 171.

——**O. 41, Rr. 23 and 25**—*Order under R. 23—Conversion into one under R. 25.*

An order which is really passed under R 23 of O. 41, C. P. Code, whether it is proper or not, cannot after it had become final be treated as one under R. 25 of that order. (*Shirreff, S.M. and Sathe, J.M.*) MAITHYLI SHARAN GUPTA *v.* RAM GUPTA. 1942 O.A (Supp.) 71=1942 O W N. (B.R.) 112=1942 A.W.R (Rev.) 65=1942 R D. 144.

——**O. 41, R. 23**—*Preliminary point—Meaning.*

A preliminary point does not necessarily mean a point collateral to the merits of the case but includes any point whether of fact or law, the decision on which renders the decision of other issues arising in the case unnecessary. (*Bhide, J.*) KHUDA BAKSHSH *v.* ATA MOHAMMAD. 201 I C. 159=15 R.L. 33=44 P.L.R 133=A I R 1942 Lah 135.

——**O 41, R. 23-A and O. 43, R. 1 (u) (as amended by Lahore High Court)**—*Intra vires.*

R. 23 A of O. 41 made by the Lahore High Court under S. 122 C. P. Code, as well as the amendment made in R. 1 (*u*) of O. 43, providing an appeal from an order passed under R. 23 A of O. 41 are *intra vires* of the High Court. R. 23-A of O. 41 as amended, does not offend against S. 128, C. P. Code; it is not in any

way inconsistent with S. 151 or any other provision in the body of the Code. S. 104 permits appeals not only from orders mentioned in R. (1) of O. 43 as originally enacted but also from rules as might thereafter be added by the High Court under S. 122, after following the procedure laid down in Part X. Accordingly, if the High Court adds a rule to O. 43, making an order appealable, which was not appealable formerly, such rule is automatically covered by S. 104. (*Tek Chand and Beckett, JJ.*) KISHAN SINGH *v* BACHAN SINGH 201 I.C. 667=15 R.L. 68=44 P.L.R. 253=A. I. R. 1942 Lah. 201.

——O. 41, R. 23-A, 25 and 27—*Trial Judge not framing proper issues and wrongly excluding evidence—Order of remand under R. 23-A—Propriety.*

If the appellate Court finds that the trial Judge has not framed proper issues and has wrongly excluded certain documentary evidence, it should frame additional issues and remand the case under R. 25 and at the same time direct the trial Judge under R. 27 to admit the excluded evidence. It should not remand the case under R. 23 A for rehearing and re decision. (*Tek Chand and Beckett, JJ.*) KISHAN SINGH *v.* BACHAN SINGH. 201 I C. 667=15 R.L.68=44 P.L.R. 253=A.I R. 1942 Lah. 201.

——O. 41, R. 27—*Additional evidence—Admissibility—Conditions—Document being above suspicion, if a sufficient ground by itself.*

Before additional evidence can be admitted in an appellate Court it must be shown that it falls within the purview of O 41, R 27, C. P. Code. The mere fact that a document is above suspicion is not enough to justify its admission in an appellate Court. (*Shirreff, S.M. and Sathe, J.M.*) CHOKAT SINGH *v.* DAYA KHATIK 1942 O A. (Supp.) 199 = 1942 R.D 405=1942 O W N. (B R) 816=1942 A W R (Rev.) 179.

——O. 41, R 27—*Additional evidence—Admissibility—Refusal—Grounds.*

Where certain documents were neither produced in the trial Court nor were they refused admission, and were not necessary to enable the Court to decide the case, it was held that a refusal to admit them by the appellate Court was justified. (*Sathe, J.M.*) CHHATTARDHARI AHIR *v.* GANESH AHIR. 1942 O W N. (B R.) 287=1942 O.A. (Supp.) 195=1942 R.D. 376 =1942 A.W R. (Rev) 175.

——O. 41, R. 27—Additional evidence—Disentitling circumstances. *See* 1941 Dig., Col 353. FATIMA BEE BEE *v.* OFFICIAL TRUSTEE. 198 I.C. 564=14 R R. 207.

——O 41, R. 27—*Additional evidence in appeal—Admission—Recording of reasons—Necessity.*

Under O. 41, R. 27, C. P. Code, additional evidence can no doubt be admitted by an appellate Court but this can be done only under certain restrictions and whenever additional evidence is admitted the Court has to record the reasons for its admission. A failure to so record would render the evidence admitted liable to be excluded. (*Sathe, J. M.*) CHOKAT SINGH *v.* CHULHI. 1942 O A (Supp.) 376 (2) =1942 A.W.R. (Rev.) 350 (2) = 1942 O.W.N. (B R.) 564 = 1942 R.D. 692.

——O 41, R. 27—*Admission of additional evidence in second appeal—Document purposely withheld to avoid penalty under Stamp Act—Subsequent validation of document—Document if admitted likely to make applicant succeed in the case—Considerations if sufficient for its being admitted.*

Where the reasons given by a party for failing to produce the document in question in the trial Court were false, and deliberately false, the fact that the

document, if admitted, would go far to prove that party's case and the fact that since the decision of the lower appellate Court the document had been validated by the payment of stamp duty and penalty cannot prevail against the consideration that the document was deliberately withheld in order to avoid penalties and possible prosecution, and that false evidence was submitted in respect of the non-production of the document at an earlier stage and also false evidence in the suit regarding the dates on which the debts were incurred—false evidence which would have been unnecessary had the document been produced. Under those circumstances the document sought to be admitted in the lower appellate Court and refused by it was also refused to be admitted in second appeal. (*Grille, J.*) GANESHPRASAD *v.* MST. RAMBAT BAI. I L R (1942) Nag. 369=201 I.C. 550=15 R N, 52=1942 N.L.J. 248=A.I.R. 1942 Nag 92.

——O. 41. R. 27—*Application for admission of additional evidence—Proper disposal.*

When an application for the admission of additional evidence in appeal is made, it is incumbent on the appellate Court to pass definite orders either admitting or rejecting the additional evidence tendered. An order of a routine nature by the clerk that the papers will remain with the file is altogether insufficient to dispose of the application. (*Shirreff S M. and Sathe, J.M.*) CHONHAR KALWAR *v* MADHO PRASAD. 1942 A.W. R (Rev) 353=1942 O A. (Supp.) 379=1942 O.W. N. (B R) 577=1942 R D 705.

——O. 41, R. 27—*Discretion of Court—Acceptance of documents.*

The acceptance of the documents under R. 27 of O. 41 is a matter of discretion. Where a large number of spurious documents have been produced on behalf of a party and that party's agents had no scruples in tampering with the evidence, it cannot be said that the discretion has not been rightly exercised by the appellate Court in not accepting them in evidence. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. 202 I C 551=15 R.C 355=47 C W.N. 9=A.I.R. 1942 Cal. 498 (S.B.).

——O. 41, R. 27—*Document for which there was no occasion to produce—Admissibility in second appeal.*

A document for the production of which no occasion arose in the trial Court can be admitted in second appeal under O. 41, R. 27, C. P. Code, when it is considered that its production and admission is necessary to enable the second appellate Court to pronounce judgment (*Shirreff, S.M. and Sathe, J.M.*) MST. KHUSHALO *v.* CHUNNILAL. 1942 R D. 723=1942 O.A. (Supp.) 404=1942 O.W.N. (B.R.) 595=1942 A.W.R. (Rev.) 378.

——O. 41, R. 27—*Documents not taken in—Formal order giving reasons—If necessary.*

No formal order giving reasons need be recorded by the appellate Court for not taking certain documents. The law requires such an order only when documents rejected by the trial Court are received in evidence by the appellate Court. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. 202 I C. 551=15 R.C. 355=47 C.W.N. 9=A I R. 1942 Cal 498 (S B.)

——O. 41, R. 27—*Grounds for admission—Sufficiency.*

The fact that the documents in question were above suspicion and that the opposite side could not adduce any valid reasons for their not being admitted, are not sufficient grounds to justify their admission under O. 41, R. 27, C. P. Code (*Sathe, J.M.*) RAM BADH TEWARI *v.* RAM PRASAD SINGH. 1942 O.W.N. (B.

C. P. CODE (1908), O. 41, R. 23.

R.) 126=1942 O A (Supp.) 86 (2)=1942 A.W.R. (Rev.) 80 (2)=1942 R.D 170 (2).

——**O. 41, R. 28**—*Question of issuing commission arising only in appellate stage—Proper procedure for appellate Court.*

Where no question of issuing a commission in a suit arose in the trial Court at all and it is only at the appellate stage that the question arises, the appellate Court should adopt the procedure prescribed by O 41, R. 28, C P. Code. It should either issue a commission itself or direct the trial Court to issue the commission and, after the return of the commission, it should take into consideration the commissioner's report. The Appellate Court should not set aside the decree of the trial Court and remand the case for a fresh consideration by that Court after giving the plaintiff an opportunity of applying for a commission. (*Agarwala, J.*) RAMDAHIN LOHAR *v.* RAMDHANI MAHTO. **199 I C. 91=14 R P. 528=8 B R. 495=A I R 1942 Pat 379.**

——**O. 41, R. 31**—*Judgment setting forth arguments of both sides—Decision in favour of one party—Relief not stated—Judgment if one in law.*

Where an appellate Court merely sets forth the arguments of both sides in its judgment and then decides that the arguments of one side must prevail simply because the counsel for that side promised to put his client in the Box to make a particular statement and the relief which that party is given is not even stated, there is no judgment in law. (*Shirreff, S.M and Sathe, J M.*) KUER PRADHAN *v.* MAULA JULAHA **1942 R.D 584= 942 A W R. (Rev.) 302= 1942 O.A. (Supp.) 328 = 1942 O W.N (B.R) 467.**

——**O. 41, R. 31**—*Non-compliance with—How affects judgment—Irregularity, if and when can be ignored.*

Non-compliance with the strict provisions of R. 31 of O. 41 may not vitiate the judgment and make it wholly void The irregularity may be ignored if there has been a substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. (*Madeley, J*) MOHD AZIM *v* MAHARAJA PATESHWARI PRASAD SINGH. **203 I.C. 361=1942 O.A. 442=1942 A W R. (C C.) 325 (1) = 1942 O.W N. 613.**

——**O. 41, R. 33**—Applicability and scope—Powers of appellate Court. *See* C.P. CODE, O. 41, R. 33. **20 Pat. 811.**

——**O. 41, R. 33**—*'Parties'—Meaning of—Award of decree in favour of persons not parties to appeal—Power of appellate Court.*

The word "parties" in O. 41, R. 33, C P. Code, is wide enough to include persons who were parties to the suit in the trial Court, but were not parties to the appeal. Where the trial Court had dismissed a suit against some of the defendants without costs and decreed it against the rest, in an appeal by the latter the appellate Court has power to decree costs incurred by the former in the trial Court. although they have not filed any appeal or cross-objection and are not parties to the appeal. (*Nasim Ali and Sen, JJ*) GIRIJA PRASANNA DEB GUPTA *v.* NIAZ MAHOMED KHAN. **I.L. R. (1941) 2 Cal. 556=46 C.W.N. 227=A.I.R. 1942 Cal. 257.**

——**O. 41, R. 33**—*Powers of Court—Cross-objections filed by some respondents only—Respondents not filing—Power of Court to permit them to take advantage of such objections—Rule.*

Where only some of the respondents to an appeal have preferred memoranda of cross-objections, while others have not, the Court has power under O. 41 R. 33, C. P. Code, to permit the respondents who have not preferred cross-objections to take advantage of the cross-objections preferred by the others when such objections go to the very root of the matter and the result of not doing so would result in two contradictory decrees. (*Fazl Ali and Meredith, JJ.*) BENARES BANK, LTD. *v.* GEORGE MACDONALD FALKNER. **21 Pat. 397=204 I.C. 48=A.I.R. 1942 Pat. 493.**

C. P. CODE (1908), O. 43, R. 1.

——**O. 41, R. 35**—*Silence of appellate Court as to costs—Inference.*

Where the order of an appellate Court is silent as to costs the order of the trial Court must stand. (*Sathe, J.M.*) WAQF IMDADIA *v* ASA RAM. **1942 O.A. (Supp) 66=1942 O W N. (B.R.) 100=1942 A.W.R. (Rev,) 60=1942 R.D. 132.**

——**O. 41-A, R. 6**—Scope—If overrides O. 3, R. 5—Affixture to office of respondent's pleader—Sufficiency. *See* C. P. CODE, O. 3, R. 5. **(1942) 1 M.L. J. 245**

——**O. 43, R. 1 (j)**—*Order confirming sale without disposing of application under O. 21, R. 90—Appeal—Revision.*

An order confirming a sale without disposing of an application under O. 21, R. 90, C. P. Code, does not fall within the purview of O. 43, R. 1 (j) and is, therefore, not appealable. It is the refusal to set aside the sale that is made appealable and not a mere order confirming the sale. The High Court can therefore, deal with the order in its revisional jurisdiction. (*Derbyshire, C.J. and Sen, J.*) NIRENDRA NATH BANERJI *v.* BIRENDRA NATH **202 I.C. 163=15 R C. 299= 46 C.W N 773=A.I.R. 1942 Cal. 480.**

——**O. 43, R. 1 (m) and O. 23, R. 3**—Applicability of O. 43, R. 1 (*m*)—Recording of compromise under O. 23. R. 3—Order that fresh decree could not be passed—Appeal—Power of High Court in. *See* 1941 Dig., Col. 357. V. M. R. M. P. CHETTYAR FIRM *v.* HAJEE MAHOMED SULTAN. **1941 Rang L.R. 774=198 I.C. 404=14 R R. 198.**

——**O 43, R. 1 (q)**—Scope — Order of interim attachment and notice—Defendant bringing into Court money equal to value of property attached—Order confirming interim order and directing money to remain in Court as security—Appealability—If falls under O. 38, R. 6 or R. 5. *See* 1941 Dig., Col. 357. PISHAMBARDAS & CO. *v.* SACHOOMAL KOTOOMAL. **197 I.C. 291=14 R.S. 99.**

——**O. 43, R. 1 (S)**—Order fixing remuneration of receiver — Appealability. *See* CIVIL PROCEDURE CODE, O. 40, RR. 1 AND 2 AND O. 43, R. 1 (S). **1942 N.L.J. 191.**

——**O. 43, R. 1 (s)**—*Order under O. 40, R. 1 (c)—Direction to receiver to pay money to third person—Appealability—S 47.*

An order passed by a Court under O. 40, R. (*c*),—C. P. Code, directing a receiver to pay any amount due from him and payable to a third person (not a party to the suit) is not appealable either under O. 43, R. 1 (*s*) or under S. 47, C. P. Code. (*Davis, C.J. and Weston, J.*) JASODABAI *v.* GOPALDAS. **I.L.R. (1942) Kar. 343=A I R 1942 Sind 144.**

——**O. 43, R. 1 (u)**—*Appealability—Appellate order remanding suit after setting aside trial Court's order setting aside an award.*

Where a trial Court sets aside an award on the ground that one of the parties to the reference was not competent to refer on behalf of another but the appellate Court disagrees with that finding and remands the suit for trial, the order of the appellate Court is appealable under O. 43, R. 1 (*u*), C. P. Code. (*Agarwal and Madeley, JJ.*) HARKARAN SINGH *v.* AGYA RAM.

C. P. CODE (1908), O. 43, R. 1.

1942 O.W.N. 685=1942 O.A. 543=1942 A.W.R. (C.C.) 350.

——O. 43, R. 1 (u) and O. 7, R. 11 (d) and Ajmer Municipal Regulation (1925), S. 233—*Failure to give notice under S. 233, Ajmer Municipal Regulation—Effect—Dismissal of suit—Setting aside on appeal—Further appeal.*

Where the statutory notice under S. 233 Ajmer Municipal Regulation, is not given, it will result in a rejection of plaint and not the dismissal of the suit. Where there is a so-called 'first dismissal' in such case it is in reality a rejection of the plaint and hence when it is set aside in appeal with a direction to the trial Court, no appeal will lie under O. 43, R. 1 (*u*), C. P. Code. (*Davies.*) MUNICIPAL COMMITTEE, AJMER *v.* HARIDAS. **1942 A.M.L.J. 13.**

——O. 43, R. 1 (u) (as amended by Lahore High Court)—If *ultra vires*. *See* C. P. CODE O. 41, R. 23-A AND O. 43 R. 1 (*u*). **44 P.L.R. 253.**

——O. 44, R. 1—Applicability—Memo of cross-objections *in forma pauperis*—Permissibility. *See* 1941 Dig., Col. 358. RAMACHANDRA IYER, *In re*. **199 I.C. 542=14 R.M. 597=(1941) 2 M.L.J. 187.**

——O. 44, R. 1 and O. 33, R. 2—Mortgage decree—Mortgagor applying for leave to appeal in *forma pauperis*—Duty to state in affidavit—Valuation of equity of redemption. *See*, 1941 Dig., Col. 358. SUBODH CHANDRA NAG *v.* K.L. BANK, LTD. **197 I.C. 489=14 R.C. 364.**

——O. 44, R. 1, proviso—*Applicant for leave to appeal as pauper—Right to be heard in support of application.*

A person who files an application for an order permitting him to file an appeal in *forma pauperis* under O. 44, R. 1, C. P. Code, is not entitled as of right to be heard in support of the application; but while there is no necessity in law to hear the applicant, it would tend to maintain confidence if judges do give such applicants an opportunity of being heard, being careful, of course, not to allow him to travel beyond the documents referred to in O. 44, R. 1. (*Leach, C. J. and Byers, J.*) SUBBA RAO *v.* TATA REDDI. **I.L.R. (1942) Mad. 746=201 I.C. 773=15 R.M. 409=1942 M.W.N. 282=55 L.W. 211=A.I.R. 1942 Mad. 478 (2)=(1942) 1 M.L.J. 435.**

——O. 44, R. 2 and S. 109 (c)—*Enquiry into pauperism—Procedure—Enquiry by Subordinate Court—Report, if binding on appellate Court—Question, if a substantial question of law.*

When an application for leave to appeal in *forma pauperis* is made it is the appellate Court which alone has power to grant leave, and the fact that it directs an enquiry by the Subordinate Court into the applicant's pauperism does not mean that it divests itself of jurisdiction to decide whether leave should be given. O. 44, R. 2, C. P. Code, merely provides for an enquiry by the Subordinate Court; it does not in any way indicate that the report of that Court must be accepted. It is entirely within the competence of that appellate Court to accept or reject it. The question whether the appellate Court can refuse to accept such a report is not such a substantial question of law as would justify the granting of certificate under S. 109 (*c*), C. P. Code. (*Bennett and Ghulam Hasan, JJ.*) JIVAN NATH *v.* RAM CHANDRA. **200 I.C. 426=14 R.O. 599=1942 O.A. 222=1942 A.W.R. (C.C.) 209=1942 O.W.N. 305=A.I.R. 1942 Oudh 422.**

——O. 45, R. 7—Deposit under—Nature of—Dismissal of appeal—Order for costs of respondent—Decree satisfied by adjustment and appropriation under S. 19, Madras Act IV of 1938—Right of respondent to payment under order for costs out of deposit. *See* 1941 Dig., Col. 358. SUBBAYYA *v.* VENKATA HANUMANTHA BUSHANA RAO. **I.L.R. (1942) Mad. 60=200 I.C. 520=15 R.M. 69=(1941) 2 M.L.J. 125.**

C. P. CODE (1908), O. 47, R. 1.

——O. 45, R. 7—*Extention of time—Power of High Court—Privy Council Rules, R. 9.*

Under O. 45, R. 7, C. P. Code, as amended by Act XXVI of 1920, the period of six weeks from the date of the certificate cannot be extended by the High Court, but R. 9 of the Privy Council Rules gives the High Court a discretion to extend time. There being a conflict between the two, the latter must prevail under the clear provisions of S. 112 (*c*), C. P. Code. (*Tek Chand and Beckett, JJ.*) DINA NATH *v.* SANT RAM. **I.L.R. (1942) Lah. 548=200 I.C. 273=A.I.R. 1942 Lah. 279.**

——O. 45, R. 13 (2) (d) and S. 151—Power of High Court—Income of property in suit accruing after decree, lying in deposit in High Court pending appeal—Order for its preservation—If may be passed after and before application for leave to appeal to Privy Council is filed. *See* 1941 Dig., Col. 359. RAMENDRA NARAIN ROY *v.* BIBHA BATI DEBI. **I.L.R. (1942) 1 Cal 67=202 I.C. 442=15 R.C. 337=A.I.R. 1942 Cal. 488.**

——O. 45, R. 17—Scope and effect of—Appeal to Federal Court—Order declaring appeal admitted under R. 8—If necessary. *See* 1941 Dig., Col. 360. RAMANATHA SASTRIGAL *v.* KRISHNA MENON. **200 I.C. 886=15 R.M. 174=A.I.R. 1942 Mad. 70=(1941) 2 M.L.J. 514.**

——O. 46, R. 1—"Any such decree"—Meaning of. *See* 1941 Dig., Col. 360. CHHOTUBHAI BHIMBHAI *v.* BAI KASHI. **14 R.B. 260=197 I.C. 895.**

——O. 46, R. 1—Construction—"Not subject to appeal"—Meaning—Reference—Competency. *See* 1941 Dig., Col. 360. CHHOTUBHAI BHIMBHAI *v.* BAI KHASHI. **14 R.B. 260=197 I.C. 895.**

——O. 47, R. 1—*Applicability—Principles governing relief—Facts to be proved by applicant.*

Applications under O. 47, R. 1, C. P. Code must be treated with a considerable measure of caution. That is a matter of public policy as it is obviously necessary that, save in exceptional circumstances, finality in litigation should be achieved at some point. It is a proper principle in applications for review that the person who wants it should at least prove strictly the diligence he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive of the matter. It is not the proper function of a review application merely to supplement evidence. It is not a proper use of O. 47, R. 1, to make it serve the purpose of merely introducing evidence which might possibly have had some effect on the result. It has to go a good deal further than that. (*Braund, J.*) PYARE LAL *v.* CHHOTEY LAL. **198 I.C. 863=14 R.A. 318=1942 A.L.J. 29=1941 A.L.W. 1106=1941 A.W.R. (H.C.) 385=A.I.R. 1942 All. 82**

——O. 47, R. 1 and Agra Tenancy Act (1926), S. 80—'*Discovery of new and important matter*'—*Want of notice as required by S. 80.*

The non-service of the notice required under S. 80 of the Agra Tenancy Act is not a ground for reviewing an order of ejectment because it cannot come within the words 'discovery of new and important matter.' (*Skirrell, S.M.*) CHANDRA DATTA *v.* LACHHI RAM. **1942 A.W.R. (Rev.) 432=1942 Q.A. (Supp.) 458=1942 O.W.N. (B.R.) 641.**

——O. 47, Rr. 1 and 7—*Interference with granting of review—Final order, proper order.*

Where the final order passed by a Court on a review of its own prior order is the proper order to be passed

C. P. CODE (1908), O. 47, R. 1.

in the case, the superior Court, whatever view it may take of the lower Court's competency to pass the order in review, should not interfere. (*Bennett and Agarwal, JJ.*) BIRENDRA BIKRAM SINGH *v.* BAJRANG BAHADUR SINGH. 1942 A W.R. (C.C.) 338=1942 O.A. 495=1942 O.W.N. 648.

——O. 47, R. 1—*Review—Grounds—Inability to pay decree amount in a decree for ejectment for arrears of rent.*

A review application can be granted by a Tahsildar only on any one of the grounds mentioned in O. 47, R. 1 C. P. Code. The 'some other good reason' referred to in the rule must be of a nature cognate to the reasons given before. Hence a decree for ejectment for arrears of rent cannot be reviewed on the ground that the judgment debtor was unable to pay the decree amount because of floods when such reason had not even been suggested when application for extension of time for payment of decree amount was made. (*Shirreff, S M. and Sathe, J.M.*) BHUNESHWARI PRASAD NARAIN SINGH *v.* JAMUNA RAI. 1942 R.D 438=1942 A.L J. (Supp) 37=1942 A W.R. (Rev) 203=1942 O.A. (Supp.) 229=1942 O.W.N. (B R.) 349.

——O. 47, R. 1—Review—Grounds—Wrong decision on a point of law. *See* 1941 Dig, Col. 361. SUNDARAM *v.* M. G. BAGLA. 197 I.C. 216=14 R.R. 115.

——O. 47, R. 1—Review—Jurisdiction to hear application—Partition suit—Appeal against final decree only—Dismissal—Second appeal also dismissed—Application to 1st appellate Court to review preliminary decree and order in appeal from final decree—Maintainbility. *See* 1941 Dig., Col. 362 JUGESHER MISRA *v.* KIRIT SINGH. 198 I C 743=14 R.P. 500=8 B R. 463=A.I.R. 1942 Pat. 76.

——O 47, R 1—*'Sufficient'—Absence of knowledge of execution proceedings—Review of order for ejectment under S. 80, Agra Tenancy Act.*

Want of knowledge of the execution proceedings is not a sufficient ground for asking for review of an order of ejectment under S 80, Agra Tenancy Act. (*Shirreff J M and Sathe, A M.*) MARVAM BIBI *v.* SARUPA. 1942 O W.N. (B R) 13=1942 O.A. (Supp) 9=1942 A.W R (Rev.) 9=1942 R.D 13.

——O. 47, R. 1 (1)—*Ground for review—Subsequent contrary decision by superior Court on question of law decided.*

The fact that subsequent to the decision by a Court there has been a contrary decision by a superior Court on the question of law decided is no good ground for reviewing the original decision. (*Bennett and Agarwal, JJ.*) BIRENDRA BIKRAM SINGH *v.* BAJRANG BAHADUR SINGH 1942 A.W.R. (C.C.) 338=1942 O.A. 495=1942 O.W.N. 648.

——O. 47, R. 4, proviso (b)—*Construction—"Strict proof"—Meaning of.*

The words "strict proof" in O. 47, R. 4 (2) (*b*) cannot be construed as meaning no more than evidence formally admissible or evidence strictly admissible. Having regard to the use of the words "strict proof" in the rule, there is no reason why the appellate Court, in deciding whether the conditions of R. 4 of O. 47. C. P. Code, have been complied with or not, should be precluded from seeing whether the evidence adduced before the lower Court amounted to proof or not. (*Burn J.*) AHMED KHAN *v.* VENKATACHALAMAYYA. 202 I.C 86=15 R M 439=55 L.W. 93=1942 M.W N. 132=A.I.R. 1942 Mad 511=(1942) 1 M.L J. 278.

——O. 47, R. 5—Jurisdiction—High Court—Appeal disposed of by two Judges—Application for review after one Judge has left the Court—Jurisdiction to hear. *See* 1941 Dig., Col. 362. P. CHENNA REDDI, *In re.* 201 I. C. 453=15 R M. 340=A.I.R. 1942 Mad. 23=(1941) 2 M.L J. 644.

C. P. CODE (1908), Sch. II, Para. 3.

——O. 47, R. 7—*Appeal against order granting review—Parties—Ejectment order against several set aside on review application by one—Appeal—All ejected persons, if to be made parties.*

Where an order for ejectment obtained against several persons is set aside on review on the application of one of them and the decree holder appeals against the granting of the review he must make all the persons ejected as parties and not implead only the applicant for review. (*Sathe, J. M.*) KUNWAR DHUJ PRATAP SINGH *v.* SHIV DIN 1942 O.W.N (B.R) 524=1942 A W.R. (B R.) 364 (2)=1942 O A. (Supp) 390 (2).

——O. 47, R 8—*Scope of inquiry—"Re-hear the case"—Meaning of—Whole case, if open.*

The words "re-hear the case" in O. 47, R. 8, C. P. Code, mean re-hear the case in full and deal with every point which it is necessary to consider before passing a fresh order. The Court is not confined to the point raised by the party seeking review (*King, J.*) GANGARAJU *v.* VENKATARAYALU NAIDU. 1942 M.W.N. 676=55 L.W 811=(1942) 2 M.L J. 716.

——O 49, R. 4 (Cal)—*Intra vires.*

Order 49, Rule 4 (Calcutta) of the Code is not *ultra vires.* Hence the judgment of a judge of the High Court on leave or during his absence can be delivered by his colleague who sat with him on the Division Bench. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARYAN ROY. 202 I.C. 551=15 R.C. 355=47 C.W N. 9=A.I.R. 1942 Cal. 498 (S B.)

——Sch. II, para. 1—*Applicability—Appeal from preliminary decree in partition suit—Application by parties to appellate Court for reference to arbitration pending appeal—Competency—Jurisdiction to make reference.*

The procedure laid down in Sch. II, C. P. Code, is not inapplicable to an appellate Court and an application for reference to arbitration under Sch. II, C. P. Code, may therefore be made to an appellate Court as well as to a Court of original jurisdiction. An application for reference to arbitration made to a Court before which an appeal from a preliminary decree in a partition suit is pending is therefore competent, and the appellate Court has jurisdiction to refer the matters in dispute to arbitration. (*Davis, C. J. and Weston J.*) ALLAKHDINOMAL *v.* TEKUMAL. I.L.R. (1942) Kar. 177=A.I.R. 1943 Sind 22.

——Sch. II. Para. 1—Reference—Competency of pleader to make. *See* LEGAL PRACTITIONER. 1942 O A. 543.

——Sch. II, para. 1 (1)—Judgment contemplated by—Pendency of review application—If a bar to reference to arbitration without intervention of Court. *See* 1941 Dig., Col. 363. SAGAR MAL *v.* PARSOTAM DAS 198 I.C 385=14 R.A. 279=1941 A.L.J. 770=A.I. R. 1942 All 36.

——Sch. II, Para. 3—*Scope—Power of Court to compel party to refer to arbitration matter not agreed to be referred.*

While para. 3 restricts the limitation on the Court's power in the case of matters referred to arbitration, it does not thereby give the Court power to compel one of the parties to go to arbitration on a matter which he has not agreed shall be referred. There is no provision in the schedule which enables a Court directly or indirectly, to force a party to refer a matter in dispute. Hence a Court has no power to nullify a reference lawfully made by an addition, to the matter referred, of some other

C. P. CODE (1908), Sch. II, Para. 8.

matter by an amendment of the pleadings. The Court cannot add to the subject-matter either by allowing an amendment of pleadings or otherwise. (*Davis, C.J. and Weston, J.*) SITALDAS POHUMAL *v.* NIHALCHAND ISSARDAS. **198 I.C. 847=14 R.S. 158=A I R. 1942 Sind 7.**

——**Sch. II, Para. 8**—*Extension of time for filing award—Discretion—Improper exercise—Interference in appeal.*

Where proceedings before an arbitrator has gone on for some time, the evidence has been closed and the case is ready for arguments and giving of the decision, and the arbitrator who had only obtained two former extensions of time for filing the award applies only for one more fortnight's time, it is an arbitrary exercise of jurisdiction to refuse it and supersede the arbitration and thereby cause grave miscarriage of justice. It is liable to be set aside in appeal. (*Ghulam Hasan and Madeley, JJ.*) CHINMAN *v.* BRIJ MOHAN DAS **1942 O A. 298=1942 O.W.N. 407=1942 A.W.R. (C.C.) 270.**

——**Sch. II, para. 10**—*Filing of award—What amounts to.*

The mere handing over of an award with the reader, in the absence of the Judge on leave, is not filing it in Court. An award cannot be said to be "filed in Court" within the meaning of Sch. II, para, 10, C. P. Code, by simply showing it on the record. It is necessary that it must be placed on the record by order of the presiding officer of the Court, or by an official specially authorised in this behalf. (*Tek Chand and Beckett, JJ.*) IMAM DIN *v.* ALLAH RAKHA. **20r I C. 462=15 R.L. 49=44 P L.R. 249=A.I.R. 1942 Lah. 190.**

——**Sch. II, para 15**—Construction—Cancellation of reference to arbitration under R 8—Subsequent award—If void—If can be filed. *See* 1941 Dig, Col. 364. SUBBAVVA *v.* VENKATADRI. **200 I.C. 55=14 R M. 687=(1941) 2 M L J. 395.**

——**Sch. II, para. 20**—Award on private reference made rule of Court—Minor party represented by guardian—Suit by minor to avoid award for want of registration—Maintainability. *See* 1941 Dig., Col. 365 SAGAR MAL *v.* PARSOTAM DAS **198 I C. 385=14 R A. 279=1941 A.L.J. 770=A I.R. 1942 All 36.**

——**Sch. II, para. 20**—*Award—Validity—Partition suit—Reference to arbitration—Procedure—Piece-meal inquiry—If invalidates award.*

If in a partition suit a reference is made of the whole matter to an arbitrator with directions to make an award, the arbitrator would not be empowered to make a series of awards each dealing with one branch of the dispute as on the making of an award he would be *functus officio*, and would have no power to do anything further. But an arbitrator dealing with a complicated partition dispute would not be debarred from taking up an inquiry piece-meal, classifying the evidence according to the subject-matter more or less under issues just as a Court would do, and arriving at tentative conclusions on each section of the case, always provided that he does not make anything in the nature of an award in writing until the whole matter is decided. The arbitrator in a partition inquiry must decide firstly what are the properties available for decision before he can proceed to decide how those properties should be divided. The apportionment of the debts would often depend upon the apportionment of the lands and it is therefore almost inevitable that the arbitration in such a case should proceed piece meal. There is consequently nothing wrong in the procedure of the arbitrator in that manner, unless he can be deemed to have made a final and formal award at any of the stages before he makes

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the final award. The procedure in deciding the various sections of the inquiry piece-meal and summing them up in one final award cannot therefore be regarded as amounting to the giving of several awards so as to render his decision invalid. (*Widsworth and Patanjali Sastri, JJ.*) RAMANUJACHARIAR *v.* VATAPATHRA SAVEE THATHACHARIAR. **1942 M.W.N. 811=55 L.W 814=(1942) 2 M L.J 698.**

——**Sch. II, Para. 20 (2)**—*Jurisdiction—Application relating to property within jurisdiction of two Courts—Forum.*

Where an application under para. 20 (2) relates to property within the jurisdiction of two Courts in British India, it is open to the Court, within the jurisdiction of which, part of the property is situate to entertain the application. It is not necessary to divide one estate among two or more Courts merely because all the property is not situated within the jurisdiction of one Court. Where the immovable property is situated within the jurisdiction of a Court *A*, the fact that certain movable properties, monies and ornaments, were in the jurisdiction of another Court would not deprive Court *A* of jurisdiction. (*Davis, C.J. and Weston, J.*) JETHANAND PITAMBERDAS *v.* MIRABAI. **I.L R. (1942) Kar. 36=202 I C 152=15 R.S 24=A.I.R. 1942 Sind 79.**

——**Sch. III, para. 11**—*Scope and effect of.*

Para II of Sch. III, C P. Code, cannot affect anything done by the proprietor for the effective cultivation of the ryoti land of the village in the ordinary course of village management, even though it may involve transfer of cultivating rights. This provision of law only takes away the judgment-debtor's capacity to alienate the property under the control of the Collector, but does not take away his right to manage his village as would be the case if the Court of Wards Act had applied. (*Niyogi, J.*) FATTECHAND *v.* BUDHU. **1942 N.L J. 299.**

COLLECTOR PROCEEDINGS—*Sale—Stay by reason of application to Debt Conciliation Board—Dismissal of application—Sale without notice to judgment-debtor—Propriety.*

After the issue of a proclamation of sale by the Collector the proceedings were stayed by reason of an application to the Debt Conciliation Board. After the latter's dismissal, the sale was held without notice to judgment debtor. It was set aside by the appellate Court. It was *held* in revision that the appellate order was so obviously just and equitable that it could not in any event be interfered with in revision. (*Binney, F.C.*) SHEONARAYAN BALIRAM *v.* SARDARKHAN ABDULLAH. **1942 N.L J. 29.**

COMPANY—*Application for shares—Revocation—Grounds—Material change in prospectus after application and before allotment—Sufficiency—Proof of misrepresentation or fraud—Necessity.*

Where after an application is made for shares in a company and before the date of the allotment, the prospectus of the company is changed in material particulars, for instance, by a reduction of the minimum subscription required before allotment from Rs. 40,000 to Rs.10,000, an applicant for shares is entitled to revoke his application. Mere material change in the prospectus is sufficient to entitle an applicant to revoke his application and it is not necessary to prove misrepresentation or fraud. (*Byers, J.*) RAJAGOPALA IYER *v.* SOUTH INDIAN RUBBER WORKS, LTD., COIMBATORE. **203 I C. 243=1942 M W N 475=55 L W 521=1942 Comp C 203=A I R. 1942 Mad. 656=(1942) 2 M. L J 228.**

——*Articles of Association—Construction—Banking company—Provision in Article for vacating*

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office by director on resignation or incapacity to act as director—Default in repayment of loan to company—If ground for vacating office of director.

Where one of the Articles of Association of a banking company provides that the office of a director shall be vacated "if he resigns or for any other reason becomes incapable of acting as a director," it cannot be held that default by him in repaying a loan to the bank and indebtedness to the bank incapacitates him from acting as a director. Loans to directors of a bank are contemplated as part of its business and therefore default in repayment of a loan cannot be a disqualification. There must be some incapacity such as illness, long absence, imprisonment or insanity, etc. (*Byers, J.*) ALBUQUERQUE *v.* CATHOLIC BANK, LTD. MANGALORE. **1942 Comp C. 213 = A I R. 1942 Mad. 737 (1) = 55 L.W. 532 (1) = (1942) 2 M.L J. 307.**

———*Purchase of own shares—Legality—Vendor—Right of to have name removed from register of shares—Companies Act, S. 184—Company—If estopped from pleading invalidity of purchase by reason of representation of officers that purchase was for constituents—Rule.*

A limited company by its very constitution is prohibited from purchasing its own shares, whether such purchase is authorised by the memorandum of its association or not, the purchase is void and illegal. The legal incapacity of a company to purchase its own shares is not dependent upon the fact of the purchase being made either within or outside the territorial limits of the place where the company is incorporated, but it is beyond the scope of its constitution. If a company therefore purchases its own shares, no matter where, a member who has sold his shares to the company cannot claim to be removed from the register of shareholders under S. 184 of the Companies Act because the purchase by the company must be deemed to have been not validly made as it is *ultra vires* of the company. On the strength of such a transaction the vendor is not entitled to have his name removed from the register and to have the vendee's name put instead. If a company purchases its own shares, the effect is that in law the vendor does not cease to be the legal owner of the shares, and his liability as a member contributory in respect of unpaid calls is not thereby extinguished, even if the sale and purchase be effected outside the state or territory where the company is incorporated. Nor is the company estopped from pleading the invalidity of the purchase or that the purchase was for itself and not for a constituent by reason of representations made by its officers to the vendor, even if it be a foreign company. A company cannot be bound by estoppel to do something beyond its powers. In such a case the remedy, if at all, can only be against the officers who made the representation on the faith of which the contracts were entered into. (*Venkataramana Rao, J.*) SABARATNAM CHETTIAR *v* OFFICIAL LIQUIDATORS. **55 L.W. 653.**

———*Directors—No quorum fixed—Acts of major part of Directors present—If valid.*

Unless a construction of the articles of a company leads to the conclusion that there was an intention to supersede the ordinary rule, it must be held that, where no quorum has in fact been fixed, the acts of a major part of the Directors for the time being are valid. (*Tek Chand and Blacker, JJ.*) GANESH FLOUR MILLS CO., LTD *v.* JAG MOHAN SARAN. **199 I C. 397 = 14 R.L. 386 = 1942 Comp. C. 10 = 44 P.L.R. 15 = A.I.R. 1942 Lah. 68.**

———Director or managing director—Position of. *See* 1941 Dig., Col. 365. GULAB SINGH *v.* PUNJAB ZAM-

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INDARA BANK, LTD. **199 I.C. 667 = 14 R.L. 423 = A.I.R 1942 Lah. 47.**

———Directors—Power to refuse to recognise transfer of shares—Failure to give reasons—Presumptions of mala fides—Opinion of shareholders—Relevancy. *See* 1941 Dig.. Col. 366. JAGDISH PRASAD *v.* PARAS RAM **I.L.R. (1942) All. 671 = 197 I.C. 860 = 14 R.A. 253 = 1942 Comp C. 21.**

———Effect of Act of Country governing the company terminating its existence. *See* 1941 Dig., Col. 366. DAIREN KISEN KABUSHIKI KAISHA *v.* SHIANG KEE. **1942 Comp C. 1.**

———Liquidation — Preferential creditor — Trust—Payment of arrears of premia to insurance company by assignee of policy for revival of lapsed policy—Condition as to production of medical certificate not fulfilled—Company ordered to be wound up before production—Right of assignee to rank as preferential creditor—Trust—If created. *See* 1941 Dig., Col. 366. RAMAKRISHNA IYER *v.* OFFICIAL LIQUIDATOR, SOUTH INDIAN GENERAL ASSURANCE CO. **201 I.C. 204 = 15 R M. 271 = A.I.R. 1942 Mad. 210 = (1941) 2 M.L J. 910.**

———Shares—Forfeiture—Non-payment of call money—Directors not appointing person or place to whom or at which it is to be paid, as provided by articles—Notice calling for payment of both call and allotment money—Forfeiture for their non payment—Validity. *See* 1941 Dig., Col. 367. BENGAL ELECTRIC LAMP WORKS. LTD., *In re.* **I.L.R (1941) 1 Cal. 132 = 203 I C. 469 = 1942 Comp C. 238 = A I.R 1942 Cal. 516.**

———Shares—Transfer in blank—Transferee's right to fill in particulars after transferor's death. *See* 1941 Dig. Col. 367. BENGAL SILK MILLS CO. LTD, *In re.* **I L.R (1942) 1 Cal. 122 = 201 I.C 778 = 15 R.C. 275 = 1942 Comp. C. 206 = A I R. 1942 Cal. 461.**

———*Winding up—Application by shareholder—What applicant has to prove—Discretion of Court - Exercise of—Principles governing—Interference with internal management of company—Rule.*

A shareholder applying for an order winding up a company is under no disability as compared with a contributory and he is under no obligation to satisfy the Court that on a winding up there would be surplus assets. But in exercising its discretion in winding up a company on the petition of a shareholder, the Court constantly bears in mind that the internal management of the Compaay is its own concern, and it is a much better judge of business prospects of trading venture than the Court can ever hope to be. If, therefore, the majority of the shareholders show confidence in the management of the company and have faith in its future prospects, the Court will rarely interfere. It is not right for the Court to intervene because one shareholder is dissatisfied. An applicant for winding up has got to make out a case for winding up on his petition, and he cannot be allowed to fish out a case by cross examination of the deponents who have made affidavits on behalf of the company or by inspecting the accounts. (*Chagla, J.*) *In re* THE CINE INDUSTRIES & RECORDING CO., LTD. **203 I.C. 116 = 1942 Comp. C. 215 = 44 Bom L.R. 387 = A.I R. 1942 Bom. 231.**

——— Winding up—Assets or capital—Uncalled share money on ordinary issued shares—If available for payment to preference share holders—Right to payment of dividend out of captial when there are no profit. *See* 1941 Dig., Col. 369. D'CRUZ *v.* VISWANATHAN. **199 I C. 602 = 14 R.M. 612 = (1941) 2 M L J. 94.**

———Winding up—Onerous contract with creditor—Company unable to carry on its business and pay its debts. *See* 1941 Dig., Col. 369. ERNEST HUGH

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CANNING *v.* SOOBRAN PARTAP. **8 B.R. 187=14 R. P.C. 80=1942 Comp. C. 5**

——Winding up—Priority of debts--Costs of successful litigant against Company—If entitled to priority. *See* 1941 Dig. Col. 369. KAILASH PICTURE PALACE, LTD. *v.* KIDAR NATH. **I.L.R. (1942) Lah. 742=197 I.C. 858=14 R L. 293=A.I.R. 1942 Lah 10.**

——Winding up proceedings—Costs—Company and shareholders appearing by same solicitor but separate counsel—Right to separate sets of costs -Creditors—Costs of. *See* PRACTICE—COST—DISCRETION. **44 Bom.L.R. 387.**

——*Winding up--Set-off—Deposit of money in name of husband and wife—Loan by husband alone—Right of set-off—Presumption as to ownership of money—Rule.*

Under the law of set-off which is applicable in the winding up of a company, where there are two amounts, one in the account of *A* and the other in the account of *A* and *B*, if it is shown that the latter account, though standing in the name of *A* and *B*, was really in trust for *A*, the amount due under one account can be set-off against the amount due under another account. Under the law prevailing in India a deposit by a husband in the name of himself and his wife payable to either or survivor, in the absence of evidence to the contrary must be presumed to belong to the husband. Where a husband deposits his salary in a bank in current and savings banks accounts in the name of himself and his wife payable to either or survivor, and takes a loan from the bank in his own name only, the amount standing to his credit in the joint account can be set off against the money due under the loan account in the winding up of the bank, as the money is really his. (*Venkataramana Rao. J.*) PANIKAR *v.* TRAVANCORE NATIONAL AND QUILON BANK, LTD. **203 I C. 588=55 L W. 252=1942 M.W N. 211=1942 Comp C. 72=A.I.R. 1942 Mad 351=(1942) 1 M.L.J. 161.**

COMPANIES ACT (VII OF 1913, as amended by Act XXII of 1936), S. 4 (2) and (5)—*Company of more than 20 persons formed in* 1922 1923 *not registered as required by S.* 4 (5) *enacted in* 1936—*Members whether guilty of contravening S.* 4 (5)—*Complaint by private persons—Cognisability.*

Where a company consisting of more than 20 persons formed in 1922 1923 is unregistered, the members thereof can be punished for continuing to be members of such company, under S. 4 (5) of the Companies Act which was introduced by the Amending Act XXII of 1936, although they cannot be punished for originally forming themselves into such a company in contravention of S. 4 (2) of the Act of 1913. (*Horwill, J.*) MUTHUVEERAN CHETTIAR *v.* MOTTAYAN CHETTIAR. **202 I.C. 28=15 R.M. 470=1942 Comp. C. 86=43 Cr. L.J. 785=1942 M.W.N. 121=A.I.R. 1942 Mad. 283=(1942) 1 M.L.J. 230.**

——**S. 21**—Articles of Association—If constitute contract—Implied contract—If may be proved. *See* 1941 Dig., Col. 369. GULAB SINGH *v.* PUNJAB ZAMINDARA BANK, LTD. **199 I.C. 667=14 R.L. 423=A.I.R. 1942 Cal 47.**

——**S. 32**—Construction—Failure to send return—Liability of company and of officers. *See* 1941 Dig. Col. 370. PUBLIC PROSECUTOR *v.* LURY & CO. **197 I C. 265=14 R.M. 355=43 Cr.L J. 138=A.I.R. 1942 Mad. 75=(1941) 2 M L.J 487.**

——**S. 32**—Prosecution of Managing Director for non-compliance with section—Several meetings not held during year—Finding by Court that this is due to his default—If necessary—His previous conviction under S. 76 for such default—If sufficient. *See* 1941 Dig., Col. 370. SURENDRA NATH SARKAR *v.* EMPEROR. **199 I.C 94=14 R.C. 533=43 Cr L.J. 466=1942 Comp. C. 252=A.I R. 1942 Cal. 225.**

——**S 72**—Permissive or imperative. *See* 1941 Dig., Col. 370. DAWSONS BANK, LTD., PYAPON *v.* MUNICIPAL COMMITTEE, KYAIKLAT. **198 I.C. 180=14 R. R. 187.**

——**S. 76 (2)**—Scope—Ordinary director of company Conviction under—Evidence to show that Director was knowingly and wilfully a party to the default—Necessity for. *See* 1941 Dig..Col. 371. PERIANNAN CHETTIAR, *In re* **197 I.C. 729=14 R.M. 398=54 L.W. 18 (2)=43 Cr.L.J. 295.**

——**S. 86 (d)**—*Scope—Loan sanctioned to director in contravention of S.* 86 (*d*)—*Duty of directors to rectify illegality when their attention is drawn to it.*

There is a contravention of S. 86 (*d*) of the Companies Act when the Board of Directors of a company sanction a loan to a director ; and if the attention of the directors is drawn to this it is their duty to see that the illegality is terminated. Failure to rectify the same is an offence under S. 86 (*d*). (*Horwill, J.*) SUBBIER *v.* LAKSHMANA IYER. **201 I.C. 701=15 R.M. 426=43 Cr. L.J. 770=1942 Comp C. 136=55 L.W. 232=1942 M.W.N. 296=A.I.R. 1942 Mad. 452 (1)=(1942) 1 M.L J. 520.**

——**S. 87 (4)**—*Failure to comply with S.* 87 (2)—*Liability of company—Proof of knowledge of change in particulars by persons connected with company—Not necessary.*

Where a company makes default in complying with S. 87 (2) of the Companies Act by failing to report to the Registrar of Joint Stock Companies a change in the directorships held by a director, it becomes liable under S. 87 (4). It is unnecessary for the prosecution in such a case to prove that anybody connected with the company had knowledge of the change, etc. The words knowingly and wilfully in S. 87 (4) can only refer to a person and not to a company. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* COIMBATORE NATIONAL BANK, LTD **1942 M W.N. 761=(1943) 1 M.L.J. 119.**

——**S. 91-B (1)(Before Amendment**,—Scope and effect—Shareholder creditor—Right to vote for resolution authorising set off of future calls against debt due. *See* 1941 Dig. Col. 371. PANDALAI *v.* SOUTH INDIAN GENERAL ASSURARCE CO., LTD. **I.L.R. (1942) Mad 230=201 I C. 374=15 R.N 320=A.I.R. 1942 Mad. 95=(1941) 2 M L.J. 595.**

——**S. 109 (1) (e)**—*Construction and scope—"Not being a pledge"—Bailment of promissory notes as security for debt by bailor to bailee—Registration—Necessity—Mortgage or pledge—Distinction.*

S. 109 (*e*) of the Companies Act clearly contemplates that there can be a mortgage which is also a pledge; the words "not being a pledge" must be held to have been inserted in S. 109 (*e*) with the object of providing that registration should not be necessary where the person entitled to the security has obtained possession of the goods. Though a transaction may amount to a mortgage, when there are all the requirements of a valid pledge, it is a pledge as well and hence does not require registration under S. 109 (*e*). The difference between a mortgage and a pledge is that in the case of a mortgage the ownership of goods passes, whereas in the case of a pledge the pledgee gets possession, but no right to the goods beyond what is necessary to secure the debt. On 5-2-1938, the appellant placed with the respondent company (a bank) a sum of Rs. 3,000 on fixed deposit. The bank was not able to repay the amount on the due date as it was in financial difficulties and offered to indorse to the appellant five promissory notes as security for its indebtednese to him. The appellant agreed to this course

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and the arrangement was embodied in a document dated 29—6—1939, which was not, however, registered with the Registrar of Joint Stock Companies under S. 109 of the Companies Act. Under the document the bank, which was referred to as the borrower, was to transfer by endorsement to the appellant, who was referred to as the lender, the promissory notes by way of security for the principal and interest due to him by the bank. It was provided that the appellant should be at liberty to collect the amounts due on the promissory notes and to credit the net realisations towards the amount due by the bank; it was further provided that on payment to the appellant of any balance due to him he should re-transfer to the bank such of the promissory notes as may be outstanding. The appellant thus became entitled to realise the securities as and how he pleased. The promissory notes which were executed to the bank by its debtors of the face value of Rs. 4,476 13-3 were indorsed to the appellant and delivered to him. Suits were instituted by the appellant against the makers of the promissory notes and the net realisations amounted to Rs. 1,173-3-9. On 2—11—1939, there was an order by the High Court for the compulsory winding up of the bank, and on 20—2—1941, the Official Liquidator applied to have the agreement between the bank and the appellant declared void for non registration and to call on the appellant to pay over to him the moneys collected by the appellant and to indorse the instruments to the Official Liquidator.

Held, that the transaction amounted to a bailment of the promissory notes as security for the payment of the debt due to the appellant by the bank, that all the requirements for a valid pledge were fulfilled, and being a pledge, it did not require registration, though it might amount to a mortgage. (*Leach, C.J. and Bell J.*) RADHAKRISHNAN CHETTIAR *v* OFFICIAL LIQUIDATOR, MADRAS PEOPLE'S BANK, LTD. **1942 M W N. 692=55 L.W. 709=A.I.R. 1943 Mad. 73=(1943) 1 M.L.J. 142.**

——**S. 141-A**—*"Of any offence in relation to the company for which he is criminally liable'—Meaning of*

The words "of any offence in relation to the company for which he is criminally liable" in S. 141 A mean not only criminally liable under the Act but criminally liable under the Penal Code as well. (*Davis, C.J.*) EMPEROR *v.* VISHWANATH. **198 I.C. 95=14 R S. 134=43 Cr. L.J. 304=1942 Comp. C. 51=A.I.R. 1942 Sind 9.**

——**Ss. 137, 138 and 141-A**—*Scope—Prosecution for offence under S. 282—Private complaint—Bar of.*

S. 137 has no relation to a prosecution for an offence under S. 282 nor does S. 138 or S. 141-A bar a prosecution upon a private complaint of an offence under S. 282. (*Davis, C.J.*) EMPEROR *v.* VISHWANATH. **198 I.C. 95=14 R S. 134=43 Cr. L.J. 304=1942 Comp C. 51=A.I.R. 1942 Sind 9.**

——**S. 153**—*Insurance company—Joint meeting of creditors and policyholders—If can be summoned.*

It is not right to summon a joint meeting of the creditors and all policyholders of an insurance company as they have different interests. (*Derbyshire, C.J. and Nasim Ali, J.*) LIGHT OF ASIA INSURANCE CO., LTD., *In the matter of.* **I.L.R. (1942) 2 Cal. 85=46 C.W.N. 441=A.I.R. 1942 Cal. 578.**

——**S. 153 (6)**—*Retrospective operation.*

The Legislature cannot be said to have altered the existing law by the addition of sub-S. (6) to S. 153 of the Companies Act by Act XXII of 1936. The object of the added clause is merely to explain the meaning of the expression "creditors of the same class" which occurred also in the Act as it stood before amendment. Consequently even depositors who obtained decrees against a Bank before the addition of the sub-section in 1936 do not constitute a separate class from ordinary depositors and it is not necessary that there should be a separate meeting of such creditors before a scheme settled by the ordinary depositors can be sanctioned by the Court (*Mukherjee and Blank, JJ.*) HARI CHARAN *v.* ULIPUR BANK, LTD. **201 I.C. 674=15 R.C. 272=75 C. L J. 203=1942 Comp C. 110=46 C.W.N. 634=A.I.R. 1942 Cal. 442.**

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——**S. 153 (7)**—*Insurance company—Order sanctioning scheme of re-construction—Appealability—Governor General in Council and Superintendent of Insurance—If can file appeal—Insurance Act, Ss. 9 and 61.*

Where the Court sanctions a scheme of re-construction of an Insurance Company by its dissolution and creation of a new Insurance Company involving the transfer of the money deposited by the dissolved company under S. 7 of the Insurance Act (a property within the meaning of S. 153 (*a*) (1) (*a*) of the Companies Act) and the reduction of contracts of insurance, it does so under S. 153 of the Companies Act as the jurisdiction of the Court under that section to sanction such scheme has not been in any way affected by any provision of the Insurance Act though in the exercise of this jurisdiction the Court is to keep in view the provisions of S. 8, S. 36 and S. 61. of the Insurance Act. Consequently the order sanctioning the scheme is an order under S. 153 read with S. 153 A of the Companies Act and is, therefore, appealable under S. 153 (7) of the Act. The Governor General in Council, although he was not a party to the proceedings in the trial Court, is entitled to appeal against the order. So also the Superintendent of Insurance. (*Derbyshire, C.J. and Nasim Ali, J.*) LIGHT OF ASIA INSURANCE CO., LTD., *In the matter of.* **I.L.R. (1942) 2 Cal. 85=46 C.W.N. 441=A.I.R. 1942 Cal. 578.**

——**Ss. 156, 212 and 216**—Company in voluntary liquidation—Contributories settled by liquidator—Application to Court for order to enforce call—Discretion and power of Court—Necessity for suit. *See* 1941 Dig., Col. 372. RAMABHADRAN *v.* MANICKAM. **199 I.C. 848=14 R.M. 641=(1941) M.L.J. 369.**

——**S. 160**—Payment order made against deceased contributory—Remedy of Liquidator. *See* 1941 Dig., Col. 372. T. N. BOSE *v.* YOGESHWAR. **199 I.C. 773=14 R.L. 437.**

——**S. 162**—*Scope of inquiry—Investigation into conduct of directors—Propriety.*

In an application for winding up a company, the Court will not investigate into conduct of the directors or consider whether they have exceeded their borrowing powers given to them under the articles of association. The question of exceeding the borrowing powers, is essentially a question of internal management of the company, and when the company has taken the view that the directors acted in the best interests of the company the Court will not go behind that. (*Chagla, J.*) *In re* THE CINE INDUSTRIES AND RECORDING CO., LTD. **203 I.C. 116=1942 Comp C. 215=44 Bom.L. R. 387=A.I.R. 1942 Bom. 231.**

——**S. 162**—*Winding up—Application by shareholder holding small number of shares if incompetent—Considerations for Court—Matters to be considered.*

In an application for winding up of a company, the mere fact that the petitioner or applicant holds only a small number of shares, *e.g.*, five shares out of 2500 shares issued, should not by itself prevent the Court from making the order asked for. The main consideration

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which the court has to keep before it is the interest of both the shareholders and the creditors, and the fact that the overwhelming majority of the shareholders are opposing the application and a large number of creditors are also doing the same and the rest are taking no part is a fact which must bear with the Court in coming to its decision. (*Chagla, J.*) *In re* THE CINE INDUSTRIES & RECORDING CO, LTD. **203 I.C. 116=1942 Comp C. 215=44 Bom.L.R. 387=A.I.R. 1942 Bom. 231.**

——**S. 162 (v)**—*Unable to pay its debts—Company when commercially insolvent—Test to determine—Burden of proof.*

A company is said to be commercially insolvent when its assets are such, and its existing liabilities are such, as to make it reasonably certain—as to make the Court feel satisfied—that the existing and probable assets would be insufficient to meet the existing liabilities. The decisive test is whether at the date of the presentation of the winding up petition there was any reasonable hope that the object of trading at a profit, with a view to which the company was formed, could be attained. It is for the applicant to prove and to satisfy the Court that there is no such reasonable hope. (*Chagla, J.*) *In re* THE CINE INDUSTRIES & RECORDING CO., LTD. **203 I.C. 116=1942 Comp. C. 215=44 Bom.L.R. 387=A.I.R. 1942 Bom 231.**

——**S. 162 (v)**—"Unable to pay its debts"—Meaning of—Application for winding up—Question for consideration—Share money due and not called up—If to be taken into account. *See* 1941 Dig., Col. 373. SUDHIVA NATH BHADURI *v.* BIHAR NATIONAL INSURANCE CO., LTD., PATNA. **198 I.C. 667=14 R.P. 483=8 B.R. 443=23 Pat.L.T. 23=1942 Comp C. 66.**

——**S. 162 (v) and (vi)**—*Winding up—Grounds—Misconduct or mismanagement of directors—Company working at a loss—If* per se *grounds for winding up—Substratum of company—When deemed to be gone.*

The mere fact that the Court is of opinion that the business of a company cannot be carried on, or probably will not be carried on, in a successful manner is not sufficient ground for winding up. So, again, mere misconduct or mismanagement on the part of the directors, even though it might be such as to justify a suit against them in respect of such misconduct or mismanagement is not of tself sufficient to justify a winding up order. The substratum of the company is deemed to be gone when (*a*) the subject matter of the company is gone, or (*b*) the object for which it was incorporated has substantially failed, or (*c*) it is impossible to carry on the business of the company except at a loss, in other words there is no reasonable hope that the object of trading at a profit can be attained, or (*d*) the existing and probable assets are insufficient to meet the existing liabilities. It is impossible to say that the assets are insufficient to meet the existing liabilities when no creditor is pressing for payment of his debt. It would not be just and equitable for the Court to make a winding up order on the grounds merely that the directors were guilty of misconduct and that the business has been carried on at a heavy loss. These are *per se* not grounds on which a winding up could be ordered. (*Chagla, J.*) *In re* THE CINE INDUSTRIES & RECORDING CO., LTD. **203 I.C. 116=1942 Comp. C. 215=44 Bom L.R. 387=A.I.R. 1942 Bom 231.**

——**Ss. 171 and 229**—*Application for leave by assignee of decree from Bank prior to liquidation—Official liquidator, if can challenge transfer.*

The official liquidator represents all the unsecured creditors and it is their right to challenge through him a transfer of property belonging to the Bank, if the transfer is believed to be fraudulent, and either voidable under S. 53 or void under S. 54, Provincial Insolvency Act. Where an assignee of a mortgage decree from a bank who was an unsecured creditor applied for leave to continue proceedings under S. 171 of the Companies Act on the bank going into liquidation, it was held that in such an application it was open to the liquidator to challenge the transfer. (*Bennett and Agarwal, JJ.*) ANAND BEHARI LAL *v.* FINSHAW AND CO. **200 I.C. 485=14 R.O. 600=1942 Comp. C 137=1942 O.W.N. 319=1942 O A 227=A.I.R. 1942 Oudh 417.**

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——**Ss 171 and 230-A (5)**—Company—Liquidation—Claim by Managing Director—Permission given to file suit within specified time—Failure to file suit in time—Effect—Right to prove claim in liquidation proceedings. *See* 1941 Dig, Col. 374. GENERAL AGENCIES AND TRADES LTD. *v.* VISWANADHAN. **200 I C 603=15 R.M. 88=1942 Comp. C. 14=(1941) 2 M.L.J. 417.**

—— **S. 171**—"Suit" and "legal proceeding"—Meaning of. *See* 1941 Dig., Col 374. SHUKANTLA *v.* PEOPLE'S BANK OF NORTHERN INDIA, LTD. **I.L.R. (1941) Lah. 760=14 R.L. 195 (F.B.).**

——**S. 171**—*Suit instituted without leave—Leave subsequently granted after limitation—Suit, if liable to be dismissed.*

A suit instituted against a company in liquidation without leave should not be dismissed on that ground alone. If leave is subsequently obtained, limitation should be calculated in the same way as if the suit had originally been instituted with leave. It is immaterial whether the leave is granted before or after the period of limitation prescribed for the institution of the suit has expired. (*Tek Chand, Ram Lall and Beckett, JJ.*) NAZIR AHMAD *v.* PEOPLES BANK OF NORTHERN INDIA, LTD. **I.L.R. (1942) Lah. 517=204 I.C. 74=A.I.R. 1942 Lah. 289 (F B).**

——**S. 184**—Removal of name from share-register—Right to—Sale of shares to company itself—Effect—Incapacity of company to purchase own shares—Foreign company—Rule as to. *See* COMPANY—PURCHASE OF OWN SHARES. **55 L.W. 653.**

——**S. 184**—*Share in company allotted to, and registered in name of minor girl on application by father as guardian—Company going into liquidation—Minor or father—If can be placed on list of contributories.*

An application was made by one *P*, as guardian of his minor daughter for shares in a company and the company issued shares to and registered shares in the name of the daughter, describing her as a minor. When the company went into liquidation, the Official Liquidator claimed against the minor for contribution, but she, through her father and guardian, set up her minority and disclaimed personal responsibility. The Official Liquidator then claimed that her father, *P* who signed the application must be deemed to have contracted for the shares and should be placed on the list of contributories. There was no suggestion that the company were unaware of the daughter's minority; on the other hand they knew that they were being invited to contract with a minor and thought fit to contract with the minor. There was nothing on record to show that the father had at any time intended to become a subscriber of the company and there was no evidence that any of his money was used for the purpose.

Held, (1) that the contract was void in law. On the face of it, the contract was made by both sides under complete misapprehension as to the law, but no misapprehension as to the facts. The father *P* could not be held to have contracted under an *alias* and could not

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therefore be placed on the list of contributories. (*Mockett and Kunhi Raman, JJ.*) PALANIAPPA MUDALIAR *v.* OFFICIAL LIQUIDATOR; THE PASUPATHI BANK LTD., COIMBATORE. **I.L.R. (1942) Mad 875=201 I.C. 731=15 R.M. 383=1942 Comp. C. 89=A.I.R. 1942 Mad. 470=55 L.W. 200=1942 M.W.N. 252=(1942) 1 M.L.J. 425.**

——**S. 186**—*Calls prior to liquidation—Nature of liability in respect of, after liquidation—Jurisdiction of Court to interfere with liquidator's right thereto.*

When there has been a valid call prior to liquidation and the date for its payment has passed, it becomes a debt due from the shareholder to the company and is just like any other debt. When subsequently the company goes into liquidation, that debt becomes an asset of the company which have to be realised by the liquidator. It has lost its character as a call has become a debt and as such is realisable by the liquidator as any other debt or asset. The Court has no jurisdiction at all to question the propriety of a liquidator seeking to get in a debt due to the company prior to the liquidation under S. 186 of the Companies Act. (*Braund, J.*) THE PUBLIC BENEFIT PROVIDENT INSURANCE SOCIETY, LTD. *In the matter of.* **I.L.R. (1942) A 26=199 I.C 663=1942 A.L.W. 17=1942 O A. (Supp.) 61 (2)=14 R.A. 397=1942 A.L.J. 47=1942 A.W.R. (H.C.) 4=A.I R. 1942 A. 136.**

——**S. 186 (2)**—*Set-off—Discretion of Court—Debt in respect of calls—If can be set off.*

By virtue of S. 186 (2) of the Companies Act, it is wholly discretionary in a Court whether any set-off can be allowed. It is now clear beyond any doubt and as a fixed judicial principle that the Court never allows a person to whom the company is indebted to set-off that, indebtedness against what is due from him as a contributory in respect of calls. It is otherwise where the two debts are of a purely commercial nature. But where the debt of the company is in respect of calls, the set-off is never available to a contributory. (*Braund, J.*) THE PUBLIC BENEFIT PROVIDENT INSURANCE SOCIETY LTD., *In the matter of* **I.L.R (1942) A. 26=199 I.C. 663=1942 A.L.W. 17=1942 O.A. (Supp.) 61 (2)=14 R.A. 397=1942 A.L.J. 47=1942 A.W.R. (H.C.) 4=A.I.R 1942 A. 136.**

——**Ss. 191 and 229 and Madras Company Rules, R 83 and 91**—*Scope—Delay in filing proof of claim—Effect—Power of Court to allow claim—Desirability of amending R. 91 to bring it in consonance with Ss. 191 and 229.*

So long as justice can be done to a creditor without disturbing the dividend already declared or paid, there is no reason why he should be prevented from getting his dividend merely because of failure to file proof of claim within the time limited by the notice under R 83 of the Rules framed by the Madras High Court under the Companies Act. The delay in filing the affidavit of proof of a claim can be excused under R. 91 of the rules. On a literal reading of R. 91, as it now stands, it would seem that unless a creditor satisfies the Court that owing to ignorance or want of notice he did not file proof of his debt, his claim cannot be admitted. It is desirable that R. 91 should be amended on the lines of R. 65 of the English Bankruptcy Act or S. 72 of the Presidency Towns Insolvency Act, as it would be in consonance with the provisions of Ss. 191 and 229 of the Companies Act. (*Venkataramana Rao, J.*) T. R. RAJAKUMARI *v.* MOTION PICTURE PRODUCERS COMBINE, LTD. **55 L.W. 99=1942 M.W.N. 347=1942 Comp. C. 113=A.I.R. 1942 Mad. 349=(1942) 1 M.L.J. 182.**

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——**S. 227 (2)**—*Applicability—Conversion of unsecured deposit account into security deposit account during pendency of liquidation proceedings—If amounts to disposition which is void—If would be sanctioned by Court.*

Where during the pendency of winding up proceedings a Bank agrees to employ a cashier and to transfer his unsecured deposit with the Bank into a security deposit and does so transfer it, the whole transaction is void under S. 227 (2) of the Indian Companies Act as a disposition by the Company of its property made after commencement of winding up. Inasmuch as the cashier obtained an undue advantage over his fellow creditors, the Court would not validate the disposition by giving it its sanction. (*Braund, J.*) RAM LAL *v.* OFFICIAL LIQUIDATOR, BENARES BANK LTD. **I.L.R. (1942) A. 86=200 I.C. 61=14 R.A. 407=1942 Comp. C. 170=1942 A.L.J. 78=1942 O.A (Supp.) 62 (1)=1942 A.W.R. (H.C.) 7=1942 A.L.W. 21=A.I.R. 1942 A. 141.**

——**S. 229**—Applicability—Garnishee order on bank under O. 21, R. 46 (3) in execution of decree against depositor—Failure to pay money into Court—Bank subsequently ordered to be wound up—Subsequent application under O. 21, R. 63 B. C.P. Code—Effect—Right to preferential payment—Levy of execution against liquidator—Permissibility—Procedure. *See* C. P. CODE, O. 21, R. 46 (3). **21 Pat. 287.**

——**S. 229**—Bank—Liquidation—Set-off—Debt due by *A* to Bank—Security given by third party to Bank in shape of fixed deposit in Bank—Right to claim set-off. *See* 1941 Dig., Col 376. SAMUEL *v.* OFFICIAL LIQUIDATORS, T. N. & Q. BANK, LTD. **198 I.C. 578=14 R.M. 463=(1941) 1 M.L.J. 818.**

——**S. 229** — Company — Winding up—Set-off—Amount due to company by partners of firm—Amount due by company to one partner—Set-off. *See* 1941 Dig., Col 376. MACHADO *v.* OFFICIAL LIQUIDATOR. T. N. & Q BANK, LTD. **200 I.C. 17=14 R.M. 650.**

——**S. 229**—*Trust of agency—Customer having account with Bank at A branch paying cheque at B branch for collection and transmission to A branch—Bank suspending payment after collection of amount but before transmission to A branch—Rights of customer.*

A cheque was handed over to the Bombay Branch of the T. N. and Q. Bank by a company which had a current account with the Bank's branch at *N* in the Travancore State for collection and remission to the branch at *N*. The Bombay branch collected the cheque, but before it could send the amount to the branch at *N*, the Bank suspended payment and went into liquidation.

Held that as the money had not got into the company's account at *N*, the Bank's position was that of an agent holding his principal's moneys and not that of debtor and creditor. Although the branches might be the agencies of one principal firm, they might be regarded as distinct trading bodies for certain special purposes of banking business. As the money never got to the branch at *N*, it belonged to the company and the company's money could not be used for paying the Bank's creditors. The liquidator was therefore bound to pay it over to the company. (*Leach, C.J. and Byers, J.*) INDIAN HUME PIPE CO., LTD. *v.* T. N. & Q BANK. LTD. **55 L.W. 430=1942 Comp C. 124=1942 M.W.N. 529=A.I.R. 1942 Mad. 646=(1942) 2 M.L.J. 128.**

——**S. 230**—*Security deposit of managing agent—If a trust fund—Test.*

The managing agents of a company deposited in the general accounts of the company a sum of money as

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security for the fulfilment of their obligations under the ag reement appointing them. They were to get interest on it and to have a second charge on the machinery and other assets of the company. Winding up of the company was ordered. The managing agents claimed that their deposit was a trust fund and not assets of the company and should be returned to them. In negativing such contention it was held that the fair test whether such a sum of money was to be held as a trust fund or not was to ask whether, in the circumstances, it was intended that it should remain a segregated fund, or whether it should, on payment, become the property of the company and be compensated for by the company's express or implied covenant to repay it, in exactly the same way as the customer's deposit in a bank creates the relationship of debtor and creditor. It was further held that the circumstances that it passed into the general assets of the company and was utilised by them for their general expenses and that interest was to be paid on it and that it was to be a second charge on the machinery, etc., of the company, clearly indicated that it was never intended to be kept aside in trust for the managing agents. (*Ganga Nath, J.*) MAHESHWARI CHUNNI LAL *v.* OFFICIAL LIQUIDATOR OF THE INDRA SUGAR WORKS LTD. **I.L.R. (1942) A. 242=199 I.C. 122=14 R.A 343=1942 O.A. (Supp.) 95=1942 Comp. C 75=1942 O. W.N. 71=1942 A.L.W. 76=1942 A W.R. (H C.) 44 =1942 A.L J. 75=A I.R. 1942 A. 119 (F B.).**

——**S. 231**—*Date of insolvency—Period of three months under S. 54, Provinial Insolvency Act—Computation of—Voluntary liquidation followed by compulsory winding up—Crucial date.*

Where a voluntary winding up is followed by a compulsory winding up by the Court, the former is superseded on account of the inconsistency betwen the provisions which relate to the two forms of winding up. In such a case the crucial date for determining the period of three months under S. 54 of the Provincial Insolvency Act, is the date of the presentation of the petition to the Court for winding up. The presentation of the petition is the act of insolvency and not the prior resolution of the company for voluntary winding up. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) CHENNAKESAVA AIYANGAR *v.* OFFICIAL LIQUIDATOR. **55 L.W. 731 =1942 M W.N. 671=A.I.R. 1943 Mad. 54 = (1942) 2 M.L J. 583.**

——**S. 234**—*Consent-order—Power of Court to pass and enforce by execution—Suit challenging correctness of Court's orders—Permissibility.*

Under S. 234 of the Companies Act, a winding-up Court has power to pass a consent order and if such order provides for execution against a guarantor, the Court has jurisdiction to enforce the order by execution It is not permissible to call into question the correctness of the decisions of the Court in a separate suit. (*Derbyshire, C.J. and Panckridge, J.*) PROBODH LAL *v.* CHANDANMULL. **46 C.W.N. 98=1942 Comp. C. 55.**

——**S. 235**—*Applicability —Misfeasance—Signing prospectus without enquiry—Director resigning before commencement of business—Liability of.*

Where a director of a company signed a prospectus without caring to ascertain what the antecedents of the other directors were or how the company was going to be worked or who the partners of the firm of managing agents were, but nearly 12 days before the declaration under S. 103 of the Companies Act was sent to the Registrar of Joint Stock Companies and before the company commenced business he resigned,

Held, that in the circumstances it could not be said that he was guilty of any misfeasance by reason of which any pecuniary loss was sustained by the company.

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(*Venkataramana Rao and Horwill, JJ.*) SUBBAYYA *v.* MACHAYYA. **55 L.W. 165=1942 Comp. C. 102= A.I.R. 1942 Mad 365=(1942) 1 M.L.J. 207.**

——**S. 235**—*Scope—Misfeasance—Liability for non-feasance—Director becoming such by gift of shares and acting as such negligently—Liability of.*

S. 235 of the Companies Act does not *prima facie* exclude non-feasance. The section would apply to every act whether of commission or omission which is a breach of duty to the company in consequence whereof loss to the company results. To become a director of a company by accepting a gift of shares without paying for them is a misfeasance. Where such a person continues to act as a director, and, in spite of the auditor's report exposing the fraud of the company does not make any enquiries or take steps, but joins in a resolution condemning the auditor's report and signs the balance sheet sanctioning the remuneration to the managing agents, he is guilty of gross and wilful negligence and clearly of misfeasance under S. 235. (*Venkataramana Rao and Horwill, JJ.*) SUBBAYYA *v.* MACHAYYA. **55 L.W. 165=1942 Comp C. 102=A.I.R. 1942 Mad. 365=(1942) 1 M.L.J. 207.**

——**S. 236**—*Applicability — Director or officer—Company—Voluntary liquidation—Director and Secretary ppointed liquidator—Falsification of accounts and false returns—Offence—Director—If ceases to be such an appointment as liquidator.*

A Bank, which was a limited company having gone into voluntary liquidation, the secretary who was also a director was appointed as the liquidator. As such he had to send periodical returns under S. 244 of the Companies Act. He was convicted on charges under S. 236 and S. 282 of the Companies Act for falsifying the accounts and for sending false returns.

Held, (*i*) that any wrongful act done by him as liquidator was a wrongful act by him as an officer of the company, so as to render him liable under S. 236, and that by his mere appointment as liquidator he did not cease to be a director so as to escape liability as director; and therefore whether as director or officer, S. 236 would apply to him; (*ii*) that he was also properly convicted under S. 282, though he may not have been legally appointed as a liquidator owing to want of quorum at the meeting at which he was apppointed liquidator. (*Horwill, J.*) RANGAI GOUNDAN. *In re.* **55 L W. 410=1942 M.W.N 433=1942 Comp C. 198=A.I R. 1942 Mad. 702=(1942) 2 M.L J. 140.**

——**S. 237**—*Scope—Complaint to Court by private party—If barred.*

There is nothing in law to prevent a private person making a complaint to a Court of offences under the Companies Act or the Penal Code against directors or officers of the company in relation to the company even if the company is being wound up. (*Davis, C.J.*) EMPEROR *v.* VISHWANATH. **198 I.C. 95=14 R.S. 134=43 Cr L.J. 304=1942 Comp C. 51=A.I.R. 1942 Sind 9.**

——**S. 237**—*Scope—If limited to offences under Act.*

The whole scheme of S. 237 appears to be enabling rather than mandatory or exclusive. The Court may order the liquidator to prosecute or refer the matter to the Registrar. The Registrar may refuse to prosecute and the liquidator with the previous sanction of the Court may prosecute, but the section is not limited to the criminal liability of directors under the Companies Act, so that the section is not limited to special offences created under the Act (*Davis, C.J.*) EMPEROR *v.* VISHWANATH. **198 I C 95=14 R.S. 134=43 Cr. L.J. 304=1942 Comp. C. 51=A.I.R. 1942 Sind 9.**

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——— **S. 280**—Order refusing to direct company in liquidation to furnish security—Appeal—If lies. *See* 1941 Dig., Col. 377. RAMARAO *v.* NATIONAL ASSURANCE CO., LTD., VIZIANAGARAM. **202 I.C 44=15 R.M. 441=1942 M W N. 80 (2)=55 L W 89 (1)= A.I.R. 1942 Mad. 405 (2)=(1942) 1 M.L.J. 180.**

———**S. 282**—*Liquidator—If includes* de facto *liquidator—Legal appointment as liquidator—If necessary.*

The liquidator referred to in S. 282 of the Companies Act is presumably the *de facto* liquidator. A person who accepts an appointment as liquidator of a company and who acts in accordance with the powers granted to him must be deemed to have accepted the duties and responsibilities of that office and so any wrongful act done by him is a wrongful act done by him as liquidator even if his appointment is not legal. (*Horwill, J.*) RANGAI GOUNDAN, *In re.* **55 L.W. 410=1942 M. W.N. 433=1942 Comp. C. 198=A.I.R. 1942 Mad. 702=(1942) 2 M.L.J. 140.**

———**S. 282**—Private prosecution—Offence under S. 282—Private complaint—If barred. *See* COMPANIES ACT, SS 137, 138 AND 141 A. **A.I.R. 1942 Sind 9.**

COMPROMISE. *See* PRACTICE—COMPROMISE.

CONSENT DECREE. *See* PRACTICE—DECREE.

CONTEMPT OF COURT—*Chamber proceedings in High Court relating to appointment of guardian* ad litem—*Publication in newspaper without leave of Judge—If contempt.*

The publication of a proceeding in Chamber in the High Court is not permitted without the express leave of the Judge, and if a newspaper does so, it amounts to contempt of Court. Proceedings relating to the appointment of a guardian *ad litem* of a minor are proceedings relating to a ward of Court, and if they are published in a newspaper without the express leave of the Judge that would amount to contempt. (*Kania, J.*) HARGOWANDAS B. KOTAK *v.* CHIMANLAL VADILAL SHAH. **I.L.R. (1942 Bom 151=199 I.C. 856=14 R.B. 384 =43 Cr. L.J. 583=44 Bom.L.R 95=A.I.R. 1942 Bom. 86**

———Duty of Courts—Accused defaming third person in his statement—Defamed person demanding apology under threat of legal action—If amounts to contempt. *See* 1941 Dig., Col. 378. EMPEROR *v.* KOLTE. **I.L.R. (1942) Nag. 506=43 Cr L.J. 98.**

———*Motive—Relevancy.*

In cases of contempt the question of motive is irrelevant; what the Court has to consider is the effect—the probable effect of the publication. Motive of the contemner cannot be considered in determining his guilt; it may, however, be a proper criterion for awarding punishment. (*Iqbal Ahmad, C.J. and Collister, J.*) EMPEROR *v.* DEBI PRASAD SHARMA. **1942 O.W.N 6=1942 A.Cr C. 28.**

———*Nature of jurisdiction—Decision to appoint receiver without actual appointment of one—Subsequent collection and disposal of funds by person aware of order or party to proceedings—If amounts to contempt—Applicability of equitable rule of deeming that to be done which ought to be done—Disposal of moneys collected as rent—If disturbance of possession of receiver appointed to collect rents.*

The jurisdiction to deal with people for contempt of Court is quasi-criminal and the Court has no right to punish people merely because it might disapprove of what they do, if their conduct does not clearly bring them within the four walls of some offence known to law. Where the Court comes to a decision that it will appoint a Receiver but does not name any officer or individual as receiver, it is not a contempt of Court for a person who knows that that decision has been arrived at even if he is a party to the proceedings who knows—to collect and disburse moneys which it is intended are to fall within the powers of the Receiver. It cannot be said that for a party bound by a judgment to do anything which will make that judgment ineffective, is in itself a contempt of Court. The equitable rule of deeming that to be done which ought to be done could not apply to such case, for it could not be imported into the realms of criminal or quasi-criminal law. Where a Receiver is appointed among other things to collect rents, there is no disturbance of his possession when there is a disposal of moneys already collected as rent, for such moneys are not moneys of which the Receiver is appointed receiver. The word 'rent', in its proper sense, ceases to be such when it is paid by a tenant to a person authorized by the landlord to give a good discharge for it. (*Blagden, J.*) S. P. L. P. NARAYANAN CHETTYAR *v.* DORAIKKANNU. **1941 Rang.L.R. 747.**

———*News item and comment—Suggestion that Chief Justice of High Court was directing collections for war fund by Judicial officers and litigants.*

Where an editorial comment based upon a news item contained a clear insinuation that the Chief Justice had issued a circular to all Judicial officers to raise contributions from litigants and others to the war fund it was *held* that the implication was that the Chief Justice had done something which was unworthy of a person holding that High Office, and that as the head and representative of the High Court he had committed the gross impropriety of forcing the Judicial officers subordinate to the High Court to ask for war contributions from litigants and that the probable effect of the news item would be to impair the authority of the High Court to lower its dignity and prestige and seriously to shake public confidence in the administration of justice. It was *held* further that the publication of an editorial comment calculated to have the above effect was a clear contempt of Court. (*Iqbal Ahmad, C.J. and Collister, J.*) EMPEROR *v.* DEBI PRASAD SHARMA. **1942 O. W N. 6=1942 A. Cr. C. 28.**

———*Newspaper article—Statement suggesting that there was not and could not be proper judicial trial when magistrate knew that Government had instituted prosecution—Contempt of subordinate Court—Liability to punishment.*

The editor of a newspaper, who was convicted of having published in his newspaper an obscene advertisement, published a leading article in his newspaper in the course of which he said: "The prosecution clearly stated that the case was filed as the result of 'correspondence from Government,' but with the blessings of the magistrate, refused to produce the correspondence and the statement had to go uncontested. Without meaning any disrespect, we doubt whether in any case where opinions count, any Subordinate Magistrate will give a judgment contrary to what he believes the Government of the day has decided. The fate of this case was sealed the minute the Police told the Magistrate that the Government was behind the prosecution."

Held, that the passage suggested that there was not and there could not be any proper judicial trial, that the proceedings before the Magistrate were an empty formality, that the Magistrate had made up his mind to convict the accused even before the trial was over with a view to conform to what he believed to be the wishes of the Government; in other words, once the Magistrate knew that the Government had instituted the prosecution, there was bound to be a conviction, and the article amounted to a gross contempt of Court, and the contempt was so grave that the High Court could not allow

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attacks of this nature to be made against the subordinate Courts of the Province without taking serious action. (*Leach, C.J., Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) ADVOCATE-GENERAL, MADRAS *v.* RAMANATHA GOENKA. **1942 M W.N. 722 = 55 L.W. 799 (2) = A I.R. 1942 Mad. 711 (1) = (1942) 2 M.L.J. 622 (S.B.).**

———*Offence—Scandalizing the Court—Letter written by solicitor to another solicitor—Allegation that Judge has prejudged issue of fact—Liability of solicitor to be dealt with for contempt.*

An allegation that a Judge hearing a case has prejudged on issue of fact, before any evidence whatever has been called on either side, is to charge the Judge with grossly improper conduct. It means that the Judge has some outside knowledge. When a solicitor makes such an allegation in a letter written by him to another solicitor, the inevitable result would be that public confidence in the judiciary would be shaken. That is always the basis of contempt proceedings of the nature known as scandalizing the Court. (*Beaumont, C.J.*) A FIRM OF SOLICITORS, *In re.* **203 I.C. 514 = 44 Bom.L.R. 796 = A.I.R. 1942 Bom. 331.**

———Pending case—Newspaper articles—Likelihood to deter witnesses from giving evidence. *See* 1941 Dig., Col. 379. ANIS AHMAD ABBASI *v.* NASIR AHMAD. **16 Luck. 758.**

——— *Proceedings for—Adjournment—Grant of—Cr. P. Code, S.* 344.

The provisions of the Code of Criminal Procedure are not applicable to summary proceedings taken for punishing a contempt. But even if S. 344 of the Code be applicable, the Court will not be disposed to adjourn the proceedings in a case where the Court is scandalised and an attempt is made by a scurrilous publication to undermine and impair the authority of the Court, as immediate action is necessary with a view to vindicate the authority of the Court. (*Young, C.J., Monroe and Mahomed Munir, JJ.*) K L. GAUBA, BAR.-AT LAW, LAHORE, *In the matter of* **I.L.R. (1942) Lah. 411 = 200 I.C. 182 = 14 R.L. 449 = 43 Cr. L.J. 599 = 44 P.L.R. 206 = A.I.R. 1942 Lah. 105 (F B).**

———*Proceedings for—Defence—Plea of justification—If open.*

In a proceeding for contempt of Court, it is not open to a contemner to show that the allegations are true. Any attempt to justify a libel on a Judge by attempting to show that the libel was justified would itself be a fresh contempt. A contemner who has been called upon to show cause why he should not be punished for an attack on the Court or its judges does not occupy the position of a defendant in a libel action, where he may plead or prove justification or the position of an accused person in a prosecution for defamation. (*Young, C.J., Monroe and Mahomed Munir, JJ.*) K.L. GAUBA, BAR.-AT-LAW, LAHORE, *In the matter of.* **I.L.R. (1942) Lah. 411 = 200 I.C. 182 = 14 R.L. 449 = 43 Cr. L.J. 599 = 44 P.L.R. 206 = A.I.R. 1942 Lah. 105 (F B).**

———*Proceedings for—Forum—Practice—Cr. P. Code, S.* 556.

S. 556, Cr. P. Code, does not apply to summary proceedings taken for punishing a contempt. In such a case the practice has been for the Judges who have been defamed to hear the case and to state in their judgment the facts within their knowledge or their reasons for taking a particular course of action. While it is unpleasant for any Judge to have to sit in judgment in a case in which he has been personally attacked, it is his duty to do so where he has been the subject of a malicious and impudent publication containing imputations which are obviously false and of the falsity of which he himself has the best knowledge. In fact he has no alternative but to sit as it is impossible to vindicate the reputation of the Court which has been attacked by taking proceedings in any Court for libel or otherwise. The sole object of these summary proceedings is to vindicate the prestige of the Court. They are not to establish the position of an individual Judge. (*Young, C.J., Monroe and Mahomed Munir, JJ.*) K. L. GAUBA BAR. AT LAW, LAHORE, *In the matter of.* **I. L.R. (1942) Lah. 411 = 200 I.C. 182 = 14 R. L. 449 = 43 Cr. L.J. 599 = 44 P.L.R. 206 = A.I.R. 1942 Lah. 105 (F.B.).**

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———What may amount to—Prohibitory order—Disobedience by party and stranger, difference—Marriage in spite of prohibition. *See* 1940 Dig., Col. 378. DISTRICT JUDGE, CHHINDWARA *v.* BASORILAL. **I L R (1942) Nag. 45**

CONTEMPT OF COURTS ACT (XII OF 1926)—Applicability—Mussalman Wakf Act, as amended by Bombay Amendment Act—Order under S 6-F—Disobedience—Proceedings for contempt — Propriety. *See* MUSSALMAN WAKF ACT, AS AMENDED BY BOMBAY AMENDMENT ACT (1935), S. 6-A. **44 Bom. L.R 231.**

———*Scope—Powers of High Court—Order by Chief Judge of Bombay Small Cause Court—Direction to mutawalli to furnish particulars and statement of accounts under Mussalman Wakf Act—Disobedience—Proceedings for contempt.*

An order made by the Chief Judge of the Bombay Small Cause Court under S. 6-A of the Mussalman Wakf Act as amended by the Bombay Amendment Act of 1935, directing a mutawalli of a wakf to furnish within a specified period a statement of accounts and particulars, is an order directing him to do a specific thing within a limited time. An order of such a nature, if disobeyed, can be enforced by proceedings for contempt by the High Court under the Contempt of Courts Act of 1926. (*Beaumont, C.J. and Wadia, J.*) EMPEROR *v.* ALI MAHOMED ADAMALLI (No. 2). **201 I.C. 441 = 15 R B. 101 = 43 Cr. L J. 667 = 44 Bom L. R. 249 = A I.R. 1942 Bom. 154 (1).**

———**S 3 Proviso**—*Apology—Expression of regret—If amounts to.*

Where a contemner states that he is 'extremely sorry, it may amount to an expression of regret, but it is certainly not an apology—which is the word used in the Contempt of Courts Act. (*Iqbal Ahmad, C.J. and Collister, J.*) EMPEROR *v.* DEBI PRASAD SHARMA. **1942 O.W.N. 6 = 1942 A. Cr. C. 28.**

CONTRACT—*Agency— Brokerage—Right to general and special employment.*

In order to found a legal claim for commission there must not only be a causal, there must also be a contractual relation between the introduction and ultimate transaction of sale. If a person has a general employment to find purchasers for a certain party and thereafter introduces a customer which results in several contracts, he will no doubt be entitled to his brokerage because he has implemented his contract by giving the introduction. If on the other hand he introduces a customer for the specific purpose of effecting a particular transaction of sale and earns his brokerage, he is not entitled to any further remuneration, however many contracts the parties may conclude thereafter, (*Derbyshire, C.J. and McNair, J.*) STANDARD COAL CO., LTD. *v.* VALARSHAK. **46 C.W.N. 119.**

———*Agency contract — Construction — Insurance —Contract between company and agent—"Completed business"—Agent canvassing and bringing about*

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policy acceptable to company—Signing of policy brought about by another—Right to commission—Test.

Where a contract of agency between an Insurance Company and an Insurance agent says that the agent is to place with the Insurance Company "completed business" of specified amounts in order to be entitled to commission, the expression "completed business" being explained in the contract itself as meaning such business as is accepted by the company and on which the first year's premium has been received in full, it must be held that the contract speaks of "completed business" merely in order to exclude business that might come to nothing from the point of view of the company, and the requirement that the agent is to place with the company "completed business" does not preclude commission in those cases in which such business is substantially due to the work of the agent, though its technical completion, such as the signing of the policy and so on may be actually brought by another person and not by the agent. If it be found that the policy was the result of sound canvassing done by the agent, he would be entitled to commission on it, although he may not have brought about the signing, etc., of the policy himself. (*Harries, C.J. and Dhavle, J.*) SATGUR DAS *v.* BOMBAY LIFE ASSURANCE CO., LTD. **201 I. C. 289 = 15 R.P. 45 = 8 B.R. 784 = 23 Pat.L.T. 318.**

——Agreement as to terms of lease and sale of forest produce—Contemplation of execution of formal deed—If renders the agreement incomplete. *See* 1941 Dig., Col. 380. DEVI PRASAD SRI KRISHNA PRASAD *v.* SECRETARY OF STATE. **I.L.R. (1941) All. 741 = 197 I.C. 390.**

——*Arbitration clause—Party repudiating liability under contract—Right to plead arbitration clause in bar of suit on contract.*

The total repudiation by a person of any liability under a contract to which he is party operates as a bar to a plea by him that the contract is subject to an arbitration in a suit by the other party on the contract. It is not open to him to say that though he is not bound by the contract the other party is bound by the arbitration clause in it. By repudiating liability he loses all right to insist upon compliance with the arbitration clause. (*Blackwell, J.*) CHIRANJILAL RAM CHANDRA *v.* JATASHANKAR N. JOSHI. **203 I C. 322 = 44 Bom.L. R. 692 = A I.R. 1942 Bom. 297.**

——*Breach—"Act of God or King's enemies."*

An agreement between the Government and a person was entered into by which the latter was to be responsible for the loss of public money which was caused otherwise than by act of God or the King's enemies. While the agent of such person was going to the Bank to deposit public money, he was attacked, stabbed and robbed of the money.

Held, that he was liable to make good the loss as the loss which had been suffered was neither by an act of God nor the King's enemies. (*Almond, J.C. and Mir Ahmad, J.*) GUJJAR MAL *v.* GOVERNOR-GENERAL OF INDIA. **200 I.C. 429 = 15 R. Pesh. 1 = A.I.R. 1942 Pesh. 33.**

——Breach—Remedy — Suit for damages—Express term in contract providing for damages on breach—If essential. *See* PROVINCIAL SMALL CAUSE COURTS ACT, S. 15 AND ART. 31. **23 Pat.L.T. 11.**

——*Building contract—Construction—Agreement to abide by certificate of architect named—Effect—Certificate of auditor—Finality—Grounds for challenging certificate—Provision for decision of architect being made a rule of Court—If makes architect arbitrator or judicial person—Form of certificate.*

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If the parties to a building contract choose to agree to abide by the certificate of an architect whom they have named in the agreement, then they must accept the decision of the architect, however wrong and erroneous it may be. A final certificate given by the architect can be challenged by the owner of the building only on three grounds, *viz.*, fraud, collusion or misconduct on the part of the architect. If there is an arbitration clause in the contract and if there are pending disputes between the parties, then the power given to the architect under the terms of the contract to give a final certificate comes to an end, and the architect can only act under the arbitration clause as arbitrator and cannot act as a certifier. But the mere fact that the contract provides for the decision of the architect being made a rule of the Court would not alter his capacity in giving his decision, which is not judicial, but administrative; nor would his decision be an award. Nor can the certificate be attacked on the ground that it is not in proper form. The law does not make it necessary for the architect to issue his final certificate in any prescribed form. All that is required is that it should give clear intimation to the owner what is the amount finally due and payable by him under the contract. (*Chagla, J.*) MOTILAL TEJSI AND CO. *v.* RAMCHANDRA GAJANAN. **44 Bom. L.R. 745 = A.I. R. 1942 Bom. 334.**

——Construction—Agreement for certain period with option of renewal—Negotiations for renewal after expiry of period—Construction — Agreement to renew—If effected (*Lord Romer.*) A. V. & SON *v.* AKOOJEE JADWET & CO. **8 B.R. 636 = 14 R.P.C. 132 = 199 I. C. 570 (P.C.).**

——*Construction — Contract subject to rules and bye-laws of East India Cotton Association—Rules and bye laws providing for reference of disputes to arbitration—Clause in contract providing for institution of suits in regard to matters arising out of transactions in particular Court only—If bars reference to arbitration.*

A clause in an agreement for the purchase and sale of cotton provided that no suit in regard to any matter arising out of the transactions should be instituted in any Court save the High Court of Bombay or the Court of Small Causes at Bombay. The transactions under the contract were to be subject to the rules and regulations of the East India Cotton Association, under which the disputes had to be referred to arbitration.

Held, that the clause referring to the institution of "suits" had no operation unless a suit was filed, in which case the Court was defined and that the clause in question did not oust the provision requiring arbitration under the rules and bye-laws of the East India Cotton Association or affect reference of disputes to arbitration. (*Beaumont, C.J. and Somjee J.*) PATEL BROS. *v.* SHREE MEENAKSHI MILLS, LTD. **I.L.R. (1942) Bom. 558 = 202 I C. 188 = 16 R.B. 140 = 44 Bom L.R. 485 = A.I.R. 1942 Bom. 239.**

——*Construction— Sale of goods — "Delivery — November, December, January, February, 1933"— Meaning of.*

Where a term in a contract of sale provides for "Delivery.—November, December, January, February, 1933" it means that delivery has to be made in equal instalments in each of the four months, or at any rate some quantity has to be delivered in each of the four months. It cannot be construed as meaning that it is at the option of the seller or supplier to deliver at any time before the end of February, 1933, or that it is not obligatory on the seller to make deliveries in each of the four months. (*Abdul Ghani and Subramanya Aiyar, JJ.*) VENKIAH & BROS. *v.* GUPTA. **20 Mys.L J. 194.**

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———*Contract by correspondence—Formal execution of document contemplated—Parties acting upon contract—Execution of formal document—If necessary.*

Where the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case, there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case, there is binding contract and the reference to the more formal document may be ignored. The conduct of the parties in acting upon the contract before the formal agreement was drawn up is the clearest evidence of this fact. (*Almond, J.C. and Mir Ahmad, J.*) GUJJAR MAL *v* GOVERNOR-GENERAL OF INDIA. **200 I.C. 429=15 R. Pesh. =A.I.R. 1942 Pesh. 33.**

———Contract by Government officers—Negotiation and agreement—Proper procedure. *See* 1941 Dig. Col. 383. DEVI PRASAD SRI KRISHNA PRASAD *v.* SECRETARY OF STATE. **I.L.R. (1941) All. 741 = 197 I C. 390.**

———Deposit in French Cochin China—Payment under judgment of Court of that country operating as discharge—Suit in British India—Not maintainable. *See* INTERNATIONAL LAW. **(1942) 1 M L J. 430**

———Frustration of venture—Basis of doctrine. *See* 1941 Dig., Col. 383. SARADA PRASAD DE *v.* BHUTNATH MALLIK. **200 I.C. 870=15 R.C. 107=A.I.R. 1942 Cal 291.**

———Minor—Lease by guardian—Minor approving it on attaining majority and executing new patta—Rights of parties—If governed by earlier or later lease. *See* 1941 Dig, Col. 383. TIKAIT UMED NARAIN SINGH *v.* EQUITABLE COAL CO., LTD. **1942 O W.N. 46=74 C.L J. 445=1942 A.L.W. 34=44 Bom L R. 188=1942 P.W.N. 32=44 P.L R 120=1942 A L.J. 107=23 Pat. L T. 338=A I.R. 1942 P.C. 1 (P.C.).**

———Right to sue—Third party—Sale of property—Purchaser undertaking to satisfy creditors of vendor—Right of creditors to sue purchaser. *See* 1941 Dig., Col. 386. JNAN CHANDRA MUKHERJI *v.* MANORANJAN MITRA **I L R (1941) 2 Cal 576=201 I.C. 138=15 R.C. 130=A.I.R. 1942 Cal. 251.**

———*Sale and purchase of goods—Provision declaring indent null and void if goods not supplied for any cause* whatsoever—*Effect of.*

One of the conditions of a contract of sale and purchase between the plaintiff and the defendants was as follows:—"It is understood that this indent is null and void in case the goods are not shipped or you cannot supply for any cause *whatsoever* without assigning any reason". Earlier in the condition reference was made to the defendants or their agents being exempted from responsibility for non-delivery of the goods by the makers or loss or inconvenience for reasons mentioned, and the delivery of the goods was subject to storm, fire and similar provisions.

Held, that the words "any cause whatsoever" in the first sentence should not be read by the *ejusdem generis* rule and that they excused the defendants from all liability. (*Gentle, J.*) RADHAKISSEN MULL *v.* SOHANLAL MOHANLAL. **47 C.W N. 86.**

———*Sale and purchase of goods—Provision declaring indent null and void if goods are not supplied for any cause* whatsoever—*Effect of—Validity*

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One of the clauses of a contract was as follows:—"You or your agents are not to be held responsible for non delivery of the goods by the makers or any loss or inconvenience that may originate by fulfilment of these goods. Delivery of the above goods is subject to storms, fire, war, tempest, flood, drought, strikes, lock-outs, bankruptcy, accidents and such other causes beyond human control. It is also understood that this indent is null and void in case goods are not shipped or you do not supply for any cause *whatsoever* without assigning any reason."

Held, (*i*) that the inclusion of the word '*whatsoever*' in the last paragraph excluded the application of the rule of '*ejusdem generis*' when interpreting the meaning of the sentence in which the word appeared, that the provision in the last paragraph was intended and it did intend to cover every possible reason for non-supply and non-shipment, and in the event of the defendant failing to supply the goods, then the indent was to be null and void and that consequently the defendants could not be held responsible for loss which might be occasioned to the plaintiff through failing to obtain delivery of the goods specified in the indent; (*ii*) that there was nothing which prevented the parties to a contract including a term in it to the effect that the party who was obliged to deliver the goods should not be liable for non-delivery. (*Gentle, J.*) RADHAKISSEN MULL *v.* MAGANLAL BROS. **47 C.W.N. 89.**

———*Sale and purchase of goods—Request to supply or instruct friends abroad to buy—If constitutes contract.*

The relevant words of a letter signed by the plaintiff and addressed to the defendants were as follows:—"We hereby request you to supply or to instruct your friends abroad to buy for and to ship, if possible, on our account and risk" and then the contract goods were set out with the terms. The defendants wrote to the plaintiff as follows:—"We beg to inform you without any engagement on our part that your under-mentioned valued indent has been placed with thanks."

Held, that the contract between the parties was one of sale and purchase, and that the defendants did not merely act as correspondents passing on the plaintiff's order to persons abroad. (*Gentle, J.*) RADHAKISSEN MULL *v.* SOHANLAL MOHANLAL. **47 C.W N. 86.**

———*Third party—Right to sue—Purchaser of partnership business undertaking to pay its debts—Debts charged on business until payment—Right of creditor to sue purchaser.*

A receiver appointed in a suit for dissolution of partnership sold the business of the firm and its assets, one of the conditions of the sale being that the purchaser should indemnify the parties to the suit against the debts of the business and until such debts were paid the same should be a charge on the business. In a suit by a creditor against the purchaser,

Held, that if the conditions of sale contained nothing more than a covenant by the purchaser of the business to pay the debts of the business, a creditor of the business could not enforce the covenant as against the purchaser but that the charge created on the business gave the creditor an equitable right as against the purchaser and the assets of the business in his hands. (*Rankrige, J.*) MAHOMED HAJI GHANI *v.* RAJ KUMAR DUTT. **46 C.W N. 871.**

———*Third party—Right to sue—Rule—Exceptions—S. 23 (c), Specific Relief Act.*

The general rule is that only those persons can sue upon a contract who are parties to it. This rule is subject to certain well-recognised exceptions, *e.g.*, where a person has been allowed to sue on a contract to which he is not a party, on the ground that he claims through

CONTRACT ACT (1872), S. 2.

a party to the contract or that he is in the position of a *cestui que trust* or that he is a principal suing through an agent, or that he claims under a family settlement. S. 23 (*c*), Specific Relief Act, which refers to a compromise or family settlement is one of the statutory exceptions to the rule. (*Rowland and Chatterji, JJ.*) JANAKI BALA DEBYA *v.* MAHESHWAR DAS. **21 Pat. 377=201 I C. 660=8 B.R. 812=15 R.P. 70=1942 P.W N. 149=A I.R. 1942 Pat. 460.**

CONTRACT ACT (IX OF 1872), S. 2—*Consideration—Promise to afford future personal service, if good consideration—Impossibility of enforcing specific performance, if renders contract bad.*

There is nothing in S. 2 of the Contract Act to show that a promise to afford future personal service is not good consideration. In most cases where personal services are promised on the one side specific performance cannot be enforced from the other. Neither the mere fact that specific performance of such a contract cannot be enforced nor the mere fact that in the nature of things one of the promisors is bound to perform his part of the agreement first, renders the contract bad. So long as there is a promise coming from each side and each side promises a thing which can be done, and can legally be done there is consideration. (*Madeley, J.*) SRI MAHADEOJI *v.* BALDEO PRASAD. **1942 O.A. 541=1942 O.W.N. 652=1942 A.W.R. (C.C.) 349.**

——**S. 2 (b)**—Acceptance—Silence. *See* 1941 Dig., Col. 386. BHOLAT *v.* YOKOHAMA SPECIE BANK, LTD. **197 I.C. 890=14 R.R. 148.**

——**S. 2 (c)**—Promisor and promisee—Merger—Promisor himself being one of the promisees under hatchita—Portion of debt due to promisor if discharged. *See* 1911 Dig., Col. 386. NABENDRA NATH BASAK *v.* SHASA BINDOO NATH. **197 I. C. 321=14 R C 332.**

——**S. 12**—Unsoundness of mind—Onus—Shifting of. *See* 1941 Dig., Col. 387. MOHAN LAL *v.* VINAYAK. **I L.R. (1942) Nag. 236.**

——**S. 16**—*Presumption of undue influence—Existence of relationship of landlord and tenant, if gives rise to.*

Per *Sathe, A. M.*—A presumption of undue influence is not warranted by the mere fact of the existence of the relationship of landlord and tenant between the parties to a transaction. Before such a presumption could arise there must be some positive evidence to show that the Zamindar exercised some undue influence on the tenant. (*Shirreff, S.M. and Sathe, J.M.*) HARKESH *v.* MAJI IS. **1942 O.W.N. (B.R) 27=1942 O.A. (Supp.) 25=1942 A.W.R. (Rev.) 25=1942 R. D. 43=1942 A L.J. (Supp.) 4.**

——**S. 19. Exception**—*Applicability—Contract containing defeasance clause.*

Per *Edgley, J.*—The exception to S. 19 of the Contract Act does not apply to a contract which contains within itself a defeasance clause. If the conditions demanded by that clause have been fulfilled, the contract can be avoided unless the right to avoid has been waived. (*Derbyshire, C.J. and Edgley J.*) WESTERN NDIA LIFE INSURANCE CO., LTD. *v.* ASIMA SARKAR **L.R. (1942) 1 Cal. 100=203 I. C. 548=46 C.W N. 159=A.I.R. 1942 Cal. 412**

——**S. 19-A**—*Contract procured by undue influence—Election by promisor—Exercise of right—Effect of.*

When a contract is procured by undue influence it is only a voidable one and consequently this only gives the person under undue influence *a right of choice or election.* Such a right, once exercised, is exhausted. So, if by notice expressly given or implied by conduct, the promisor elects to affirm, he can never afterwards claim to avoid; similarly if he has once elected to avoid, he can never afterwards be allowed to affirm in his own interests. There is no *locus penitentiae* in either case. (*Pal, J.*) KUNJA LAL *v.* HARALAL. **46 C.W.N. 947.**

CONTRACT ACT (1872), S. 23.

——**S 20**—*Contract—Executant not knowing nature of deed—Contract, if void or voidable.*

Where a person is induced to execute a deed under the belief that he is signing some other instrument of a different nature, the transaction is void and not only voidable. (*Hasan, J.*) MUSLIM BANK OF INDIA, *In the matter of.* **44 P.L.R. J. & K. 23.**

——**S. 23**—*Applicability—Agreement by agent exceeding his powers.*

Where a statute prescribes no penalties an agreement in breach of a condition imposed under powers given by it does not fall under S. 23, Contract Act, and where a condition is imposed under statute purely for administrative purposes an agreement in violation thereof is not void. Hence where a Cantonment Board agrees to confer on a person 'old grant' rights in land in the Cantonment area, there is nothing unlawful about it, but only a doubt as to whether the Board had the power to do so. It is really a case of an agent exceeding his authority and the principal not repudiating his action. Even if there is ground for considering whether S. 23 is applicable on the view that the agent's powers were circumscribed by law and that he acted *ultra vires*, the section would not be applicable because the consideration or object of the agreement is neither forbidden by any statute nor is of such a nature that, if permitted, it would defeat the provisions of any statute (*Bennett and Agarwal, JJ.*) TAJAMMUI HUSAIN *v.* THE CANTONMENT BOARD LUCKNOW. **203 I.C. 555=1942 O.A. 558=1942 A.W R. (C C.) 353=1942 O.W.N. 699.**

——**S. 23**—Compromise—Agreement not to claim ex-proprietary rights on transfer—If unlawful. *See* 1941 Dig., Col. 387. LAL BHAGWAT SINGH *v.* HARI KISHEN DAS. **17 Luck. 249=A.I R. 1942 Oudh 1.**

——**S 23**—*Stifling prosecution—Cheating—Threat of prosecution—Execution of promissory note by strangers jointly with offender—Consideration—If lawful—Enforceability of note.*

The 1st defendant had obtained loans from the plaintiff by perpetrating a gross fraud on him, involving the offence of cheating punishable under S. 420, I. P. Code. On discovery of the fraud the plaintiff threatened to prosecute the 1st defendant, but he was induced to refrain from taking this step in consideration of the 2nd and 3rd defendants executing jointly with the 1st defendant a promissory note in favour of the plaintiff. In a suit on the promissory note,

Held, that notwithstanding that no prosecution was actually launched by the plaintiff, the consideration for the promissory note so far as the 2nd and 3rd defendants were concerned was manifestly unlawful and therefore the note could not be enforced against them. (*Leach, C.J. and Lakshmana Rao, J.*) VENKATASUBBA RAO *v.* CHANDANMAL. **203 I.C 272=1942 M W N. 487=44 Cr. L J. 29=55 L. W 493=A.I.R. 1942 Mad. 662 (1)=(1942) 2 M.L J. 191.**

——**S 23**—Stifling prosecution — Compoundable offence—Promissory note in consideration of abstention from prosecution—If void. *See* 1941 Dig., Col. 389. CHANDANMAL *v.* RAMAKRISHNAYYA. **201 I C. 91=43 Cr. L.J. 734=15 R.M. 327=A.I.R. 1942 Mad. 173=(1941) 2 M L J. 827.**

——**S. 23**—Stifling prosecution—Conviction for theft—Appeal—Agreement pending appeal not to contest appeal in consideration of accused paying certain sum on his success in appeal—Enforceability. *See* 1940 Dig., Col. 390 and 1941 Dig., Col. 388. JAGGILODU *v.* BYRAMMA. **199 I.C. 876=14 R.P. 635=8 B.R. 643.**

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——S 23—Stifling prosecution—Elements of agreement—Mortgage bond by wife as part of consideration for withdrawal of criminal proceedings against husband—Enforceability. *See* 1941 Dig., Col. 389. BHOWANIPUR BANKING CORPORATION, LTD. *v.* DURGESH NANDINI DASI. **I L.R. (1941) Kar. (P C.) 141=74 C L J 408=44 Bom L R. 1=1942 M W N. 1=I.L R. (1942) 1 Cal. 1=23 Pat.L.T. 237=(1941) 2 M.L. J. 726 (P C .**

——S. 25—*Scope and applicability—Agreement to pay time-barred debt, when not affected by S. 25 (3)—Mere implied promise to pay, if enough—Effect of express promise to pay interest on debt acknowledged.*

S. 25 of the Contract Act only applies to contracts which are wholly without consideration and not to contracts which may be for inadequate consideration. Indeed under Expln. (2) of S. 25 inadequacy of consideration is not relevant unless it affects the question of free consent to contract. It is true that under S. 25 (3), Contract Act, an agreement to pay a time-barred debt is regarded as one without consideration but this sub section only applies when a wholly gratuitous promise is made to pay a time-barred debt and not to those cases when a promise to pay a time-barred debt is made for some consideration though the consideration might be inadequate. When a new contract is made for a fresh consideration superseding the previous contract which had become barred by time but including it as a part consideration in the new contract, an action could be founded upon the new contract and it can be enforced in its terms without raising any question about the acknowledgment of a time-barred debt. An express promise to pay is not necessary in the case of an agreement to pay a time-barred debt and an implied promise would satisfy the requirements of S. 25 (3). An express promise to pay interest on the debt acknowledged would reasonably include a promise for payment of principal also. (*Baipai and Dar, JJ.*) DEBI PRASAD *v.* BHAGWATI PRASAD. **1942 A.W.R. (H.C.) 382=1942 A.L.J. 656.**

——S. 25 (3)—Barred debt—Execution of mortgage in lieu thereof—If amounts to promise to pay in writing. *See* 1941 Dig., Col. 390. NUR HOSSEIN SERANG *v.* TAMIJUDDIN. **197 I.C. 495=14 R.C. 366.**

—— S. 26—*Scope of—Partial or indirect restraint on marriage if within—Provision in compromise between widows as to deprivation of property on re marriage.*

Though S. 26 of Contract Act is general in its terms it is doubtful whether partial or indirect restraint on marriage is within its scope. A provision in a compromise between two widows whereby either of them would be divested of her share in her husband's property on her re-marrying is not void. (*Iqbal Ahmad, C. J. and Dar, J.*) RAO RANI *v.* GULAB RANI. **1942 A.W.R. (H C.) 221=1942 A.L W. 475=1942 A.L.J. 446=1942 O.A. (Supp.) 530 (2)=A I.R. 1942 All. 351.**

——S. 27—*Applicability — Partial restraint of trade.*

There is nothing in the wording of S. 27 of the Contract Act to suggest that the principle stated therein does not apply when the restraint of trade or business is for a limited period only or is confined to a particular area. Such matters of partial restriction have effect only when the facts fall within the exception to the section. (*Davis, C. J. and Weston, J.*) KHEMCHAND MANEKCHAND *v.* DAVALDAS BASSARMAL. **I.L R. 1942 Kar. 25=15 R.S. 8=201 I C. 376=A I.R. 1942 Sind 114**

——S. 27—Public policy—Agreement in restraint of trade—Validity—Company doing sardine business—Sale of business—Covenant not to engage in any other sardine business in specified place directly or indirectly—Enforceability—Holding shares in such business—If breach of covenant. *See* 1941 Dig., Col. 385. CONNORS BROS., LTD. *v.* CONNORS. **8 B.R. 154 (P.C.).**

CONTRACT ACT (1872), S. 45.

——S. 30—*Wager—Essence of bet.*

The essence of a bet is that both parties agree that they will pay and receive respectively on the happening of an event in which they have no material interest. The transaction may be cloaked behind the forms of genuine commercial transactions; but to establish the bet it is necessary to prove that the documents are but a cloak and that neither party intended them to have any effective legal operation. Where the documents show an ordinary commercial transaction, and in conformity with them one of the parties incurs personal obligations on a genuine transaction with third parties so that he himself is not a winner or loser by the alteration of price, but can only benefit by his commission, the inference of betting is irresistibly destroyed. In such cases the fact that no delivery is required or tendered is of practically no value. (*Lord Atkin.*) ISMAIL LEBBE *v.* BARTLETT AND CO. **199 I.C. 574=1942 A.L.J. 258=8 B R 640=55 L.W. 332=14 R.P.C.136=1942 A.W R. (P C) 43=A.I.R. 1942 P.C. 19 (P.C.)**

——S. 30—*Wagering contract—'Forward' contract with 'pacca arhatis'.*

Where the effect of the clauses in a series of 'Forward' contracts with a 'pacca arhati' is that the 'pucca arhati' was to be in a position to choose whether he delivered or not and was, if he so liked to be able to settle the matter by paying or receiving, as the case might be, a mere difference, and where in not one of such contracts is there any delivery except in one small instance, the contracts are based upon terms which are singularly appropriate to mere gambling transactions. The Court is entitled, if not bound, to regard the course of dealing between the parties in such case as a reliable indication of what their real intentions were. Such a transaction is a wagering contract and cannot be enforced in view of S. 30 of the Contract Act. (*Braund and Yorke, JJ.*) RAMKRISHNA DAS *v.* MUTSADDI LAL. **I L R. (1942) All 289=200 I C. 225=14 R.A. 416=1942 A.W.R. (H C) 99=1942 A.L W. 137=1942 A.L.J. 131=A. I R. 1942 All. 170.**

——S. 43—Satisfaction made by one of parties jointly and severally liable—If discharges claim against all—English Law—Applicability. *See* 1941 Dig., Col. 392. NEW STANDARD BANK LTD. *v.* PROBODHCHANDRA. **198 I.C. 768=14 R.C. 494=A.I.R. 1942 Cal. 87.**

——S 44—*Scope—Partial discharge of some of joint promisors by promisee—Right of others to contribution—If affected.*

S. 44 of the Contract Act applies not only to the case of a complete discharge but also to one of a partial discharge of some of the joint promisors by the promisee. A partial discharge of some of the joint promisors by the promisee does not release them from their liability to contribute equally with others to the performance of the promise. (*Derbyshire, C. J. and Panckridge, J.*) GOUR MOHAN MULLICK *v.* KANTO MOHAN MULLICK. **46 C.W.N. 234.**

——S. 45—Hatchitta executed by a person in favour of himself and three other persons—Suit by two of the three promisees for their shares against executant and other promisee who refused to join with plaintiff—If maintainable. *See* 1941 Dig., Col. 392. NABENDRA NATH BASAK *v.* SHASABINDOO NATH. **197 I.C. 321=14 R.C. 332.**

CONTRACT ACT (1872), S. 49.

——S 49—*Applicability—Negotiable instrument—Promissory note payable on demand—"On demand"—Meaning and effe t of.*

It is well-settled law that a promissory note payable on demand" does not imply that a demand must be made. The words "on demand" only mean that the note is payable immediately, or at sight, and the words "on demand" do not by-themselves take the note out of S. 49, Contract Act. S. 49 of the Contract Act does not however, apply to negotiable instruments. S. 49 deals with a contract between a promi-or and a promisee, and has no application to matters governed by the law merchant contained in the Negotiable Instruments Act (*Beaumont, C.J. and Somjee, J.*) JIVATLAL PURTAPSHI *v.* LALBHAI FULCHAND. **I.L.R. (1942) Bom. 620=203 I.C 27=15 R.B. 184=44 Bom.L.R. 495= A.I.R. 1942 Bom 251.**

——S. 50—Applicability—Company—Chit fund—Prize winner depositing amount in special Savings Bank Account as sanctioned by rules made by the company—If good performance—Bank going into liquidation—Liability of prize winner. *See* 1941 Dig., Col. 392. TRAVANCORE NATIONAL BANK SUBSIDIARY CO., LTD. *v.* VENKATARAMAN. **1942 M.W.N. 148 (1)= 55 L.W. 254=A.I.R. 1942 Mad. 337=(1941) 2 M.L.J. 908.**

——S 56—*Employee agreeing to indemnify employer in case of thefts—Enforceability.*

Where an employee binds himself to indemnify his employer if theft occurred of the property for which he was responsible, no question of impossibility of performance arises and the stipulation could be enforced and the employee made liable for loss occasioned by theft (*Davis.*) CHAND MAL *v.* BADRI DASS. **1941 A.M.L.J. 98**

——Ss 59 to 61—Scope—Principal and interest due on single debt or decree passed on such debt carrying subsequent interest. *See* 1941 Dig, Col. 393. JIA RAM *v.* SULAKHAN MAL. **I.L.R. (1941) Lah. 740.**

——S. 60—Appropriation— Intention—Proof—Circumstantial evi ence *See* MADRAS AGRICULTURAL RELIEF ACT, S. 8 (1). **(1942) 2 M.L.J. 724.**

——S. 61—*Appropriation of payments—Payment not indicated to be towards a particular transaction.*

Where there is nothing to show that a particular payment was made towards any particular transaction, then under S. 61 of the Contract Act, the payment should be appropriatad towards the earlier transaction. (*Agarwal and Mudeley, JJ.*) PIAREY LAL *v.* MAHADEO PRASAD. **199 I.C. 698=14 R.O. 514=1942 R.D. 320=1942 A.W.R. (C.C.) 109=1942 O.W.N. 157=1942 O.A. 88 =A.I.R. 1942 Oudh 311.**

——S. 62—Applicability—Agreement made after breach of original contract—Cause of action arising from breach—If may be discharged by accord and satisfaction. *See* 1941 Dig., Col. 394 NEW STANDARD BANK LTD. *v* PROBODH CHANDRA. **198 I.C. 768=14 R.C. 494=A.I.R. 1942 Cal. 87.**

——S. 63—Scope—English doctrine—Application of. *See* 1941 Dig., Col 394. NEW STANDARD BANK. LTD. *v.* PROBODH CHANDRA. **198 I.C. 768=14 R. C. 494=A.I.R. 1942 Cal. 87.**

——Ss. 64, 73, 74 and 75—*Applicability—Contract of sale of immovable property—Buyer failing to complete payment—Seller putting end to contract—Duty to restore benefit received—Buyer's right to get back portion of price paid.*

The Transfer of Property Act does not provide expressly for the return of a portion of the purchase money paid in pursuance of a contract of sale, when the buyer fails to complete the payment and the sale in

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consequence falls through. The provisions of the Contract Act, however, apply generally to contracts of sale of immovable property. In cases not falling under S. 74 of the Contract Act, where there is no stipulation that a certain payment shall be "earnest" or penalty, the right of the seller to damages on the failure of the buyer to complete payment would arise under S. 73 or 75 of the Contract Act, and is something quite independent of the amount of any part payment made. Under S 64, the party rescinding a voidable contract must restore such benefit as he may have received from the other party. If the buyer fails to complete payment, and the seller avoids the contract, he must pay back the buyer the payments made by the buyer, *i.e.*, restore the benefit. (*Davis, C.J. and Weston, J.*) MADHAVDAS PARMANAND *v.* JAN MAHOMED. **I.L.R. (1941) Kar. 495=199 I.C. 438=14 R.S. 181=A.I.R. 1942 Sind 37.**

——S. 65—Ageement void *ab initio*—If affected by section. *See* 1941 Dig., Col. 394. DISTRICT COUNCIL WARDHA *v.* ANNA **I.L.R. (1942) Nag. 294.**

——S. 65—Applicability—Contract not executed according to statutory requirements—Party receiving advantage—If liable to compensate *See* BENGAL MUNICIPAL ACT, S. 103 (3). **46 C.W.N. 393.**

——Ss. 65 and 70 and T. P. Act, S. 108 (f) and (p)—*Applicability of Ss. 65 and 70, Contract Act—Lease not satisfying requirements of S. 107, T. P. Act—Lessee spending on shed and chabutra without complying with Cls. (f) and (p) of S. 108, T.P. Act—Right to reimbursement.*

Where a lessee under an instrument not satisfying the requirements of S. 107, T. P. Act spent money on putting up a shed and chabutra without giving notice to the lessor or obtaining her consent as he should have done under Cls. (*f*) and (*p*) of S. 108, T.P. Act, it was *held* that he was not entitled to reimbursement as S. 65 of Contract Act would not apply to the agreement since it was not void and that S. 70, Contract Act also would not apply as the requirements of Cls. (*f*) and (*p*) of S. 108, T. P. Act, were not complied with. (*Bennet and Agarwall, JJ.*) QAMAR JAHAN BEGAM *v.* BANSI DHAR. **17 Luck. 530=199 I.C. 35=14 R.O. 455= 1941 O.W.N. 1395 1942 A.W.R. (C.C.) 42=1941 O.A. 1050=A.I.R. 1942 Oudh 231.**

——S. 65—Applicability—Void transfer—Suit for recovery of possession of property transferred—Duty to make compensation for benefit received. *See* T. P. ACT, S. 6 (*a*) & (*b*). **(1942) 2 M.L.J. 364.**

——S. 65—*Liability to restore benefit obtained—Landlord making profit out of a surrender and granting of lease to another—Mother of tenant getting into possession—Lessee's right to recover profits made by landlord.*

When a contract becomes void under S. 65 of the Contract Act, any person who has received any advantage under the contract is bound to restore it. Where the landlord arranged for the surrender of a holding by a tenant and executed a lease to a third person and made a profit by the transaction, he is bound to restore it to that lessee when he loses possession by reason of the mother of the original tenant moving the Revenue Court and getting placed in possession on the ground that the transaction was in violation of S. 12 of the C.P. Tenancy Act. (*Pollock, J.*) SEGO *v.* SHIVAJI. **1942 N.L.J. 324.**

——S. 65—Mortgagee obtaining sale of mortgaged property after mortgagor's death from guardian of his minor sons—Sale subsequently set aside—Effect on mortgage—Remedy of mortgagee in respect of money due under mortgage. *See* LIMITATION ACT, ART. 97. **197 I.C. 498.**

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——S. 65—*Provisions when come into play—Agreement void ab initio—Limitation—Starting point.*

The provisions of S. 65, Contract Act came into play when an agreement is discovered to be void or when a contract becomes void. When an agreement is void in its inception it is ordinarily to be considered to have been discovered to be void at the time when parties entered into it. Hence a suit to recover money advanced under S. 65 of the Contract Act in respect of a void mortgage has to be brought within some period beginning from the execution of the agreement of mortgage. (*Allsop and Varma, JJ.*) SANA ULLAH v. JAI NARAIN SINGH 203 I.C. 428=1942 A.L.J. 390=1942 A.W.R. (H.C.) 252=1942 A.L.W. 427=A.I.R. 1942 All. 409.

——S. 68 and United Provinces Court of Wards Act (1912), S. 37—*Claim under S. 68, Contract Act—S. 37 of Court of Wards Act, if a bar—Claim for supply of cloths—Credit for amount disproportionate to the allowance of the ward.*

To a claim under S. 68 of the Contract Act for the price of necessaries supplied to a Ward of Court, S. 37 of the Court of Wards Act is no bar. But a supplier of goods which are necessaries must take care to see that he is really protected by S. 68. A claim for an amount in respect of necessaries, very disproportionate to the allowance granted to the ward could not be recovered. (*Rennett, J.*) DEPUTY COMMISSIONER OF BARA BANKI v. MADAN GOPAL 204 I.C. 38=1942 A.W.R. (C.C.) 343 (2)=1942 O.W.N. 560=1942 O.A. 507.

——S. 70—*Applicability—Irrigation tank owned by Government and Moatriendar as co-owners—Repairs effected by Government—Right to recover contribution from co-owners.*

Where the Government effects repairs to an irrigation tank owned by the Government jointly with a thoutriendar and sues the latter (co-owner) for contribution in respect of the expenses incurred for the repairs, it must be held that the Government in carrying out the repairs has acted lawfully and has not intended to carry them out gratuitously, and that the defendant co-owner, who has enjoyed the benefit of the repairs which were necessary and but for which his lands would have suffered is liable to pay contribution to the Government. All the conditions of S. 70 of the Contract Act having been fulfilled, the Government would be entitled to recover contribution. Though under the English law, the defendant would not be liable, the provisions of S. 70 of the Indian Contract Act are wider than the English law, and therefore the defendant is liable under S. 70. (*Leach, C.J. Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) SUBBAYA KAIA v. SECRETARY OF STATE. 1943 M.W.N. 6=(1942) 2 M.L.J. 800 (F.B.).

——S. 70—*Applicability—Lessee under invalid lease not satisfying requirements of Cls. (f) and (g) of S. 108, T. P. Act—Right to reimbursement.* See CONTRACT ACT, SS. 65 AND 70 AND T.P. ACT, S. 108 (PARTS (F). 1941 O.A. 1050.

——S. 72—*Applicability—Money paid under mistake—Knowledge—Carelessness of payer—Effect—Privity between payer and payee—If essential.*

S. 72 of the Contract Act is unambiguous, and under that section, if money is paid to a person by mistake, he is bound to repay it. There is nothing in S. 72 to suggest that it should only be applied when there is privity between the payer and the payee. G, falsely representing himself to be the real owner of a certain house and land, induced the appellant to lend him Rs. 2000 on a mortgage of the property. The real owner had no knowledge of the fraud. Again falsely representing himself to be the real owner, G, afterwards induced the respondent to advance Rs. 3,500 on a second mortgage of the property. Out of the Rs. 3,500 which the respondent agreed to advance, she was to pay to the apellant Rs. 2,000 in discharge of the 1st mortgage. Believing that G was the real owner and that the appellant was a first mortgagee of the property the respondent paid to her the Rs. 2,000. When the fraud was discovered the respondent instituted a suit to recover from the appellant Rs. 2,000 as a payment made in mistake of facts.

Held, that the money having been paid under the impression of the truth of a fact which was untrue, it could be recovered back, however careless the party paying might have been in omitting to use diligence to inquire into the facts. The receiver (appellant) was not entitled to the money nor intended to have it.

Held, further, that assuming that there should be privity between the payer and the payee that condition was fulfilled in the present case; though the appellant was not a mortgagee, she regarded herself as a mortgagee, and the respondent also thought that she was a second mortgagee discharging a first mortgage. (*Leach, C.J. and Bell, J.*) SOWDRA BAI v. SARASWATI AMMAL. I.L.R. (1942) Mad. 669=55 L.W. 233=1942 M.W.N. 335=A.I.R. 1942 Mad. 590=(1942) 1 M.L.J. 441.

——S. 72—Applicability—Sale of one's property in execution of decree against another—Application by owner to set aside sale under O. 21, R. 89, C. P. Code—Suit to recover money deposited under O. 21, R. 89—Maintainability. *See* 1941 Dig., Col. 396. APPA RAO v. VENKATA KUTUMBA RAO. 198 I.C. 552=14 R.M. 456=(1941) 1 M.L.J. 793.

——Ss. 73, 74 and 75—Applicability—Contract of sale of immovable property—Avoidance by seller on failure of buyer to complete payment—Effect—Right of buyer to recover monies paid. *See* CONTRACT ACT, SS. 64, 73, 74 AND 75. I.L.R. (1941) Kar. 695.

——S. 73, Expl.—*Scope of.*

The Explanation to S. 73 of the Contract Act seems to cast a burden upon the person complaining of the breach of contract to show that he did not possess the means of remedying the inconvenience caused by the non performance of the contract. (*Chatterji Khosla and Lahiri, JJ.*) ALIYA BEEVAM v. MOHINI BOSE. 1942 A.W.R. (C.C.) 339 (1)=1942 O.A. 461=1942 O.W.N. 664=A.I.R. 1943 Oudh. 17.

——S. 74—*Applicability—Deposit to secure performance of contract—Deposit not made or required by contract—If liable to be forfeited.*

The provisions of S. 74 of the Contract Act do not apply to a deposit of money made to secure or guarantee the performance of a contract. Such a deposit can, therefore, be forfeited upon the failure of the depositor to perform the contract within time or that amount is not unreasonable, although no damage is proved. The fact that a party has not paid the security deposit required by the contract does not affect the question of his liability to forfeit the amount required to be deposited, as he cannot be in a better position by reason of his own default than if he had fulfilled his obligations. (*Ghosh, J.*) W. J. VOGHORE v. TULSIRAM LOHIRAM. 201 I.C. 325=15 R.C. 525=46 C.W.N. 322=A.I.R. 1943 Cal. 381.

——S. 74—*Penalty—provision in compromise decree to transfer property in lieu of amount due.* See 1941 Dig., Col. 397. LAL BHAGWAT SINGH v. HARI KISHEN DAS. 17 Luck. 519=A.I.R. 1942 Oudh 1.

——S. 74, Expl.—*Penalty—Mortgage with possession for term—Stipulation for payment of 12 per cent. inter-*

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est in addition in default of payment of mortgage money within time fixed—If penal—Power of Court to relieve against—Clause—If wholly unenforceable. *See* MORTGAGE—INTEREST. **55 L.W. 661.**

——**S 87**—Applicability—Sale of future crops of garden—Effect of—Rights of vendee. *See* MYSORE T. P. ACT, S. 5. **19 Mys. L.J. 475.**

——**Ss. 124 and 125**—*Scope—If exhaustive—Indemnity holder—Right of action—Suit before actual loss is suffered—Maintainability—If premature.*

The Contract Act of 1872 is both an amending and a consolidating Act and is not exhaustive of the law of contract to be applied by the Courts in India. Ss 124 and 125 of the Act do not embody the whole law of indemnity. S. 124 only deals with one particular kind of indemnity which arises from a promise made by the indemnifier to save the indemnified from the loss caused to him by the conduct of the indemnifier himself or by the conduct of any other person, but does not deal with those classes of cases where the indemnity arises from loss caused by events or accidents which do not or may not depend upon the conduct of the indemnifier or any other person, or by reason of liability incurred by something done by the indemnified at the request of the indemnifier. S. 125 only deals with the indemnity-holder in the event of his being sued and is by no means exhaustive of the rights of the indemnity-holder. There is no justification or authority for holding that in no case can an indemnity holder maintain an action against an indemnifier unless he has suffered actual loss. If the indemnified has incurred a liability and that liability is absolute, he is entitled to call upon the indemnifier to save him from that liability and to pay it off. (*Chagla, J.*) GAJANAN MORESHWAR *v.* MORESHWAR MADAN. **I L R (1942) Bom 670 = 203 I C 261 = 44 Bom L.R. 703 = A I.R. 1942 Bom. 302.**

——**S. 126**—*Scope—Two persons liable for same debt one primarily and the other secondarily—Hindu son joining father in execution of mortgage of father's property for debt incurred by father for his own purposes—Discharge of debt by son out of own moneys—Right to benefit of security.*

The Court in granting relief to a person in the position of a surety is not confined to contracts of guarantee within the meaning of S. 126 of the Contract Act, and is free to apply the principles of equity unless the position is governed by some positive provision of law. Where in a mortgage deed executed by a Hindu father over his separate properties in respect of amounts borrowed by him for his own purposes, his son is made a party at the request of the mortgagee, and is made liable for the repayment of the debt, though not as a mortgagor, and the son after the death of his father pays off the mortgage out of his own moneys, he falls within the category of cases in which without any contract of suretyship there is a primary and a secondary liability of two persons for one and the same debt, the debt being, as between the two, that of one of those persons only, and not equally of both, so that the other, if he should be compelled to pay it, would be entitled to reimbursement from the person by whom (as between the two) it ought to have been paid. The son therefore would be entitled to the benefit of the security held by the mortgagee whom he has paid off, although he cannot be regarded as a surety within the meaning of S. 126 of the Contract Act. (*Leach C.J. and Bell, J.*) RAJAGOPALA IYER *v.* RAMACHANDRA IYER. **I L.R. (1942) Mad. 851 = 55 L.W. 417 = A.I.R. 1942 Mad 628 = (1942) 2 M.L J 406.**

——**S. 128**—*Liability of surety—Guarantee for re-payment of money advanced on promissory note—Guarantee to remain in force until debt due is fully and finally adjusted—Payment of interest by debtor—If extends period of liability of surety.*

A letter of guarantee for the re-payment of money advanced on a promissory note payable on demand with interest stated that the guarantee would remain in force until the debt due was fully and finally adjusted and would not be affected by any forbearance or arrangement for giving time or other facilities to the principal debtor. The creditor accepted small payments of interest by the debtor from time to time and thus enlarged the period of limitation.

Held, that in view of the terms of the guarantee the period of liability of the surety was also extended by the payments made by the debtor and that the surety remained liable so long as the principal debtor remained liable. (*Derbyshire, C.J. and McNair, J.*) GANA NATH SEN *v.* RANJIT RAY. **I L.R. (1942) 1 Cal. 11.**

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——**Ss. 129, 130 and C.P.C., O. 2, R. 2**—*Surety for one year's theka money—Widow succeeding thekadar—Decree against her—Recourse to surety—Suit if barred by O. 2, R. 2.*

Where a person executes a security bond for the period of the theka, for the payment of one year's theka money in case the thekadar fails to pay it and the theka is for five years and on the death of the thekadar the theka is continued in the name of his widow who commits default in the payment of the theka money, the surety is liable inasmuch as the guarantee was given for the period of the theka it must be regarded as being also a guarantee on behalf of the heirs and successors of the thekadar in the absence of any contrary intention in the security bond. A suit by the landholder for the recovery of the theka money in default from the surety is not barred by O 2, R. 2 on the ground that the former had already brought a suit in the rent court against the new thekadar prior to the proceeding in the civil court against the thekadar and the surety. (*Madeley, J.*) KAPURTHALA ESTATE *v.* SHEO SHANKAR. **200 I.C. 311 = 14 R O 594 = 1942 O.A. 126 = 1942 O.W.N. 198 = 1942 A.W.R. (C.C.) 147 = A.I.R. 1942 Oudh 325.**

——**S. 135**—*Applicability—Conditions.*

A person cannot take advantage of the provisions of S. 135 of the Contract Act, and cannot plead that he is a surety, unless he comes under the definition of the word in S. 126 of the Act and must be a party to a contract of guarantee. (*King and Kunhi Raman JJ.*) MAHALINGA AIYAR *v.* UNION BANK, LTD., KUMBAKONAM **55 L.W 664 = 1942 M.W.N 623 = (1942) 2 M.L J 532**

——**Ss. 172 and 178**—Pledge—Validity—Conditions—Deposit of share certificate—Sufficiency to create valid pledge. *See* 1941 Dig., Col. 399. KRISHNA PATTAR *v.* KUNHUNNI ELAYA NAIR. **199 I.C. 828 = 14 R M. 634.**

——**S. 178**—*"Goods"—Shares in joint stock company—Deposit of share certificate as security—Effect of—Rights of pledgee—Power of sale.*

There is no valid reason for giving the word "goods" in S. 178 of the Contract Act a different meaning from that which it has in the Sale of Goods Act. "Goods" would include shares in a joint stock company and there can be a valid pledge of the shares. When a person delivers a share certificate to another to be held by him as security, there is under the law of India a pledge which he can enforce, but unless the pledgee at the time of the deposit secures a deed of transfer which he can use in case of necessity or obtains one from his debtor at a later stage, he must have recourse to the Court when he wishes to enforce his security. There

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is nothing to prevent the pledgee suing on the debt and asking the Court to sell the goods for him If the goods happen to be shares, the Court can confer a full title on the buyer by following the procedure laid down in O. 21, R. 80, C.P. Code. (*Leach, C.J. and Happell, J.*) KANNAMBRA NAYAR v. KRISHNA PATTAR 55 L.W. 423 = 1942 M.W.N. 450 = 1942 Comp. C. 189 = A.I.R. 1943 Mad. 74 = (1942) 2 M.L.J. 120

——(as amended in 1930), Ss. 178 and 178 A—*Jewels deposited for safe custody—Pledge by depositee—Validity.*

Jewels entrusted merely for safe custody cannot be subject of a valid pledge by the depositee even in cases arising after the Contract (Amendment) Act of 1930. (*Somayya, J.*) VISALAKSHI AMMAL v. COIMBATORE JANOPAKARA NIDHI, LTD. 201 I.C. 766 = 15 R.M. 402 = 55 L.W. 319 = 1942 M.W.N. 25 = A.I.R. 1942 Mad. 299 = (1942) 1 M.L.J. 44

——S. 182—Agent—Employment by principal—If necessary. *See* 1941 Dig., Col. 399. SUKUMARI GUPTA v. DHIRENDRA NATH ROY. 197 I.C. 869 = 14 R.C. 401.

——S. 196—*Admission to tenancy by agent without authority—Right of landholder to disown it.*

If a tenant is admitted to the tenancy by an agent of the landholder without his knowledge or authority then under S. 196, Contract Act, it is open to the landholder to disown it. (*Stewart, J.*) PARTAP BAHADUR SINGH v. MULCHAND. 202 I.C. 454 = 15 R.O. 121 = 1942 A.W.R. (C.C.) 313 = 1942 O.W.N. 473 = 1942 O.A. 389.

——S. 213—Agents' liability to account—Agent under suspicion or working under supervision of other agents—If relieved from liability to account. *See* 1941 Dig., Col. 400. DEVA PRASANNA MUKHERJEE v. LAKSHMI NARAYAN MUNDHAL. A.I.R. 1942 Pat. 105.

——S. 230—Contract by agent—Personal liability—Effect. *See* 1941 Dig., Col. 400. SUKUMARI GUPTA v. DHIRENDRA NATH ROY. 197 I.C. 869 = 14 R.C. 401.

——S. 230 and Ajmer Taluqdar's Loan Regulation, R. 18—*Loan obtained by agent of Intermediar under invalidity—Liability of agent.*

Where the karindar of an Intermediar under disability borrowed money on behalf of his principal it was held that under the Ajmer Taluqdar's Loan Regulation there was no bar to a suit where the object for the advancement of the loan was somehow mentioned. It was held further that S. 230, Contract Act, must be held to apply to the time when the liability was incurred and not to the time when the suit was instituted. (*Al & Dhaon, J.*) RAM PERTAP v. DHURA LAL. 1941 A.M.L.J. 126.

——S. 230—*Organising agent with power to appoint selling agents and receive deposits—Payment of deposit to such organising agent—Effect—Insolvency of principal—Liability of the organising agent.*

Where an organising agent of a company is allowed to appoint selling agents and receive deposits from them and appropriate them towards the deposits made by him with the company, when he receives such a deposit from a selling agent who is an agent of the company and when he informs the company that he has received this amount so he was entitled to and asks the company to send a receipt for that amount and the company agrees to do so, that is sufficient to constitute the company of the deposit. On the insolvency of the company the selling agent cannot sue the organising agent for the recovery of the deposit made. (*Bhide and Pathak, JJ.*) NIRANJAN BHULANJAN v. RADHEYAL. 1943 B.L.J. 518.

CO-OPERATIVE SOCIETIES ACT (1912), S. 42.

——S. 230—*Presumption under—Scope of—Contract made directly in name of foreign principal—Right of agent to sue personally on contract.*

The presumption arising under S. 230 (1) of the Contract Act that an agent can personally enforce the contract entered into through him on behalf of a foreign principal is one that can be rebutted by evidence or by the circumstances of the case. It is in fact rebutted when the foreign principal is, in writing made the contracting party and the contract is made directly in his name. (*Abdul Ghani and Subramanya Aiyar, JJ.*) VENKIAH & BROS. v. GUPTA. 20 Mys.L.J. 194.

——S. 238—*Applicability—Fraud practised by agent—Absence of evidence as to whether principal was a party to the fraud—Agreement to sell by principal if affected.*

The provisions of S. 238, Contract Act, according to which a fraud or misrepresentation practised or made by an agent invalidates a contract into which the agent enters on behalf of the principal do not apply to a case where an agreement to sell a house is entered into between the vendor himself and the vendee and the deed of sale itself is executed by the vendor. There may be cases outside the scope of the provisions of S. 238 in which such fraud may invalidate agreement entered into by the principal. But where there is no evidence to show that the principal was a party to the fraud practised by the agent or that there was express authority to the agent to give the false information in question, an agreement followed by a sale deed executed by the principal himself to the vendee could not be avoided on the ground of the alleged false information having been given by the agent. (*Allsop and Verma, JJ.*) RAMACHANDRA v. HIRA LAL. 1942 A.W.R. (H.C.) 249 = 1942 A.L.W. 395 = A.I.R. 1942 All. 341.

CONTRIBUTION

See also CONTRACT ACT, S. 43.

——*Co-indigent co-debtors—Satisfaction of decree by one—Right to sue for contribution—Rule.*

Where a number of defendants are made jointly and severally liable under a decree, and the entire decretal amount is realised from one of them, that one can sue his co-defendants for contribution of equal proportionate share from each; that is the *prima facie* position. It may, however, be shown that there are special circumstances in the case which render the rule inapplicable. (*Mudholkar and Khare, JJ.*) SHANKAR PRASAD KHAN v. DANRU SAHU MAHAKHUR RAM. 20 Pat. 811 = 199 I.C. 821 = 14 R.P. 460 = 3 R.R. 421 = 23 Pat.L.T. 586 = A.I.R. 1942 Pat. 204.

——*Joint tort-feasors—Suit by one against another—Maintainability—Rule in Merry weather v. Nixon—Applicability in India.*

There is no legal impediment in India to the granting of a decree in a suit for contribution by one tort feasor against another. The rule in *Merryweather v. Nixon* does not apply in India. (*Allsop, J.*) VENKATA RAO v. VENKATA. 55 L.W. 772 = A.I.R. 1943 Mad. 89 (2) = (1942) 2 M.L.J. 427.

CONVERSION *See* HINDU LAW—CONVERSION.

CO-OPERATIVE SOCIETIES ACT (II OF 1912), S. 42—*Control of their property—Mode of calculation. See* 1941 Dig., Col. 401. ALLAH YAR v. ANJUMAN ISHAAT QURAN. I.L.R. (1942) Lah. 578.

——S. 43 (2) (h) and (3)—*Order of Registrar exempting members's contribution when his company changes its business—Effect—If ultra vires—Power of Civil Court to refuse execution. See* PRIOR INSOLVENCY ACT, Ss. 34 (2) and 44 (2). 44 P.L.R. 879.

CO-OPERATIVE SOCIETIES ACT (1912), S. 43.

——**Ss 43 and 44**—*Powers of Registrar—Award if can be both against society as well as against the members—Sale in execution—Questioning.*

The Registrar of Co-operative Societies has the power under the rules and regulations made under the Co-operative Societies Act to pass an award not only against a society but also against its members individually. A consolidated award both against the society and its members mentioning all the members though it may be irregular in form is not invalid. Its validity could be questioned by a judgment debtor and when not objected to by him, it cannot be raised after a sale in execution of it. (*Niyogi, J.*) CO-OPERATIVE CENTRAL BANK LTD., MALKAPUR *v.* NARAYAN RAMJEE KUNBI. **I L.R (1942) Nag. 685 = 202 I C 512 = 15 R N. 85 = 1942 N.L J. 462 = A.I R. 1943 Nag. 7.**

——**S 43 (1)**—*Rules under—Award by Registrar relating to mortgagee in favour of society—If mortgage decree—Claims of priority—Power of Registrar to decide.*

An award relating to a mortgage in favour of a Co-operative Society made by the Registrar under the Rules made by the Local Government under the provisions of S. 43 (*l*) of the Co-operative Societies Act, can in no sense be a mortgage decree. The Registrar has no power to decide disputed claims of priority or to make a decision which in any way affects the rights of other persons interested either in the mortgage security or in the equity of redemption. (*Henderson, J.*) SATISH CHANDRA NAG *v.* SILCHAR CO-OPERATIVE TOWN BANK, LTD **I.L R (1941) 2 Cal 551 = 201 I.C 585 = 15 R.C. 246 = A I R. 1942 Cal. 290.**

CO-OWNERS—*Right of one to recover entire profits from trespasser.*

The right of each co-owner extends to the whole property jointly with the others. Hence one of several co-owners is entitled to recover from a trespasser the whole of the profits which are payable by the trespasser on account of his wrongful possession and the whole amount of the compensation payable on account of the injury caused to the property. (*Allsop and Verma, JJ*) RAM CHARAN *v.* BANSIDAR **203 I.C. 223 = 1942 A L J. 411 = 1942 A.W R. (H C.) 278 = 1942 A.L.W. 380 = A. I.R. 1942 All 358.**

——*Ejectment suit*—Ijmal *property—Person intruding upon land against will of one co-sharer but with consent of another co-sharer—Right of former to eject intruder.*

It has long been settled that one of several co-sharers of *Ijmal* property may partially eject a person who has intruded upon such property against his will though with the consent of another co-sharer, by obtaining a decree for possession of his share jointly with the intruder. (*Harries, C. J. and Dhavle, J.*) RAM RAN BIJAVA PRASAD SINGH *v* RAMJIWAN RAM. **200 I. C. 769 = 15 R.P. 11 = 8 P R. 727 = 23 Pat.L.T. 294 = A.I R. 1942 Pat 397.**

——Land revenue—Arrears of—Payment by lambardar—Charge, if created—Right to interest. *See* 1941 Dig., Col 404. GULAB NATHURAM *v.* BINDRABAN SHEO CHARAN. **197 I C. 327 = 14 R.N. 163.**

——*Oudh—Liberty to lease by one—Conditions necessary to make lease valid.*

In Oudh a lease could be executed in favour of a tenant by one out of several co-sharers. But for this purpose a co-sharer must be himself in possession of the land before he can lease it. A lease given in respect of land in the effective possession of another co-sharer cannot be valid when the alleged lessee does not even obtain possession in pursuance of the lease. (*Shirreff, S.M. and Sathe, J.M.*) **GHISAI TELI** *v.* **SHEO MURAT**

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MISIR. **1942 O.A. (Supp.) 293 = 1942 R D. 594 = 1942 A W R. (Rev.) 267 = 1942 O.W N. (B.R.) 477.**

——*Partition—Land subject to* raiyati *tenancy created by one co-sharer allotted to another—Occupancy rights acquired by tenant—If can be claimed in respect of original holding.*

A co sharer to whom a parcel of land has been allotted by a decree for partition does not take it subject to a *raiyati Jama* created by another co-sharer without his concurrence when the land was the joint property of the co-sharers, when there is nothing to show that the land has been allotted to him as *raiyati* land and rated as such. On partition the tenancy itself is transferred by operation of law to the land allotted to the other co-sharer who created it, and any occupancy rights acquired by the tenant in the original holding could attach only to the land to which the tenancy is so transferred. (*Biswas, J.*) DEBENDRA NATH BISWAS *v.* UMESH CHANDRA MANDAL **I L R. (1942) 1 Cal. 408 = 202 I.C. 635 = 15 R.C. 377 = 46 Cal. W.N. 904 = A.I.R 1942 Cal. 513.**

——Partition—Suit for—When and when not maintainable. *See* 1941 Dig., Col. 405. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. **200 I C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.**

——*Rights* inter se—*Changing character of plot by one—Planting of grove on arable land.*

Where on a plot of land being used as arable land, a grove is planted by a co-sharer, the others have a right to the changing of the character of the plot. (*Bennett, J.*) SHAMBHU RATAN *v.* BADRI NARAYAN. **203 I. C. 613 = 1942 O A. 605 = 1942 O.W N. 750.**

——*Rights* inter se—*Claim for joint possession with one in exclusive possession of a portion—Maintainability.*

Where without demur or protest from the other co-sharers, one of them has been using a portion of the land owned in common with the rest in a proper and husband-like manner for 5 years at least and has not been raising any plea of adverse possession as against the others or denying their title, it is not possible to give a decree for joint possession in favour of any of the others, in respect of such land. (*Baipai, J.*) JAGDISH SHANKAR *v.* JANKI SINGH. **1942 A.L.W. 592.**

——Rights *inter se*—Decree entitling one to maintain a garden in a plot—Right to put up a building therein—Others, if prejudiced. *See* 1941 Dig., Col. 405. MAHOMED SHAKIR *v.* KALKA PRASAD. **197 I.C 492 = 14 R A. 199.**

——*Rights* inter se—*Right of one to put up constructions on joint land—Remedy of others.*

The general rule in regard to land which is in the joint possession of co-sharers is that one co-sharer is not entitled to make any constructions upon a plot which will have the result of ousting his co-sharers from their possession. The putting up of a temporary structure, such as a thatched shelter, does not come within this condemnation. But it may be added that even if when there is exclusive possession by means, for example, of the erection of cattle-sheds, it is not open to a co-sharer to alter the nature of that possession and substitute for the cattle sheds a *pucca* residential house. *Prima facie* where one co-sharer upon open ground over which possession, actual or constructive, is exercised by other co sharers, erects a building, it is the right of the co-sharer who as a result of this construction is ousted completely from use of the plot covered thereby to obtain a decree which will necessitate the demolition of the construction This; of course, is subject to the proviso that there shall be due diligence on the part of

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the co-sharer complaining of ouster and it shall not be possible to say that there has been such delay as will make him subject to an estoppel by reason of acquiescence and presumed consent. (*Yorke, J.*) RAM SEWAK *v.* RAM SAHAI. **1942 A.L.W. 225=1942 O.W.N. 281.**

——Right of one co-tenant to deal with property of another. *See* 1940 Dig., Col. 414. NANURAM *v.* RADHABAI. **I.L.R. (1942) Nag. 24.**

——*Right to joint possession—Lambardar taking unregistered surrenders and obtaining possession.*

Where a lambardar took from the tenants a number of unregistered surrenders and obtained possession, it was *held* that whatever the position of the proprietary body *vis-a-vis* the surrendering tenants might be, so far as the proprietors were concerned, the lands were taken by the lambardar on behalf of all and a co-sharer had as much right and title to those lands as the lambardar. It was *held* further that where one co-sharer obtained possession of any part of the joint property, the others were entitled to share in the benefit which that co-sharer had obtained and that no question of title arose because the title as between the various co-sharers was the same and that a co-sharer could obtain joint possession with the lambardar. (*Bose, J.*) NUMAN SINGH *v.* MST. GURUDEO KUMARI. **1942 N.L.J. 207.**

——*Right to sue—Suit against trespasser.*

One co-sharer of property can maintain a suit against a trespasser without impleading all the other co sharers. (*Almond J.C.*) MAHOMED YUNAS *v.* JAHAN SULTAN. **198 I.C. 803=14 R. Pesh. 76=A.I.R. 1942 Pesh. 9.**

COSTS. *See* (1) C. P. CODE, S. 35.
(2) PRACTICE—COSTS.

CO TENANTS. *See* LANDLORD AND TENANTS—CO-TENANTS.

COURT FEE—*Determination—Form of prayer—If the deciding factor.*

The taxing authority must look to the whole plaint and not merely to the form of the prayer. A plaintiff cannot evade payment of Court fees by clothing his relief in a form which would appear to seek no consequential relief if in fact consequential relief is actually involved and would ensue if the prayer were to be granted. (*Rose, J.*) VINAYAKRAO *v.* MANKUNWARBAI. **202 I.C. 643=15 R.N. 97=1942 N.L.J. 466.**

——*Taxing dept. (Nagpur H. C.)—Position of—Nature of the powers of the taxing officer—Relative province of taxing officer and Judge.*

A High Court is not in the same position as a lower Court as regards the determination of Court-fees. The taxing department of the High Court (Nagpur) is quite separate from its judicial side. The taxing officer has no judicial powers except as regards the one matter of Court-fees, nor has the Taxing Judge. If the appellant in an appeal to the High Court insists that he wants a declaration only and nothing more the taxing authorities cannot decide whether such a suit will lie. All they can say is that the Court-fees payable on a relief for declaration simpliciter is a certain figure and they must leave the wider question of consequential relief to the Judge deciding the appeal on the judicial side. Even there the taxing authority can decide whether the relief sought is in fact a declaration simpliciter or whether consequential relief is implicit in it. In case of doubt the taxing authority can insist on the necessary amendments. Once that is done then the Judge hearing the appeal decides whether the suit so framed can lie. The taxing authority cannot do it. (*Rose, J.*) VINAYAK RAO *v.* MANKUNWARBAI. **202 I.C. 643=15 R.N. 97=1942 N.L.J. 466.**

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COURT-FEES ACT (VII OF 1870), Ss. 5 and 28—*Scope and effect of—Patna High Court Rules, Ch VII, Rr. 16 and 19—Admission of appeal by Registrar—Revised Stamp-Report by Stamp Reporter demanding further court-fee—Jurisdiction to submit—Taxing Officer's power to order payment of additional court-fee—C. P. Code, O. 7, R. 11.*

The Stamp Reporter first reported through inadvertence that the court-fee on a memorandum of appeal was sufficient, and the Registrar admitted the appeal under R. 16 of Chap. VII of the Patna High Court Rules and ordered notice to respondent. A few days later the Stamp Reporter detected his mistake, sent for the record and after examining it submitted a fresh report under R. 19 of Chap. VII of the Rules to the effect that further court-fee should be paid. When the matter came before the Taxing Officer, the appellant contended that (*a*) the Stamp Reporter was *functus officio*, (*b*) that he had no right to submit a revised report after the appeal was admitted by the Registrar and (*c*) that the Taxing Officer had no jurisdiction at that stage to make an order for payment of deficit court-fee. Taxing Officer held as regards, the first two contentions, that the Stamp Reporter had power under R. 19 to re open the question of the sufficiency of the Court-fee. So long as the appeal remained pending, and on the third contention he held that in view of S. 28 of the Court Fees Act that was a matter not for him but for the Taxing Judge to decide. It was pleaded further before the Taxing Judge that the respondent had no *locus standi* to be heard in the matter.

Held, (1) that though the question of court fees was primarily one between the appellant and the Crown, it could not properly be said that it did not affect the respondent at all and that he could not be heard on the question; (2) that the Stamp Reporter had power to reopen the question of the sufficiency of the court-fee when the matter had not already been decided by the Taxing Officer, so long as the appeal was pending; (3) that the mere admission of a plaint or appeal did not operate to deprive the Court of power to reject it under O. 7, R. 11 (*c*), C. P. Code; and the admission of the appeal by the Registrar under R. 16 of Chap. VII in no sense involved any decision by the Taxing Officer under S. 5 of the Court Fees Act; (4) that such admission did not prevent the Taxing Officer from functioning under S. 5 of the Court Fees Act when a dispute as to court fee subsequently arose; (5) that it was only when the Taxing Officer had given his decision under S. 5 as regard the court fee payable on a memorandum of appeal that such decision would be final and it could not be questioned even in the exercise of the powers vested in the Court under S. 28; (6) that S. 5 enabled the Taxing Officer to deal with the question and he had jurisdiction to make an order for payment of additional court-fee and S. 28 did not take away his jurisdiction under S. 5 to deal with the revised Stamp Report. (*Dhavle, J.*) HASAN MIRZA *v.* SYED BAKER HUSAIN. **21 Pat. 720.**

——**S. 6-A (1) (as amended by U.P., Act XIX OF 1938)**—Appeal under—Cross objections if can be filed in. *See* C. P. CODE (1908), O. 41, R. 22 AND COURT-FEES ACT, S. 6-A (1). **1942 O.W.N. 382.**

——**Ss. 6-B and 6-C**—Reference by whom competent—Chief Inspector of Stamps how to move High Court. *See* 1941 Dig., Col. 407. KALLU SINGH *v.* MIR KUNWAR. **198 I.C. 287=14 R.A. 273.**

——**S. 7 (1)**—Applicability—Co-mortgagees or co-chargeholders—Suit by one for share of debt—Court-fee—Valuation for Court fee and jurisdiction—Entire mortgage-debt or share of plaintiff—Suits Valuation

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Act, S. 8. *See* 1941 Dig., Col. 408. KAILASA AYYAR *v.* SUNDARAM PATTAR **I.L.R. (1942) Mad. 438 = 201 I.C. 103 = 15 R.M. 218 = A.I.R. 1942 Mad. 205 = (1941) 2 M.L.J. 986.**

——**S. 7 (ii) and Sch. II, Art. 17 (vi)**—*Applicability—Wakf-deed—Suit to remove mutawalli, for accounts and for recovery of amounts directed to be paid annually to descendants of wakif and for appointment of new mutawalli—Court-fee—Relief—If incapable of valuation—C. P. Code, O. 7, R. 11—Failure to pay requisite court-fee—Proper order.*

In 1925 *A*, a Mahomedan, executed a wakf-deed, the terms of which roughly werethat the children of the *wakif* should reside in the house and be maintained from the income of the lands forming part of his estate,and that on the eventual failure of any descendant, the property should go to charity and be applied to musafirkhanas for the general public, the maintenance and clothing of widows, poor persons and travellers and the building and repairing of mosques. *S* appointed himself mutawalli in his lifetime and directed that after his death his son *H* should be mutawalli with power to appoint his successor. The deed provided, *inter alia*, that the mutawalli should render proper accounts to the wakif's children, and if he acted dishonestly or was lazy, he should be dismissed and another mutawalli appointed. The deed also provided that all the members of the family should, if possible, live together, but that if, after *A's* death, and if they were not able to agree to live together, *H* should separate them, thereafter paying all expenses of the administration of the estate, and after paying amounts set out to be paid to his widow and two daughters, *H* should divide the balance, appropriate half to his own family and give over half to the widow and her daughters. *A* died in 1933 and thereafter, his son, *H*, managed the estate as mutawalli. Sometime later, the widow and some daughters and grand-children of *A*, brought a suit against *H* and one of the daughters of *A* for removal of *H* from the office of mutawalli and for appointment of a new mutawalli, for accounts and for recovery of amounts misappropriated by *H*, on the allegations that the mutawalli *H* was not carrying out the terms of the wakf, that he was not making the payments enjoined by the deed to the widow and the daughters of the settlor and that he was misappropriating the income and alienating the property. The suit was valued for purposes of jurisdiction at Rs. 20,000 but only a court-fee of Rs. 15 was paid under Art. 17 (vi) of Schedule II of the Court-Fees Act on the plea that it was not possible to estimate the money value of the reliefs sought. The lower Court holding that the valuation for court fee and jurisdiction should be the same, ordered the plantiff to pay court-fee on Rs.20,000 in 10 days and in default thereof dismissed the suit.

Held, (1) that the suit was not governed by Art. 17 (vi) of Sch. II of the Court-Fees Act, but fell under S. 7 (ii) of the Court-Fees Act, as what the plaintiffs sought were material benefits to which they were entitled or might be entitled under the clause in the wakf-deed, that on disagreement between the parties the income should be divided and enjoyed in the proportions set out; (2) that the plaintiffs' claim to annual receipts was capable of valuation at least on an average basis and court-fee should therefore be paid on ten times the annual value of the receipts to which they claimed they were entitled; (3) that the correct figure should be arrived at by deducting from Rs. 20 000, the value of the total property, the interest of the two defendants, namely, Rs. 10,000 being the 1st defendant's share, and Rs. 500 the value of 2nd defendant's share being 10 times the amount of Rs. 50, which was the amount to be paid to defendant

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No. 2 annually, and the plaintiffs should therefore pay court-fee on Rs. 9,500 which was the value of their shares; (4) that the proper order to make was to allow the plaintiffs one month's time for payment of the requisite Court-fee and to provide that in default of such payment the plaint do stand rejected with costs, under O. 7, R. 11, C.P.Code. (*Davis C. J. and Weston, J.*) IBRAHIM SHAH *v* HATIMALI SHAH. **I.L.R. (1942) Kar. 424 = A.I.R. 1942 Sind 160.**

—— **S. 7 (iv) (a) (as amended in Madras)**—Applicability—Decree against temple in suit filed on promissory note by hereditary trustee—Suit by worshipper to declare not binding on temple as being collusive—Temple and trustee made defendants—Court-fee payable *See* 1941 Dig., Col. 408. RAMASUBBA IYER *v.* AYYALU NAIDU. **199 I.C. 528 = 14 R.M. 593 = (1941) 1 M.L.J. 414.**

——**S. 7 (iv) (b) & Sch. II, Art. 17**—Suit to recover a sum as profits—Alternative prayer for decree for whatever found due—If makes suit a suit for accounts—Court-fee payable. *See* 1941 Dig., Col 409. NANHE SINGH *v.* RAM NARAIN SINGH. **17 Luck. 246**

——**S. 7 (iv) (c)**—*Applicability—Alienation by Hindu widow—Suit by reversioner after death of widow to declare invalid—Prayer for setting aside—If necessary—Suit for declaration, possession and partition by person out of possession—Court-fee.*

An alienation by a Hindu widow is not absolutely void but voidable at the election of the reversionary heir of the last male owner. A reversioner suing after the death of the alienating widow need not sue to set aside the alienation besides praying for a declaration of its invalidity, so as to make his suit fall under S. 7 (iv) (*c*), Court-Fees Act,leviable to *ad valorem* court-fee. Where, however, in a suit for partition, accounts and declaration, the plaintiff, who is, on the allegations in the plaint, not in possession, asks for a declaration possession and partition, the suit falls under S. 7 (*iv*) (*c*), the consequential relief being partition and possession and therefore *ad valorem* court-fee has to be paid. (*Davis, C.J. and Weston, J.*) KARAMCHAND *v.* NARAINDAS. **I.L.R. (1942) Kar. 358.**

——**S. 7 (iv) (c)**—Applicability—Suit for partition of joint family property—Plaintiff claiming to be in joint possession—Allegation in plaint that defendant got up colourable deed of partition executed by plaintiff while a minor and that same was not acted upon or intended to be acted upon—Court-fee. *See* 1941 Dig., Col 410. RAMAUTAR SAO *v.* RAM GOBIND SAO. **198 I.C. 866 = 14 R.P. 512 = 23 Pat.L.T. 218 = 8 B.R. 471 = A.I.R. 1942 Pat. 60.**

——**S. 7 (iv) (c)**—Applicability—Suit to set aside decree effecting partition by metes and bounds and for fresh partition of all properties held by plaintiff and defendants exclusively since date of prior partition—Court-fee payable—Plaintiff—If in joint possession—Sch. II, Art. 17 (*vii*). *See* 1941 Dig., Col. 411. FAZILAT KHATUN *v.* RAHIMBUX GULMAHOMED. **197 I.C. 590 = 14 R.S. 112.**

——**S. 7 (iv) (c)**—*Applicability—Test—Specific relief claimed.*

The Court has to look at the substance of the plaint in each case to determine whether the suit is really one for a declaration with a consequential relief or is merely a camouflage attempt in words to disguise a specific relief claimed in the garb of a suit for declaration coupled with a consequential relief. It cannot be held that in all suits where possession is one of the reliefs claimed the suit must fall within S. 7 (*v*) of the Court-Fees Act any more than if the relief was not possession but was some-

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where specifically provided for say in Art. 1 of the Schedule the relief would necessarily fall within that article. It will depend on the facts and circumstances of each case whether the relief by way of possession or any other relief claimed is or is not consequential on the declaration sought. If it is consequential on the declaration sought then the suit would fall under S. 7 (*iv*) (*c*). If it is not so consequential, then the suit may fall if relief claimed was possession partly under S. 7 (*v*) or if the relief was not for possession but did come within Art. 1, Sch. I, then under that article. (*Dalip Singh and Sale, JJ.*) HARKISHAN LAL *v.* BARKAT ALI. **202 I.C. 174=15 R.L 109=44 P.L.R. 162=A I.R. 1942 Lah. 209.**

——**S. 7 (iv) (c) and (v)**—*Sale of joint family property by father—Suit by son for declaration that it is not binding and for possession—Court-fee.*

A suit by a son for a declaration that a sale of joint Hindu family property effected by his father had not been made for family necessity and was not binding on the family, and for joint possession of the property sold along with his father, falls within the purview of S. 7 (*iv*) (*c*) and not of S. 7 (*v*) of the Court-Fees Act. An alienation by the father of a Hindu joint family is not void but is only voidable at the instance of his sons. It is, therefore, necessary for the plaintiff to get rid of this voidable document by having the Court to declare that in the circumstances of the case it should be avoided at the plaintiff's request. The possession which he then claims flows from and is a necessary consequence of the relief claimed, namely, that the document does not stand in the way of the plaintiff. The remedy of possession, therefore, is essentially in this case a consequential relief flowing from and arising out of the declaration sought by the plaintiff. (*Dalip Singh and Sale, JJ.*) HARKISHAN LAL *v.* BARKAT ALI. **202 I C. 174=15 R.L. 109=44 P L.R. 162=A.I.R. 1942 Lah 209.**

——**S. 7 (iv) (c)**—Suit for declaration of title and injunction—Plaintiff claiming to be in possession of suit land—Valuation for Court-fees and jurisdiction. *See* 1941 Dig., Col. 413 GHULAM NABI *v.* UMAR BAKHSH. **197 I.C. 609=14 R.L. 263.**

——**S. 7 (iv) (c)**—Suit for declaration that liquidator's order against plaintiff is void and for injunction—Arbitrary valuation. *See* 1941 Dig., Col 413. ALLAH YAR *v.* ANJUMAN IMDAD QARZA. **I.L.R. (1942) Lah. 379.**

——**S. 7 (iv) (c) and (v)**—*Suit for declaration with consequential relief for possession and suit for possession—Choice of plaintiff.*

Where it is open to the plaintiff to frame his suit in one of two ways, there is no obligation in law that he should frame his suit, in any other way than he would choose to frame it. In other words, if it is open to the plaintiff to bring a suit for possession or to bring a suit for a declaration with consequential relief for possession it is entirely for the plaintiff to choose in which form he brings the suit and to the results that may flow from his choice in the way of limitation or otherwise the question of Court-fee payable is wholly irrelevant. The Court-fee will be determined on the nature of the suit as framed at the choice of the plaintiff always provided it is legally open to him to do so. (*Dalip Singh and Sale, JJ.*) HARKISHAN LAL *v.* BARKAT ALI. **202 I C. 174=15 R.L. 109=44 P.L.R. 162=A.I.R. 1942 Lah. 209.**

——**S. 7. (iv) (c)**—*Suit to declare decree debts not binding by person not a party to decrees*—Ad valorem *fee, if payable—Test.*

Ordinarily a decree binds only parties and privies. For one not a party and hence not bound, it is not necessary to get the decree set aside. But in the case of one who is for some reason or another bound by the decree there is implicit in the prayer for declaration that the decree does not bind him, a further prayer that the decree be modified so as to exonerate his interests.

Where a Hindu son sues for a declaration that certain debts represented by decrees against his father are not binding on him or on the joint family property, there is involved in it a prayer for setting aside the decree and hence *ad valorem* court-fee is payable. (*Bose, J.*) VINAYAK RAO *v.* MANKUNWARBAI. **202 I C. 643=15 R.N. 97=1942 N.L J. 466.**

——**S. 7 (iv) (c)**—*Valuation of relief—Power of Court.*

The plaintiff can place any valuation he likes for purposes of Court Fees in a case falling under S. 7 (*iv*) (*c*) of the Court Fees Act and the Court has no power to question that valuation, however arbitrary it may be, and the value for purposes of jurisdiction must be the same as the value for purposes of Court-fee. The Court cannot decide that a relief claimed is undervalued if it is in accordance with the provisions of the Court-Fees Act. (*Almond, J.C. and Mir Ahmad, J.*) NAJAB SULTAN *v.* RAM KISHAN. **197 I.C. 782=14 R. Pesh 64=A I R. 1942 Pesh. 4.**

——**S. 7 (iv) (f) and Art 17-B, Sch II**—Administration suit—Court-fee to be paid on market value of property—Jurisdiction of Court should be gone into—Revision proper to correct error at early stage. *See* 1941 Dig., Col. 414 KHAJA MOIDEEN SAHIB *v.* ABDUL GAFOOR SAHIB. **I L R. (1942) Mad 455=201 I C. 261=15 R M. 291=A.I.R. 1942 Mad. 247=(1941) 2 M.L J. 962.**

——**S. 7 (iv) (f)**—*Suit for accounts—Appeal—Valuation.*

Where the claim in a suit for accounts has been valued in the trial Court for purposes of court-fees and jurisdiction at a particular figure, if the defendant appeal against the decree claiming dismissal of the plaintiff's suit in its entirety, the same valuation would continue throughout the litigation and court-fee thereon would have to be paid. (*Grille, C.J. and Pollock, J.*) SHEORAM SITARAM *v.* ATMARAM RAGHOJI. **1942 N.L.J. 557=A I R 1943 Nag 13**

——**S. 7 (iv) (f)**—*Suit for accounts of partnership—Nominal valuation—Higher valuation in prior suit between same parties 'on account stated'—Plaintiff if should be pinned down to his prior estimate.*

Where a plaintiff in a suit for 'accounts of partnership' gives a nominal valuation, the fact that he on an earlier occasion filed a suit against the same defendant claiming a much larger amount 'on account stated' is no reason for pinning him down to his original estimate. He can value his suit as he pleases and there is no likelihood of any loss of revenue as the exact fees due have to be paid later on. He can put his own valuation in such a suit as it is only tentative. (*Gruer, J.*) MOTILAL ONKARSA CHAURE *v.* GULABSA MANIKSA BANORE. **1942 N L J. 197.**

——**S. 7 (iv) (f)**—*Suit for accounts—Valuation—Option of plaintiff or appellant.*

In suits for accounts it rests with the plaintiff or appellant to assess the amount at which he values the relief desired. (*Davies.*) RAM PAL *v.* BHAGWAN DAS. **1942 A M L J. 11.**

——**S 7 (iv) (f)**—Suit for administration—Valuation of plaintiff—It can be questioned by defendant—Remedy in case of under valuation. *See* 1941 Dig., Col. 414 MAUNG YA *v.* MAUNG LU GYAW. **198 I C. 414=14 R R. 201.**

——**(as amended in Madras), S. 7 (iv)-A**—*Applicability—Decree on promissory note against ender*

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ser—Suit by latter to declare decree unexecutable against him—Consequential relief—Court-fee payable.

A suit on a promissory note was brought against the makers and also against the petitioner who was the payee of the note and who had endorsed it over to the plaintiff in that suit for consideration. A decree was passed both against the makers and against the petipetier, and in execution thereof some properties of the otintioners were sold. The petitioner then brought a suit for a declaration that the decree which was being executed was not executable against him and for consequential relief in the shape of setting aside the sale already held together with an injunction preventing further execution of the decree against him. The basis of the claim to avoid execution was an agreement which the petitioner alleged was entered into between him and the decree-holder prior to the institution of the suit on the promissory note to the effect that no remedies should be claimed against him. The petitioner valued the reliefs at an arbitrary figure, but the lower Court held that the suit in effect was one to set aside the decree in so far as it bound him and must therefore be valued for purposes of court-fee accordingly and called upon the petitioner to pay such court-fee.

Held, in revision, that the only way in which the decree could be attached by the petitioner was by setting it aside and not by way of a declaration, and the suit therefore fell within the scope of S 7 (*iv*) A of the Madras Amendment of the Court-Fees Act; hence the order calling on the petitioner to pay additional court-fee was correct. (*Byers, J.*) VENKATARAMA NARA SIMHA RAO *v.* SITHA RAMA CHANDRA RAO. **1942 M W.N. 792 = 55 L W. 747 (2) = (1942) 2 M L.J. 658.**

——**S. 7 (IV-B) (d), Expl. II (U. P. Court-Fees Amendment Act 1938)**—*Court-fee—Nature of—Basis of computation—Suit by representative of true owner against benamidar—Prayer for declaration that benamidar not the adopted son of another person—Court-fee—Property to be taken into account.*

A Court-fee is that fee which the State requires to be paid by the plaintiff on the presentation of his plaint and it has therefore to be considered by reference to the point of time at which the plaint is filed and by reference to the case which is presented by it. Where a plaintiff sued as a universal legatee of a certain *R* for recovery of property bought by *R* benami in the name of the defendant who was styled as the adopted son of one *M* a nephew of *R* and also asked for a declaration that the defendant was not the adopted son of *M*, it was *held* that what had to be considered for the purpose of determining the Court-fee was, what was the property that might be diverted by that adoption. It was further *held* that the property which might be diverted or affected by that adoption, if the defendant were to establish it, would be that property which at the date of the death of *R* was joint and which the defendant or *M* himself as the case might be would have taken by survivorship and not the separate property of *R*. (*Braund, J.*) KUNDAN LAL *v.* GORE LAL. **1942 A.L W. 192.**

——**S 7 (v) (b)**—*Applicability—Suit to declare ownership and delivery of possession of field—Denial of alleged adoption of defendant—Court-fee payable.*

Where a suit is to declare the ownership of the plaintiff of a field and for delivery of possession thereof from the defendant and incidentally an alleged adoption of the defendant on which he rested his claim is also denied the Court-fee is payable only under Court-Fees Act, S 7 (*v*) (*b*) and not on the market value of the field. The suit is really one for possession and the mention of an anticipated defence of adoption does not oblige him to

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pay Court-fees on a declaration to avoid it. (*Gruer, J.*) RADHABAI *v.* LAISA. **1942 N L.J. 372.**

——**S 7 (vi-a) (U. P. Court Fees Amendment Act 1938)**—*Suit for partition—Amendment of plaint to include extra share after U. P. Court-Fees Amendment Act—Computation of Court-fee.*

Where on the death of a plaintiff in a suit for partition of his share in certain property, his brother one of the defendants steps into his shoes and continues the suit and obtains an amendment of the plaint so as to include his share of the property also and this amendment is obtained after the passing of the U. P. Court-Fees (Amendment) Act of 1938, the Court-fee payable in respect of the extra share must be calculated according to the Amended Act and not according to the Act prior to its amendment. (*Allsop and Verma, JJ.*) MAHOMED SHARIF *v.* HAJIRA BIBI. **I.L.R. (1942) All. 376 = 201 I.C. 460 = 15 R A. 62 = 1942 A.W.R. (H.C) 128 1) = 1942 A.L.J. 351 = 1942 A.L W. 184 = A.I.R. 1942 All 222.**

——**S 7 (ix)**—*Applicability—Suit for redemption—Decree—Appeal—Court-fee.*

If an appeal from a decree in a suit for redemption relates only to the amount payable and not to the right of redemption, Court-fee on such appeal has to be paid *ad valorem* on the amount claimed to be payable. Even when the appeal purports to dispute both the right of redemption and the amount payable, if in substance it relates only to the amount payable there again court-fee must be paid *ad valorem* on the amount claimed. But if the right of redemption and the amount payable are both disputed in appeal and both grounds are grounds in substance and not merely in form, the court-fee payable would be as for a suit under S. 7 (*ix*) of the Court-Fees Act. It cannot be said that it is the form alone and not the substance of the appeal which determines the question of court-fee. (*Happell, J.*) PACHAYAKKAL *v.* SHANMUGAVELAYUDHA GOPANNA MANNADIAR. **1943 M W.N. 14 (2) = (1942) 2 M.L J. 785.**

—— **S. 7 (ix)**—Suit to recover mortgaged property—Second appeal—Court-fee payable. *See* 1941 Dig., Col. 415 AB UL HAQ *v.* SHAMSHUDDIN. **197 I.C. 582 = 14 R.A 207**

——**Ss 10 (2 and 12 (ii)**—*Construction and scope—"Suit" in S. 10 (2)—It includes appeal—Duty of Court under S. 12 (ii)—Partition suit—Plaint not sufficiently stamped—Decree—Appeal by defendant—Liability of appellant to pay deficit Court-fee on plaint.*

In a case falling under S. 12 (*ii*), the reference to the "suit" in S. 10 (2) which is expressly made applicable under S.12 (*ii*), must be read as a reference to the "appeal" and the Court is bound to stay the appeal until the additional Court-fee, although the appeal is by the defendant and not by the plaintiff who failed to pay the proper Court-fee on his plaint in the suit in the trial Court. In a partition suit in which the plaint was insufficiently stamped a preliminary decree was passed declaring that the plaintiff was entitled to a share in the plaint property and directing that the plaintiff was entitled to costs from the defendants. After reference to the Commissioner for partition, there was a final decree in accordance with the division made by the Commissioner. The defendant appealed against the final decree. At the hearing of the appeal there was an objection raised that the plaint was insufficiently stamped and that the proper Court fee ought to be paid on the plaint before the appeal could be proceeded with.

Held, (1) that though the appeal was by the defendant and not by the plaintiff respondent who ought to have paid the proper Court-fee on his plaint, the Court was bound under the mandatory provisions of S. 12 (*ii*)

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of the Court-Fees Act to stay the appeal until the additional fee was paid; (2) that the Court should direct the respondent (plaintiff) to pay the proper additional court-fee and to stay the appeal until that is done; (3) that if the respondent did not pay the Court-fee and if the appellants wished to save their appeal they would have to pay the Court-fee themselves in the name of the respondent (plaintiff) when alone, the appeal would come on for hearing; (4) that at the hearing it would be open to the Court of appeal to decide on whose shoulders the additional fee should fall and to make the necessary orders. (*Beaumont, C.J. and Wadia, J.*) ALABUX NAZARALLI *v.* ABDULLALLI KHANBHAI. **200 I.C. 323 = 15 R.B. 7 = 44 Bom.L.R. 117 = A.I.R. 1942 Bom. 151.**

——**S. 11**—*Administration suit—Decree—Direction for payment of additional court-fee by plaintiff—Plaintiff paying same before withdrawal of amount deposited in Court—Right to levy execution therefor.*

A decree in a suit for an account of the defendants' administration of an estate contained a clause to the effect that the decree should not be executed until the plaintiff paid a further court-fee of Rs. 157 8 0, as is usual, under S. 11, Court-Fees Act. The decree amount was deposited in Court and the plaintiff applied to withdraw the same, but the amount was not paid out to him until he had paid the additional court-fee required to be paid by him by the decree. The plaintiff having paid the additional court-fee and withdrawn the amount from Court applied to recover from the defendants the amount of the additional court fee paid by him in execution of the decree.

Held, that the execution application of the plaintiff was competent and should be ordered, the plaintiff under the decree having had to pay the additional court-fee before the full liability of the defendants could be ascertained. (*King and Kunhi Raman, JJ.*) PARASURAM BYOS *v.* ATCHUTARAMA RAO, **1942 M.W.N. 713 = 55 L.W. 786 = (1942) 2 M.L.J. 673.**

——**S. 11**—*Scope and effect of—Decree for mesne profits—Drawing up of before payment of Court-fee—If prohibited.*

S. 11 of the Court-Fees Act only says that the decree shall not be executed until the Court-fee is paid; it in no way requires the Court to postpone the passing or the drawing up of the decree for mesne profits. (*Rowland and Chatterji, JJ.*) MAHOMED SADIQUE MIAN *v.* MAHABIR SAO, **21 Pat. 366 = 199 I.C. 818 = 14 R.P. 631 = 8 B.R. 631 = 23 Pat.L.T. 202 = 1942 P.W.N 139 = A.I.R. 1942 Pat. 410.**

——**S. 12**—Decision under—When becomes final—Sufficiency of stamp decided without reference to opposite side—If can be questioned later on by the other side. *See* 1941 Dig., Col. 416. GANGOO *v.* SALOO. **I.L.R. (1942) Nag 432.**

——**S. 12 (1)**—Construction and scope—Decision under—Finality—Conditions of—If parties should have been heard before decision—Object of sub section. *See* 1941 Dig, Col. 416. MAHALAKSHMAMMA *v.* VENKATANARAYANAMURTHI. **198 I.C. 597 = 14 R.M. 479 = (1941) 1 M.L.J. 796.**

——**S. 12 (1) (as amended in U. P.)**—*Final order—Decision of Court as to sufficiency of Court-fee—Reconsideration on report of Inspector of stamps and on objection by other side—Competency.*

Where on the report of the Munsarim a Civil Judge decides that the court-fee paid on an appeal is sufficient it is not such a final order within the meaning of S. 12 (1) of the Court-Fees Act as to preclude a District Judge from going into the question once again either on the report of the Inspector of Stamps or on the preliminary objection of the opposite side. (*Bennett, J.*) CHHOTEY SINGH *v.* SURAT SINGH **200 I.C. 223 = 14 R.O. 576 = 1942 O.W.N. 338 = 1942 A.W.R. (C.C.) 226 = 1942 O.A. 247 = A.I.R. 1942 Oudh 385**

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——**S. 12 (1)**—*Scope—Finality—If refers to classification of suit—Court determining value of property for Court-fee—Power of Court to reconsider value of property for purposes of jurisdiction—Madras Civil Courts Act, S. 14.*

The finality referred to in S. 12 (1) of the Court-Fees Act is only with regard to arithmetical calculations of the Court-fee payable and not to questions of classification. A finding as to the value of the property in suit for purposes of Court-fee does not preclude the Court from afterwards coming to the conclusion that it has no jurisdiction to try the suit on the ground that on a proper valuation of the property the suit would go beyond the pecuniary jurisdiction of the Court. It cannot be said that because the Court has already determined the amount of Court-fee payable, it has no authority to reconsider the value of the property for purposes of jurisdiction. It would be strange if the Court, by making an error in fixing the value of the Court-fee payable, can obtain jurisdiction which it does not really possess. In a suit for possession of land, the true value of the land determines the jurisdiction and is also the basis for calculating Court fee, subject to the qualification of S. 12 (1) of the Court-Fees Act that when once the amount of the Court-fee has been determined, it is final. (*Horwill, J.*) NARASIMHALU CHETTY *v.* RAMAYYA NAIDU. **202 I.C. 65 = 15 R.M. 427 = 1942 M.W.N. 243 = 55 L.W. 173 = A.I.R. 1942 Mad. 502 = (1942) 1 M.L.J 400.**

——**S. 12 (2)**—Construction—Order under—Power of Court to reconsider. *See* 1941 Dig, Col. 416. MAHALAKSHMAMMA *v.* VENKATANARAYANAMURTHI, **198 I.C 597 = 14 R.M. 479 = (1941) 1 M.L.J. 796.**

——**S. 12 (11)**—Scope—Mandatory character of—Partition suit—Plaint not properly stamped—Decree—Appeal by defendant—Objection that proper Court-fee was not paid on plaint—Procedure—Duty of appellate Court—Liability of appellant to pay Court fee on plaint. *See* COURT-FEES ACT, SS. 10 (2) AND 12 (*ii*). **44 Bom.L.R. 117.**

——**Ss. 14 and 15**—*Cases not coming under—Order for refund—Power of Court.*

Apart from the provisions of Ss. 14 and 15 of the Court-Fees Act, the Court has power in proper cases to make an order for refund where it is found that the court-fees have been paid under an order subsequently held to be wrong. (*Biswas, J.*) ABDUL MAJID *v.* AMINA KHATUN. **I.L.R. (1942) 2 Cal 253 = 201 I.C 683 = 15 R.C. 269 = 75 C.L.J. 393 = 46 C.W.N. 697 = A.I.R 1942 Cal 539.**

——**S. 17**—*Applicability—"Distinct subjects"—Suit for recovery of possession of property under sale deed and in the alternative for recovery of consideration money—If comprises "distinct subjects"—Court fee.*

The appellant instituted a suit for possession of property purchased by him under a sale deed executed in pursuance of an agreement of sale, and in the alternative for the recovery of the consideration money paid by him. He valued the suit at Rs. 955 made up of Rs. 925 representing the value of the property and Rs. 30, the mesne profits claimed by him and paid court-fee on that amount. The value of the alternative relief also was the same, *viz.*, Rs. 955, made up of Rs. 925, the amount of the consideration for the sale-deed and Rs. 30 for the incidental expenses.

Held, that a single court fee based on the valuation of Rs. 955 was sufficient and was all that could be

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levied, and the suit did not comprise two "distinct subjects" so as to fall under S. 17 of the Court Fees Act. (*Krishnaswami Ayyangar, J.*) NARASIMHAM, *In re.* **55 L.W. 612=1942 M.W.N. 802=A.I.R. 1942 Mad. 744=(1942) 2 M.L.J. 418.**

——**(as amended by Bengal Act VII of 1935) S. 17**—*Claims for possession, mesne profits and arrears of royalty—If separate and distinct causes of action.*

O. 2, Rr. 2 and 4, C. P. Code, clearly indicate that a claim for mesne profits would not be barred under O. 2, R. 2, C. P. Code, if such a claim was not included in a previous suit for possession and that the claims for possession and mesne profits are not based on the same cause of action. The cause of action in respect of the claim for arrears of royalty is also separate and distinct from the cause of action for khas possession and mesne profits. Consequently, a suit for khas possession, mesne profits and arrears of royalty being based on three separate and distinct causes of action is a multifarious suit and falls within the purview of S. 17. (*Nasim Ali, J.*) SRIS CHANDRA NANDY *v.* JOYRAMDANGA COAL CONCERN. **201 I.C. 563=15 R.C. 241=A.I.R. 1942 Cal. 40.**

——**S. 17**—*Main cause of action same in respect of all properties—Alternative pleas based on different cause of action in respect of some of the properties—Separate fee on each property, if chargeable—Separate fee on mesne profits if chargeable in a claim for possession and mesne profits.*

Where the main case of a plaintiff is that he is entitled to all the properties under a primogeniture *sanad* and that is the main cause of action in respect of all the properties, the fact that some alternative pleas based on different cause of action are raised in respect of some of the items is no ground for charging a separate fee on each of the various items, for it cannot be said that they are distinct and separate from the main cause. A separate Court fee cannot be charged under S. 17 on the claim for mesne profits in a suit for possession and mesne profits as if a separate suit had been instituted for them. (*Bennett and Ghulam Hasan, JJ.*) RAJ RAJ BAHADUR SINGH *v.* SHATRANJAI SINGH. **201 I.C. 567=15 R.O. 100=1942 A.W.R. (C.C.) 256 (2)=1942 O.A. 284=1942 O.W.N. 394=A.I.R. 1942 Oudh 412.**

——**S. 17 (2) Proviso (C. C. Amendment)**—*Applicability—Suit for Specific Performance of agreement to sell consideration being discharge of mortgage debt—Alternative prayer for decree on mortgage—Court-fee on the two reliefs, if necessary.*

Where in a suit for specific performance of an agreement to sell, the consideration being the discharge of a mortgage debt due to the plaintiff, a decree on the mortgage is asked as an alternative relief, the two reliefs are based on the same cause of action, the alternative one being ancillary to the main one and separate Court fee on each is not necessary. The matter falls under the proviso to S. 17 (2) of the Court-Fees Act as amended in C. P. (*Bose, J.*) SHAM RAO *v.* SHEIK DAWOO. **1942 N.L.J. 352.**

——**S. 19-I**—*Court-fees not paid—Application, if competent.*

S. 19-I of the Court Fees Act says that the Court shall not grant probate until the court fees are paid. It does not say that the Court shall not try an application for probate or letters of administration until the fees are paid or that the payment of the fees is a condition precedent to the making of the application. (*Sen, J.*) LILIAN SINGH, *In the goods of.* **I.L.R. (1942) 2 Cal. 194.**

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——**S. 19. Cl. (xvii)**—Petition contemplated by. *See* 1941 Dig. Col. 417. SARDAR SINGH *v.* CHAMPA. **I.L.R. (1941) All 793=198 I.C. 275=14 R.A. 275=1941 A.L.J. 733=A.I.R. 1942 All. 45.**

——**S 19 (17)**—*Revision application by prisoner presented through counsel—If exempt from Court-fee.*

A revision application by a prisoner even if presented through a counsel is exempt from the payment of court-fee under S. 19 (17). (*Almond, J.C.*) GIAN CHAND *v.* EMPEROR. **202 I.C. 379=15 R. Pesh. 43=43 Cr. L.J. 837=A.I.R. 1942 Pesh. 50.**

——**S. 19-D**—*Hindu joint family property—Letters of administration—Court fees.*

Under S. 19-D of the Court-Fees Act, no Court-fee is payable on letters of administration in respect of property which had been purchased with joint family funds and which stood in the sole name of the *karta* or another member of the family till his death, as the property had been held by the deceased in trust for the family. The question of duty is in no way affected by the fact that the deceased had a beneficiary interest of his own in the property during his lifetime. (*Tek Chand, Dalip Singh and Beckett, JJ.*) SRI RAM *v.* COLLECTOR, LAHORE. **I.L.R. (1942) Lah. 717=202 I.C. 114=15 R.L. 95=44 P.L.R. 330=A.I.R. 1942 Lah. 173 (F.B.).**

——**S. 28**—Scope—Power of Taxing Officer and of Court—Order for further Court-fee on revised stamp report—Jurisdiction—Decision of Taxing Officer—When final. *See* COURT-FEES ACT, SS. 5 AND 28. 21 **Pat. 720.**

——**Sch. I, Art. 1**—*Applicability—Real nature of relief—Test—Suit not only to set aside award but the agreement to refer as well.*

In order to find out the real nature of the relief claimed by the plaintiff one has to look at the allegations in the plaint. Hence where from such allegations it is clear that the relief claimed is not only for setting aside the award but also for the cancellation of the agreement on the basis of which the award was made as well, the plaintiff is liable to pay *ad valorem* court-fee. (*Collister and Baipai JJ.*) HABIBUL NISSA *v.* NAYABUT NISSA. **1942 A.L.W. 223.**

——**Sch. I, Art. 1 and Sch. II, Art. 17-B (as amended in Madras)**—Applicability—Suit for money claiming first charge on certain assets—Decree for money only without charge—Appeal claiming charge on assets—Court-fee payable. *See* 1941 Dig., Col 418. VINAITHERTHAL ACHI, *In re.* **201 I.C. 86=15 R. M. 206=A.I.R. 1942 Mad. 152=(1941) 2 M.L.J. 774.**

——**Sch. II, Art 1 (as amended in Madras)**—Applicability—Pauper appeal—Order for payment of court-fee and security for costs—Failure to pay in time—Dismissal of appeal—Application for review—Court-fee payable. *See* 1941 Dig., Col. 420 KAYAMBU PILLAI, *In re.* **I.L.R. (1941) Mad. 954=(1941) 2 M.L.J. 500.**

——**Sch. II, Art. 1 (d) (i) (Madras Amendment)**—*Order directing a decree-holder to refund a sum of Rs. 987 3 11 received by him in rateable distribution—Suit in which sale proceeds realised valued at more than Rs. 1,000—Revision petition—Pr per Court-fee.*

The proper stamp duty leviable on a memorandum of civil revision petition presented to the High Court against an order directing a decree-holder to refund a sum of Rs. 987-3-11 received by him in rateable distribution will be Rs. 10 and not Rs. 5, where the value of the suit or the main proceeding wherein the order was made is above the value of Rs. 1,000. (*Venkataramana Rao, J.*) RAMANATHAN CHETTIAR, *In re.* **201 I.C.**

COURT-FEES ACT (1870), Sch. II, Art. 11.

753=15 R.M. 400=55 L.W. 323=1942 M.W.N. 66 =A.I.R. 1942 Mad. 390=(1942) 1 M.L.J. 111.

——Sch. II, Art. 11—Applicability—Appeal under R. 9, Madras Agriculturists' Relief Act—Court-fee payable. *See* 1941 Dig., Col. 420, VENKATARATNAM, *In re.* 198 I.C. 322=14 R.M. 427=(1941) 1 M.L.J. 721.

——Sch. II, Art. 17 (3)—*Applicability—Suit for mere declaration that plaintiffs are mortgagees.*

Where plaintiffs who have been directed, to go to a Civil Court for establishing their title, by the Revenue Court to file a suit for a declaration that they are the mortgagees of the land in suit and there is no consequential relief involved or prayed for, the suit is one for pure declaration and is governed by Art. 17 (3) of Sch. II and not by Sch. I, Art 1. In considering such cases, the Court has to see what is the substance of the relief asked for. It should not import any other considerations. (*Almond, J.C. and Mir Ahmad, J.*) ABDULLAH JAN *v.* NUR HUSSAIN. 202 I.C. 450=15 R Pesh. 42= A.I.R. 1942 Pesh. 62.

——Sch. II Art. 17 (3)—Applicability—Suit to declare plaintiff's interest not affected by gift in favour of defendant—Nature of—*Ad valorem* court-fee paid by mistake in suit and appeal—Same fee if should be paid in second appeal also. *See* 1941 Dig., Col. 423. MA WA NU *v.* MA THAN. 197 I.C. 220=14 R.R. 114.

——Sch. II, Art. 17 (iii)—Declaratory decree—When could be passed—Relief of possession not implied in—Court fee for possession, if necessary. *See* 1941 Dig., Col. 421. BHABOOTI SINGH *v.* CHANDRAPAL SINGH. 17 Luck. 145=A.I.R. 1942 Oudh 58.

——Sch. II, Art. 17 (iv)—Applicability—Suit to declare award of Registrar of Co-operative Society *ultra vires*—'Award' what is included in. *See* 1941 Dig., Col. 421. KISANLAL *v.* CO-OPERATIVE CENTRAL BANK, LTD. I.L.R. (1942) Nag. 636=14 R.N. 299 =199 I.C. 765.

——Sch. II, Art. 17 (vi)—Applicability—Wakf-deed—Suit for removal of *mutawalli* and for appointment of new *mutawalli* as provided under deed—Prayer for accounts and for recovery of amounts directed to be paid to descendants of wakif annually out of income of estate—Court-fee—Valuation. *See* COURT-FEES ACT, S. 7 (ii) AND SCH. II, ART. 17 (vi). I.L.R. (1942) Kar. 424.

COURT OF WARDS ACT (1899), S. 47—*Bar of agitation in civil Courts—Limits.*

It is true no doubt that when a Court of Wards administers the estate of a ward, neither he nor any person claiming the estate through him could question its exercise of discretion. But that would not be applicable to a person who claimed that the property belonged to himself, that the ward had no existing interest in it at all and that the Court of Wards had no authority to administer it. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARAMESHWARI NANDAN SINGH. I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104= 1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All. 267 (2).

CRIMINAL PROCEDURE CODE (V OF 1898), Ss. 4 (b) and 200—*Joint complaint by two persons—Validity—Proper procedure in regard to examination of complainants.*

There is nothing in S. 4 (*b*), Cr. P. Code, to suggest that a complaint must be made by only one person. There is no reason why a joint complaint should not be made by two persons who allege similar and connected offences against one or more persons committed in the course of the same transaction. There is no legal objection to such a complaint. Upon such a joint complaint it is incumbent upon the Magistrate to

CR. P. CODE (1898), S. 51.

examine both complainants and if they are examined one after another without any delay there is a substantial compliance with the requirements of S. 200 and the accused cannot be acquitted on the ground that the procedure followed was illegal. (*Bennet, J.*) ABDUL KARIM *v.* NANGOO. 201 I.C. 54=43 Cr. L.J. 731= 15 R.O. 59=1942 A.W.R. (C.C.) 259=1942 O.A. 287=1942 A.Cr.C. 114=1942 O.W.N. 388=A.I.R. 1942 Oudh 407.

——S. 4 (1) (f)—Applicability—Offence under S. 5, Bombay Prevention of Gambling Act—Power to arrest without warrant. *See* PENAL CODE, S. 342. I.L.R. (1942) Kar. 94=A.I.R. 1942 Sind 106.

——S. 5 (2)—*Special Act making special offence and special procedure—Prosecution not in accordance with such procedure—Bar of.*

Obiter.—Where a special Act makes a special offence and a special procedure for the prosecution of offences under that Act, prosecutions not in accordance with that special procedure are barred. (*Davis, C.J.*) EMPEROR *v.* VISHWANATH. 198 I.C. 95=14 R.S. 134=43 Cr. L.J. 304=1942 Comp. C 51=A.I.R. 1942 Sind 9.

——Ss. 9, 193 (2) and 409—Combined effect on the powers of Sessions Judge and Assistant Sessions Judge with reference to appeals. *See* 1941 Dig., Col. 424. CHANDRA KUMAR DIKSHIT *v.* RAMESH CHANDRA. 43 Cr.L.J. 50=A.I.R. 1942 Oudh 50.

——Ss. 15 and 16—*One member of a Bench of two alone signing charge sheet and statement of witnesses—If affects conviction.*

Where a member of a Bench of two Magistrates fails to sign the statements of witnesses and the charge sheet that does not show that he was absent or was not attending to the proceedings and so cannot lead to the conclusion that the conviction is bad. (*Agarwal, J.*) JADONATH *v.* EMPEROR. 201 I.C. 243=43 Cr. L.J. 646=1942 O.W.N. 444=1942 A.W.R. (C.C.) 277= 15 R.O. 74=1942 A. Cr. C. 147=1942 O.A. 305=A. I.R. 1942 Oudh 423.

——S. 28—Scope—Powers of Sessions Judge—Committal of case under S. 511, I. P. Code, accused being old offender—Legality—Sessions Judge—Power to try case. *See* PENAL CODE, S. 75. (1942) 1 M.L.J. 455.

——S. 35—*Scope—If controlled by S. 64, I. P. Code.*

S. 35, Cr. P. Code, does not expressly refer to substantive sentence of imprisonment but it must be read with S. 64, Penal Code, which clearly contemplates that when imprisonment in default of payment of a fine is ordered, the imprisonment shall be in excess of any other imprisonment to which the accused may have been sentenced. Consequently, when a sentence of imprisonment is to be in default of payment of a fine, the sentence of imprisonment in default must be consecutive to any substantive sentence of imprisonment which may have been passed upon the accused. There is no difference in principle between a case where two sentences of imprisonment are imposed in default of fine and a case where there is a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of a fine. (*Davis, C.J., and Weston, J.*) EMPEROR *v.* MITHO MAROO MACHI. I.L.R. (1942) Kar. 1=201 I.C. 772=15 R. S. 23=43 Cr.L.J. 779 =A.I.R. 1942 Sind 80.

——Ss. 51 and 54—*Scope of power to search and arrest—Search of a person on the suspicion that he had some papers 'connected with the Congress'—Legality.*

The only provision of law which allows a police officer to search a person is to be found in S. 51, Cr. P. Code. That section can come into operation only after a person has been arrested either under a warrant or without a warrant. Where a person is suspected to be in posses-

CR. P. CODE (1898), S. 54.

sion of papers 'connected with the Congress', he cannot be arrested without a warrant, for, having papers 'connected with the Congress' cannot be a cognizable offence. Hence such a person could not be arrested under S. 54 and it follows he cannot be searched under the provisions of S.51. (*Mulla, J.*) RAMAIN RAI *v.* EMPEROR. 203 I.C. 467=44 Cr.L.J. 67=1942 A.I.W. 534=1942 A.Cr.C. 178=1942 A.W.R. (H.C.) 300=1942 A.L.J. 528=A.I.R. 1942 All. 424.

——Ss. 54 (1) and (9) and 56 (1)—*Relative scope —S.* 54 (1), *if limited or controlled by S.* 54 (9) *or* 56 (1).

Neither S. 54 (9) nor S. 56 (1) in any way limits or confines or restricts the application of S. 54 (1), Cr. P. Code. S. 54 (1) permits a Police officer to arrest without a warrant any person concerned in any cognizable offence or against whom information has been received or a reasonable suspicion exists of his having been so concerned. S. 54 (9) merely introduces another class of persons who can be arrested without a warrant. S. 56 (1) only lays down the procedure to be adopted by an officer-in-charge of a police station desirous of requiring an officer subordinate to him to arrest without a warrant. (*Horwill, J.*) MAHOMED MEERA SAHIB *v.* EMPEROR. 1942 M.W.N. 723=(1942) 2 M.L.J. 710.

——S. 54 (1), Ninthly—"*Requisition*"—*If includes message sent by telephone—Power to order arrest by means of telephonic message.*

There is no warrant for the proposition that a Police Officer cannot order the arrest of a person by means of a telephonic message. The word requisition in S. 54 (1), Ninthly of the Code of Criminal Procedure, is quite general and clearly covers a message communicated by telephone, though it would be necessary for him, when he is asking another Police Officer to do what he could have done himself, to disclose not only the identity of the person whom he wishes to be arrested but also the offence or the reason for which the arrest is to be made. (*Abdur Rahman and Somayya, JJ.*) MAHA RANI GURUCHARAN KAUR OF NABHA *v.* PROVINCE OF MADRAS. I.L.R. (1942) Mad. 696=203 I.C. 45=44 Cr. L.J 45=1942 M.W.N. 602=5 F.L.J. (H.C.) 103=A.I.R. 1942 Mad. 539=(1942) 2 M.L.J. 14.

——S. 54 (2)—Arrest under—When justified. *See* 1941 Dig., Col. 425. EMPEROR *v.* ABDUL HAKIM. I.L.R. (1942) All. 35=14 R.A. 277=43 Cr. L.J 338=198 I.C. 264=1942 A.L.J. 32=A.I.R. 1942 All. 74

——S. 54 (9)—Scope—If limits S. 54 (1). *See* CR. P. CODE, SS. 54 (1) AND (9) AND 56 (1). 1942 M.W.N. 723=(1942) 2 M.L.J. 710.

——S. 56 (1)—Scope—If confines and restricts S. 54 (1). *See* CR. P. CODE, S. 54 (1) AND (9) AND S. 56 (1). 1942 M.W.N. 723=(1942) 2 M.L.J. 710.

——Ss. 87 and 88—Orders under—Condition precedent to. *See* 1941 Dig., Col. 426. VELLAYAPPA CHETTIAR *v.* ALAGAPPA CHETTIAR. 14 R.M. 331=43 Cr. L.J. 11=A.I.R. 1942 Mad. 289.

——Ss. 87 and 537—*Requirements of section not fulfilled—Failure of justice.*

There are three requirements of S. 87, Cr. P. Code, and all of them must be fulfilled. The failure to fulfil any one of them may well result in a failure of justice within the meaning of S. 537, Cr. P. Code. (*Blacker, J.*) MST. JAWAI *v.* EMPEROR. 202 I.C. 15=43 Cr. L.J. 791=15 R.L. 112=44 P.L.R. 300=A.I.R. 1942 Lah. 214.

——S. 88 (6-D)—Scope—Parties to suit under—Frame of—Relief—Attachment of paddy in execution of order under S. 488, Cr. P. Code—Claim—Rejection—Property sold and proceeds kept in Court—Suit for recovery of money by defeated claimant—Competency—Government—If necessary party—Failure to ask for declaration—If fatal. *See* 1941 Dig., Col. 426. GANGAVVA *v.* LAKSHMI DEVI. 198 I.C. 203=14 R.M. 424=43 Cr. L.J. 325=A.I.R. 1942 Mad. 93=(1941) 2 M.L.J. 510.

CR. P. CODE (1898), S. 106.

——S. 94—*Duty of Court—Order for production of documents—Conditions precedent to making of—Magistrate to satisfy himself of necessity or disability of production.*

S. 94, Cr. P. Code, gives power to the Court to require the production of documents when it considers their production necessary or desirable for purposes of investigation; but before an order under the section can be made, it must appear, at least *prima facie*, that the documents are likely to be relevant evidence in the case. It is the duty of the Magistrate to consider whether their production is necessary or desirable, especially when the application itself discloses no grounds why production of documents is necessary or desirable, and it is not open to the Magistrate to evade his responsibility on the plea that he might have to hear the nature of the defence which the accused, on whose behalf application is made, might make. (*Davis, C.J. and Weston, J.*) GRAVES *v.* PITOOMAL HOONDOMAL. I.L.R. (1942) Kar. 292.

——S. 94—*Issue of written order by Police Officer —Necessity for.*

Under S. 94, Cr. P. Code, a Police Officer cannot demand the production of books in any manner that he likes. The word 'may' in the section merely means that if a Police Officer makes up his mind to issue an order to the person concerned, he must do it in writing. (*Din Mahomed and Blacker, JJ.*) DURGA DAS *v.* EMPEROR. 44 P.L.R. 549.

——S. 106—Applicability—Case under S.75, Madras City Police Act. *See* 1941 Dig., Col. 428. SIVAKALATHI GRAMANY, *In re.* 43 Cr L.J. 40.

——S 106—*Grounds for order under—Duty of Magistrate—Charge and conviction of petty offence—Order under S.* 106—*Desirability of.*

It is generally undesirable where a person is charged with some petty offence, to tack on to some small sentence of fine an order under S. 106, Cr. P. Code, which, in most cases, in view of the poverty of the accused person, would necessitate his remaining in jail for a long period which very much exceeds the punishment legally permissible for the offence of which the accused is charged and convicted. An order under S. 106, Cr. P. Code, is, of course, legally permissible, but should be made very sparingly in such cases. Before passing an order under S. 106, the Magistrate should be satisfied that it is necessary to require the accused to execute a bond for keeping the peace; in other words, the Magistrate should be satisfied that if he does not call upon the accused to furnish such a bond, there is a likelihood that there will be breaches of the peace in future. The Magistrate must consider only legal evidence and should not act on statements made by the prosecution from the Bar. (*Horwill, J.*) ARUMUGA THEVAR, *In re.* 55 L.W. 746=1942 M.W.N. 760 (2)=(1942) 2 M.L.J. 613.

——S. 106—*Scope—Duty of Magistrate—Omission to record express finding or reasons for order—If makes order illegal.*

An order under S. 106, Cr. P. Code, is not illegal merely because no reasons have been given by the trial Magistrate for passing the order. There is no general rule that a trial Magistrate must give reasons for his opinion or record an express finding that a breach of the peace was involved, in order to empower him to make

CR P. CODE (1898), S 106.

an order under S. 106, Cr. P. Code. (*Horwill, J.*) SUBBIAH THEVAN, *In re.* **200 I.C. 352=15 R.M. 86=43 Cr. L.J. 674 (1)=55 L.W. 231 (2)=1942 M. W.N. 304=A.I.R. 1942 Mad. 501 (1)=(1942) 1 M. L.J. 490.**

——**S. 106 to 126-A—(Chap. VIII)**—*Object of proceedings.*

Weston, J.—The purpose of security proceedings is not panitive, but preventive. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**Ss. 107, 144 and 145**—*Applicability and scope —Dispute concerning land—Procedure.*

When there is a dispute likely to cause a breach of the peace concerning land, it can be dealt with under S. 145, Cr. P. Code, and the section is not inapplicable on the ground that the dispute is not *bona fide*. However *mala fide* such a dispute may be, it is neither outside the scope of S. 145 nor peculiarly amenable to S. 107, Cr. P.Code, and action under S. 145 cannot properly be said to be inadmissible or not warranted by law. However, the fact that such a dispute likely to cause a breach of the peace concerns land does not by itself deprive a Magistrate of jurisdiction under S. 107. But for S. 107 to apply it is essential that the acts committed or likely to be committed should be wrongful. Acts committed in the lawful exercise of the right of a private defence cannot support proceedings under S. 107, and therefore it is to the party who is not in possession of the property in dispute that the operation of S. 107 is usually restricted. Disputes concerning land can also be dealt with under S. 144, Cr P. Code, provided that there is sufficient ground for proceeding under it and immediate apprehension or speedy remedy is desirable. But orders under S. 144 are merely temporary and cannot remain in force for more than two months, and cannot be said to decide anything about the respective rights of the parties. Ordinarily, therefore, unless the facts are, on the face of them, quite clear, a proceeding should be drawn up under S. 145 for the purpose of investigating the question of actual possession. (*Dhavle, J.*) MADHO SINGH *v.* EMPEROR. **200 I.C. 316=8 B.R. 670=14 R.P. 658 =43 Cr. L.J. 637=1942 P.W.N. 79=23 Pat.L.T. 243=A.I.R. 1942 Pat. 331.**

——**S. 107**—*Proceedings under—Jurisdiction—Requisites.*

S. 107, Cr.P, Code, clearly requires that the person proceeded against must be within the local limits of jurisdiction unless the District Magistrate chooses to initiate the proceedings. The person must be present at the time when the Magistrate receives information and commences proceedings. If a residence within jurisdiction is not proved then at least temporary presence at the critical time must be established. (*Bose, J.*) GAJANAND MANBODH LODHI *v.* EMPEROR. **203 I.C. 493=1942 N.L.J. 529.**

——**S. 107**—*Proceedings under—Power to transfer from one district to another.*

There is no bar of jurisdiction in the way of the chief Court of Oudh to transfer a case under S. 107 of Cr. P. Code from one district to another. (*Ghulam Hasan, J.*) SARFARAZ AHMAD *v.* MOHAMMAD HASNAIN. **198 I.C. 433=14 R.O. 417=43 Cr. L.J. 365=1942 A. Cr C. 16=1941 O.W.N. 1351=1941 O.A. 1047=1942 A.W.R. (C.C.) 3=A.I.R. 1942 Oudh 186.**

——**S. 107**—*Propriety of proceedings under—Doing of lawful acts—Claim to* Manpan*—Attempt to hold separate festival at different time and place.*

Where a party asserts an exclusive right to enjoy village *Manpan* at festival times and another party arranges to hold the festival at a different place and

CR P CODE (1898), S 110.

time without in any way interfering with the festival conducted by the other party, it is not proper to take proceedings under S. 107 against the latter party, for the acts complained of are not wrongful acts and the right asserted by the first party is not such as would be enforced by Courts. (*Bose, J.*) GOVINDA AMRITA *v.* EMPEROR. **I.L.R. (1942) Nag. 620=198 I.C. 409=14 R.N. 226=43 Cr. L.J. 357=1942 N.L.J. 15 =A.I.R. 1942 Nag. 45.**

——**S. 107**—*Scope — Jurisdiction — Order under S. 144—Revision—High Court declining to interfere on ground of expiry of time but directing that it should have no weight in subsequent proceedings—Magistrate proceeding against one party under S. 107—Legality.*

Where in revision against an order under S. 144, Cr. P. Code, the High Court declines to interfere on the ground that the order would become time expired in a few days, but makes it clear that the finding of possession on which the order was based should carry no weight in subsequent proceedings, it is unjust and improper on the part of the Magistrate to proceed against one of the parties under S. 107, Cr. P. Code, on the footing of the order under S. 144 previously passed against such party. If the Magistrate so proceeding, his order is liable to be quashed. The proper course is either to proceed under S. 145, Cr. P. Code, and decide the dispute as to possession once for all so far as the Criminal Court is concerned or to proceed under S. 107 against both the parties to the dispute. (*Dhavle, J.*) MADHO SINGH *v.* EMPEROR. **200 I.C. 316=8 B.R. 670=14 R.P. 658=43 Cr. L.J. 637=1942 P.W.N. 79 =23 Pat.L.T. 243=A.I.R. 1942 Pat. 331.**

——**S. 108 (b) and Evidence Act (1872), S. 14**—Proceedings under S. 108 (*b*), Cr. P. Code, to prevent delivery of objectionable speeches—Previous speeches of same party—Admissibility. *See* 1940 Dig., Col. 440. JAGANNATH PRASAD VERMA *v.* EMPEROR **I.L.R. (1942) Nag. 62.**

——**S. 109**—*Proceedings under—Sufficiency of material for trial for substantive offence, if a bar to.*

The mere fact that certain persons could be tried for the substantive offence of attempted theft cannot preclude the taking of proceedings against them under S. 109, Cr. P. Code, if the case can otherwise be established to fall under any of the clauses of that section. (*Ghulam Hasan, J.*) RAM LAL *v.* EMPEROR. **198 I.C. 276=14 R.O. 392=1942 A. Cr. C. 45=43 Cr.L.J. 342=1942 O.A. 22=1942 A.W.R. (C.C.) 34 =1942 O.W.N. 3=A.I.R. 1942 Oudh 246.**

——**S. 109 and Evidence Act, S. 54**—*Proceedings under S. 109—Relevancy of prior convictions.*

The evidence of previous conviction is relevant in proceedings under S. 109, Cr. P. Code. (*Ghulam Hasan, J.*) RAM LAL *v.* EMPEROR. **198 I.C. 276=14 R.O. 392=1942 A. Cr. C. 45=43 Cr. L.J. 342=1942 O.A. 22=1942 A.W.R. (C.C.) 34=1942 O.W.N. 3=A.I.R. 1942 Oudh 246.**

——**S. 109 (a)**—Applicability—Requisites. *See* 1941 Dig., Col. 428. CHHUTAI *v.* EMPEROR. **17 Luck. 105.**

——**Ss. 110, 117 and 256**—*Enquiry under S. 117 in proceedings under S. 110—Right of further cross-examination.*

It is very doubtful whether a person whose conduct is under enquiry under S. 117, Cr. P. Code, in proceedings under S. 110, Cr. P. Code, is entitled at any stage of the proceedings to demand that witnesses who have been cross-examined should be recalled for further cross-examination. Such a question however is of no grea importance in revision before the High Court, where it had been rightly found by the lower Court that no pre-

CR. P. CODE (1898), S. 110.

judice had been caused by such a refusal. (*Allsop, J.*) LACHMAN PRASAD *v.* EMPEROR. **1942 A.W.R. (H. C.) 326=1942 A.L.W. 545= 1942 A.L.J. 557=1942 A.Cr.C. 193==A.I.R. 1943 All. 23.**

——**S. 110**—*Evidence of Police Officer—Value of.*

There is no sanction in law for basing an order under S. 110 on the opinion of the Police Sub-Inspector. No doubt the Sub-Inspector is a competent witness but he must place facts before the Court to prove that his allegations against the accused are correct. It would be very dangerous to base an order under S. 110 on the bare *ipse dixit* of the Sub-Inspector. (*Almond, J.C. and Mir Ahmad, J.*) MUZAFFAR *v.* EMPEROR. **203 I.C. 458=15 R. Pesh. 64=44 Cr. L.J. 6=A.I.R. 1942 Pesh. 84.**

——**S. 110**—*Evidence—Value—Test—Weight and not number.*

The accused in a case under S. 110, Cr. P. Code, is not entitled to an acquittal because the defence witnesses were as numerous or more numerous than the prosecution witnesses. It is the weight of the evidence and not the number of witnesses which the Court has to consider. (*Agarwal, J.*) SAHDEO SINGH *v.* EMPEROR. **198 I.C. 547=1942 A.W.R. (C.C.) 51=1942 A.L.W. 27 =1942 A. Cr. C. 51=14 R.O. 422==43 Cr. L.J. 398 =1942 O.W.N. 39=1942 O.A. 27=A.I.R. 1942 Oudh 356.**

——**S. 110**—*Evidenee—Witness as to general repute—Residence in the locality—Necessity.*

It is not necessary that the witnesses who speak to the general reputation of a person must be residents of the same place; a stranger could find out what the general repute of a person is and he is competent to testify to that effect. (*Agarwal, J.*) SAHDEO SINGH *v.* EMPEROR. **198 I.C. 547=1942 A. W.R. (C.C.) 51= 1942 A.L.W. 27==1942 A. Cr. C. 51=14 R.O. 422 =43 Cr. L J. 398=1942 O.W.N. 39=1942 O.A. 27= A.I.R. 1942 Oudh 356.**

——**Ss. 110 and 439**—*Revision in case under S. 110 —Sufficiency of evidence—If can be considered.*

The opinion of the Court of first instance in respect of the sufficiency or insufficiency of evidence in a case under S. 110, Cr. P. Code, will not be questioned in a revision against any order that may be passed therein. (*Agarwal, J.*) SAHDEO SINGH *v.* EMPEROR. **198 I.C. 547=1942 A.W.R (C.C.) 51=1942 A.L.W. 27 =1942 A. Cr. C. 51=14 R.O. 422=43 Cr.L J. 398= =1942 A. Cr. C. 51=14 R.O. 422=43 Cr.L J. 398= 1942 O.W.N. 39=1942 O.A. 27=A.I.R. 1942 Oudh 356.**

——**S. 110 (f)**—*Desperate and dangerous character.*

Where a person threatens and beats people, he can certainly be called a desperate and dangerous character. (*Agarwal, J.*) SAHDEO SINGH *v.* EMPEROR. **198 I.C. 547=1942 A.W.R. (C.C.) 51=1942 A L.W. 27 =1942 A. Cr. C. 51=14 R O. 422=43 Cr. L.J. 398 =1942 O. W. N. 39=1942 O. A. 27=A.I R. 1942 Oudh 356.**

——**S. 112**—*Amendment—Original order mentioning particulars falling under S. 110 (c)—Subsequent order including S. 110 (f) also before showing cause—Irregularity—Effect—Accused not prejudiced—Interference.*

An order under S. 112, Cr. P. Code, is analogous to a charge framed in the case of a regular trial of an accused person for an offence; and just as a charge may be altered, added to or amended under S. 227, Cr. P. Code, at any time before judgment is pronounced subject to certain conditions so too can an order under S. 112, Cr. P. Code, be amended. Where, on information in his possession, the District Magistrate makes an order under S. 112, Cr. P. Code, against two out of

CR. P. CODE (1898), S. 117.

three persons who are brothers and five days later he makes a similar order against the third brother, asking them to show cause on a specified date, it being stated that the District Magistrate has "reliably learnt that you habitually protect and harbour thieves and dacoits", and subsequently on the date fixed for hearing fresh information is laid before the Magistrate in application by the public prosecutor, pointing out that the case of the three persons would fall not only under S. 110 (*e*), but also under S. 110 (*f*), and as a result of this, the Magistrate makes out a fresh order under S. 112 against all the three persons and the same is served on them on that date when they appear to show cause in answer to the original orders, it must be held that the third order is clearly an amendment of the previous orders on which no proceedings have actually been started, and that there is no irregularity in the procedure adopted by the District Magistrate in this regard. Further when no prejudice is shown to have been caused to the accused, there is no ground for interference at all. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**S. 112**—*Contents of order under—Particulars to be mentioned—Omission of—Effect of irregularity—Further proceedings—If vitiated.*

Although it is not sufficient in an order under S. 112, Cr. P. Code, to quote the words of any particular clause of Ss. 108, 109 or 110, because an order under S. 112 is in the nature of a charge and the person to whom the order is issued is entitled to definite information as to the case he is called upon to answer, the question whether the omission of such particulars in an order under S. 112 has in any particular case any material effect is a question of fact. If the accused is shown to have had full knowledge, before he opened his cross-examination, as to what the case of the prosecution against him was and what he was called upon to meet, the irregularity in the matter of the contents of the order is purely technical and may well be ignored.

Per *Weston, J.*—The sufficiency of the notice given in the order made under S. 112, Cr. P. Code, is a matter to be considered in the light of the facts of the particular case and with regard to the possibility of prejudice to the accused. Where it is clear that the accused are not taken by surprise by the evidence, or are in any way embarrassed in cross-examination of the witnesses, there is no prejudice and there is no defect in the order which vitiates further proceedings. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A I.R. 1942 Sind 122.**

——**S. 112**—Jurisdiction — Subsequent events — Magistrate's power to take notice of—Supplementary order based on subsequent events and on subsequent conduct of person proceeded against—Legality. *See* 1941 Dig., Col. 429. SRINIVASALU REDDIAR, *In re.* **198 I.C. 528=14 R M. 494=43 Cr. L. J. 409=1942 M.W.N. 426=55 L W. 757 (1)=A.I R. 1942 Mad. 242 (1)=(1941) 2 M.L.J. 1086.**

——**S. 112**— Preliminary order—Contents. *See* 1940 Dig., Col. 442. JAGANNATH PRASAD VERMA *v.* EMPEROR. **I.L.R. (1942) Nag. 62.**

——**S. 117 (3)**—*Enquiry—Scope—Duty of Magistrate—Evidence—Necessity for.*

S. 117 (3) does not contemplate the taking of evidence on oath and the cross-examination of witnesses in the usual manner. The Magistrate must record his reasons, he must deal with applications under S. 117 (3), with care and prudence, realising that they are not mere routine orders, nor orders designed to anticipate final orders that may be made, but that they are urgent orders, arising out of an emergency and can only be

CR. P. CODE (1898), S. 117.

justified in the exceptional circumstances of an emergency If the Magistrate is satisfied that such an emergency exists and that urgent orders are necessary he can act upon the application of a police officer or upon the sworn testimony of a police prosecutor given in the witness-box or in the form of affidavits. (*Davis, C. J. and Weston, J.*) EMPEROR *v.* NABIBUX. **I.L.R. (1942) Kar. 189=202 I.C. 43=43 Cr. L.J. 788=15 R.S 28=A.I.R. 1942 Sind 86.**

——**S. 117 (3)**—*Orders under S. 117 (3) are designed to meet emergencies—Delay of two months—Effect*

Orders under S. 117 (3) are not mere routine orders to be appended to an order under S. 112, Cr. P. Code, nor are orders under S. 117 (3) meant merely to anticipate final orders that may be made under S. 118, Cr. P. Code. The orders contemplated by S. 117 (3) are orders designed to meet emergencies. Where an order under S. 117 (3) is passed after a delay of about two months after the initiation of proceedings under it, it cannot be justified, and must be set side. (*Davis, C.J. and Weston, J.*) EMPEROR *v.* NABIBUX. **I.L.R. (1942) Kar. 189=202 I C. 43=43 Cr. L.7. 788=15 R.S. 28=A.I.R. 1942 Sind 86.**

——**S. 117 (3)**—*Scope of inquiry—Duty of Magistrate in passing order.*

The orders under S. 117 (3) are not mere matters of routine, a routine order, appended as it were to orders passed by a Magistrate under S. 112 on an application made under S. 110. Before a Magistrate passes an order under S. 117 (3) he must direct his consideration particularly to the question of emergency and the necessity of immediate measures. Charges falling under S. 110 (*a*), (*b*) and (*c*) do not with one exception, bring the case under S. 117 (3). The words "commission of any offence" in S. 117 (3) cover cases falling under S. 110 (*a*), (*b*) and (*c*), only when the Magistrate considers that emergency orders involving immediate measures are necessary to prevent the commission of any offence. The Magistrate must give a careful consideration to the separate case of an emergency under S. 117 (3) and the necessary immediate measures. The Magistrate cannot be said to have done this when merely on a police report, (without even calling the police officer in the witness box, without making any further inquiry into the general and vague allegations, such as that the persons complained against were "dangerous badmashes" and the public was in fear of them) he passes an order under S. 117 (3). The mere report by a police officer that the persons complained against were desperate and dangerous characters is not sufficient for action under S. 117 (3). The Magistrate should make some further inquiry either from the police officer himself or from some other source before he is satisfied that an emergency justifying immediate measures under S. 117 (3) exists. (*Davis, C.J. and Weston, J.*) BACHAL SAMAHO *v.* EMPEROR. **I.L.R. (1942) Kar. 9=14 R.S. 212=43 Cr. L.J. 692 =200 I.C. 334=A.I.R. 1942 Sind 77.**

——**Ss. 118, 120 and 123**—Construction—Substantive sentences for theft and under Criminal Tribes Act—Separate sentence for failure to give security under S. 118—How to run—Cr. P. Code, S. 397. *See* 1941 Dig., Col. 430. EMPEROR *v.* FAZULKHUSH MAHOMED. **43 Cr.L.J. 105.**

——**S. 123 (2)**—Scope—If restricts or controls, S. 498. *See* CR. P. CODE, S. 498. **I.L.R. (1942) Kar. 278.**

——**S. 123 (2)**—Power of Sessions Judge—Direction that punishment shall run from date of his order and not from date of Magistrate's order—Jurisdiction to make. *See* CR. P. CODE, S. 499. **I.L.R. (1942) Kar. 278.**

CR. P. CODE (1898), S. 139-A.

——**S. 133**—*Object and nature of proceedings under—Position of complainant.*

Proceedings under S. 133, Cr. P. Code, are not intended to settle private disputes between two members of the public. The complainant or informant has no rights in the matter and is not a person who could be described as a party to the proceedings and he has no rights in such proceedings. (*Allsop, J.*) RAMU *v.* MURLI DAS. **1942 A.L.J. 584=1942 A. Cr. C. 207=1942 A.L.W. 541=1942 A.W.R. (H.C.) 325 (2)=A.I.R. 1943 All 19.**

——**S. 133**—*Proceeding for removal of obstruction—Considerations for Court—Opposite party setting up adverse possession—Proper remedy.*

In a proceeding under S. 133, Cr. P. Code, for removal of an obstruction, all that the Courts have to see is whether the encroachment has in fact been made upon a public place and not whether the encroachment causes or does not cause any inconvenience to the public. If the opposite party claims that by adverse possession the public have lost their right to use the place as a public place, his obvious remedy is to deny the existence of any public right in respect of this place in a proceeding under S. 139-A. The Court is precluded from considering the question whether the opposite party has acquired by adverse possession a right in this place. The only question to be gone into is whether the obstruction is such that it attracts the provisions of S. 133 and other relevant sections in Ch. X of the Code. (*Manohar Lal, J.*) JADUNANDAN LAL *v.* RAMPEYARE SAO. **43 Cr. L.J. 903=9 B.R. 55=15 R.P 155=202 I.C. 783=1942 P.W.N. 218=A.I.R. 1943 Pat. 32.**

——**S. 133**—*Scope and applicability—Encroachment affecting complainant and not the public.*

Proceedings under S. 133, Cr. P. Code, are not intended to settle private disputes between different members of the public, but on the other hand is intended to protect the public as a whole against inconvenience. Hence when an encroachment is found to cause inconvenience only to the complainant and not to the public generally, he cannot resort to proceedings under S. 133 for redressing his personal troubles. (*Allsop, J.*) RAM DAYAL MISRA *v.* JAGDAMBA DEVI. **203 I.C. 495=44 Cr. L.J. 76=1942 A.Cr.C. 177=1942 A.L.J. 558 =1942 A.W.R. (H.C.) 312=1942 A.L.W. 533=A.I.R. 1942 All. 443.**

——**Ss. 139 (2) and 140**—Applicability—Order under S. 133 not made absolute—Procedure. *See* 1941 Dig., Col. 431. MANICKAVASAGA NADAR *v.* KRISHNASWAMI IYER. **198 I.C. 131=14 R.M. 413=43 Cr.L. J. 314=A.I.R. 1942 Mad. 113.**

——**S. 139-A**—"*Enquiry into the matter*"—*Meaning.*

The words "enquire into the matter" in S. 139-A, Cr. P. Code, merely mean that the Magistrate is to hear any evidence that the person on whom a conditional notice under S. 133 has been served wants him to hear before proceeding further. If such a person neither tenders any evidence in support of the cause which he shows against the conditional order nor asks the Magistrate to give him an opportunity of producing such evidence, there is nothing for the Magistrate to enquire into. (*Agarwala, J.*) RAJARAM SINGH *v.* KESHARI RAI. **198 I.C. 724=8 B.R. 462=14 R.P. 510=43 Cr. L.J. 423=1942 P.W.N. 177=A.I.R. 1942 Pat. 468.**

——**S. 139-A**—*Way encroached upon admittedly public way—Omission to put question—Irregularity.*

Although it is the duty of the Magistrate to question the person against whom an order under S. 133, Cr. P. Code, was made, as to whether he denied the existence of any public right in respect of the way alleged to have

CR. P. CODE (1898), S. 141.

been obstructed, the omission to do so in a case where it is an admitted fact that the way is a public way is a mere irregularity not affecting the merits, and the High Court will not interfere in revision. (*Rowland, J.*) BANSIDHAR MARWARI *v.* P. W. D., BIHAR. **203 I.C. 70=9 B.R. 56=43 Cr.L.J. 923=15 R.P. 160=A.I.R. 1943 Pat. 3.**

——S. 141—*Four only out of five jurors submitting report—Power of Magistrate to proceed under section.*

The verdict of four out of five jurors is not the verdict of the jury. Although it is not necessary that the jurors should return a unanimous verdict, they must all take part in the deliberations of the jury. If, therefore, only four of the jurors attend the meeting and submit a report, there is no verdict of the jury and the Magistrate is entitled to proceed under S. 141, Cr. P. Code and either appoint fresh jury or hear the evidence, and on that evidence come to a decision whether the conditional order should be made absolute. (*Agarwala, J.*) RAJARAM SINGH *v.* KESHARI RAI. **198 I.C. 724=8 B.R. 462=14 R.P. 510=43 Cr. L.J. 423=1942 P.W.N. 177=A.I.R. 1942 Pat. 468.**

——S. 144—*Applicability—Conditions of.*

S. 144, Cr. P. Code, provides for temporary orders in urgent cases of nuisance or apprehended danger; the urgency of a case of nuisance or apprehended danger is therefore essential to the application of S. 144. (*Dhavle, J.*) RAM NARAIN SAH *v.* PARMESHWAR PRASAD SAH. **200 I.C. 776=8 B.R. 722=15 R.P. 28=43 Cr. L.J. 722=1942 P.W.N. 144=23 P.L.T. 644=A.I.R. 1942 Pat. 414.**

——S. 144—Applicability —Order under —When justified—Order under—Nature, operation and force of —How far conclusive as to rights of parties. *See* CR. P. CODE, SS. 107, 144 AND 145. **1942 P.W.N. 79.**

——S. 144—*Jurisdiction—Nature and extent of—Duty of Magistrate under to exercise care.*

The orders to be passed under S. 144, Cr. P. Code, must be of a temporary nature. Such orders are passed in the general interests of society and may validly interfere, within the limitations laid down, with private rights of enjoyment of property. There is therefore all the more reason why the jurisdiction under S. 144, Cr. P. Code, ought to be exercised carefully, and interference with private rights reduced to a minimum and regulated by a full observance of the limitations imposed by the section itself. (*Dhavle, J.*) RAM NARAIN SAH *v.* PARMESHWAR PRASAD SAH. **200 I.C. 776=8 B.R. 722=15 R.P. 28=43 Cr. L.J. 722=23 P.L.T. 644=1942 P.W.N. 144=A.I.R. 1942 Pat. 414.**

——S. 144—*Order interfering with liberty of press—Duty of Magistrate.*

The right of the public to have news published is common to all countries where there is liberty of the press and it is the right of all newspapers equally to publish news provided it does not offend against any existing law. It is obvious therefore that the powers given to a Magistrate under S. 144, Cr. P. Code, to interfere with the liberty of the press should be used very sparingly and only for good cause shown. It is for this reason that the section itself makes it obligatory for the Magistrate in any such order to indicate the material facts which justify such an order. (*Young, C.J., Bhide and Mahomed Munir, JJ.*) P. T. CHANDRA, EDITOR, 'TRIBUNE' *v.* EMPEROR. **I.L.R. (1942) Lah. 510=201 I.C. 572=43 Cr. L.J. 747=15 R.L. 65=44 P.L.R. 297=A.I.R. 1942 Lah. 171 (F.B.).**

——S. 144—*Order under—Nature of—Value of as evidence of possession in subsequent proceedings.*

An order under S. 144, Cr. P. Code, is of no use in determining possession beyond the period during which it remains in force. Having regard to the peculiar jurisdiction conferred by S. 144, no inference of possession can be drawn from it. Being a summary order and in the nature of temporary injunction intended for emergencies, it should not be utilised in subsequent proceedings as substantive evidence of possession of a successful party. (*Dhavle, J.*) MADHO SINGH *v.* EMPEROR. **200 I. C. 316=8 B.R. 670=14 R.P.658=43 Cr. L. J. 637=1942 P.W.N. 79=23 Pat.L.T. 243=A.I.R. 1942 Pat. 331.**

CR. P. CODE (1898), S. 144.

——S. 144—*Powers of Magistrate—Questions of title—Jurisdiction to decide on taking measurements of property—Suit pending in Civil Court between parties—Magistrate assuming functions of Civil Court—Propriety.*

A Magistrate's jurisdiction under S. 144, Cr. P. Code is not a jurisdiction to assume the functions of the Civil Court, though he can decide questions of possession and of rights of user by appropriate proceedings under Ch. XII of the Cr. P. Code. He has no jurisdiction to pass an order which is not limited in time but on the face of it purports to be of the nature of a perpetual injunction. He cannot decide disputed questions of title to property by taking measurements, etc., especially when a civil suit is pending between the parties in the Civil Court. (*Dhavle, J.*) RAM NARAIN SAH *v.* PARMESHWAR PRASAD SAH. **200 I.C. 776=8 B.R. 722=15 R.P. 28=43 Cr.L.J. 722=23 P.L.T. 644=1942 P.W.N. 144=A.I.R. 1942 Pat. 414.**

——S. 144—*Scope—Acts interfering with easement rights.*

A person is entitled to have the protection of S. 144, Cr. P. Code not only when the act or measure complained of is such as will amount to an offence when allowed to be completed but also when if completed it will furnish grounds for a civil action only, as for example, an infringement of a right of easement. (*Akram and Pal, JJ.*) RASHID ALLIDINA *v.* JIWANDASKHEMJI. **I.L.R (1942) 1 Cal. 488=46 C.W.N. 136=A.I.R. 1943 Cal. 35.**

——S. 144—*Scope—Acts interfering with individual rights.*

S. 144, Cr. P. Code, is not limited in its operation only to cases of possible breach of general peace of the district but contemplates also cases of interference with individual rights. (*Akram and Pal, JJ.*) RASHID ALLIDINA *v.* JIWANDAS KHEMJI. **I.L.R. (1942) 1 Cal. 488=46 C.W.N. 136=A.I.R. 1943 Cal. 35.**

——Ss. 144 and 145—Scope—Breach of peace likely about possession of land — Proper proceeding. *See* 1941 Dig., Col. 432. KALIPADA ROY *v.* SATISH CHANDRA HUI. **198 I.C. 559=14 R.C. 477=43 Cr. L.J. 396=A.I.R. 1942 Cal. 66 (1).**

——S. 144 (1)—*Construction—"Direct any person to abstain from a certain act or to take a certain order with certain property" etc.—Meaning—Order requiring party to demolish wall—Legality.*

The words "direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management" in S. 144, Cr. P.Code, do not empower a Magistrate to make a positive order requiring a person to do particular things. The absention from certain acts must obviously not be carried too far. The section does not authorise the passing of any mandatory order; the Magistrate may only pass a restrictive order of a temporary character. An order, such as an order directing a party to demolish or remove a wall erected by him, which is irrevocable in its nature is outside the section and is entirely unauthorised and illegal. (*Dhavle, J.*) RAM NARAIN SAH *v* PARMESHWAR PRASAD SAH. **200 I.C. 776=8 B.R. 722=15**

CR. P. CODE (1898), S. 144.

R.P 28=43 Cr. L.J. 722=23 P.L.T. 644=1942 P. W.N. 144=A.I.R. 1942 Pat. 414.

——S. 144 (1)—Jurisdiction—Subordinate Magistrate refusing to pass order—Power of superior Magistrate to pass order on same materials. *See* 1941 Dig., Col. 432. NAINAMALAI GOUNDAN *v* RAMASAMI GOUNDAN. **198 I.C. 109=14 R.M. 462=43 Cr.L.J. 372=A.I.R. 1942 Mad. 20.**

——S. 144 (3)—Construction and scope of. *See* 1941 Dig., Col 432. EMPEROR *v.* TURAB KHAN. **17 Luck. 52=A.I.R. 1942 Oudh 39.**

——S. 144 (6)—*Period of two months—Computation of—Starting point—Date of order or date of first notice.*

The period of two months referred to in S. 144 (6), Cr.P.Code, runs from the date on which the first notice is issued and not from the date on which the order is passed after hearing the parties. (*Dhavle, J.*) RAM NARAIN SAH *v* PARMESHWAR PRASAD SAH **200 I. C. 776=8 B.R. 722=15 R.P. 28=43 Cr.L.J.722=23 P.L.T. 644=1942 P W.N. 144=A.I.R. 1942 Pat 414.**

——S. 144 (6)—*Scope and effect—Power to review original order—Evasion of S.* 144 (6)—*Jurisdiction.*

A Magistrate has no jurisdiction under S. 144, Cr. P. Code, to make an order for the renewal of the original order which would operate to extend an injunction under S. 144 without the sanction of the Local Government. It is not open to the Magistrate to evade S. 144 (6) by repeating orders under the section. (*Dhavle, J.*) RAM NARAIN SAH *v.* PARMESHWAR PRASAD SAH. **200 I.C. 776=8 B.R. 722=15 R.P. 28=43 Cr. L J. 722=23 P.L.T. 644=1942 P.W.N 144=A.I.R. 1942 Pat. 414.**

——S. 145—*Applicability—Dispute as to undivided share in land or crops—Proceedings under S.* 145—*Propriety.*

S. 145, Cr.P. Code, is not ordinarily intended to apply to disputes as regards undivided shares in land or in the produce of land, if there is, however, a dispute between co-owners of undivided shares among themselves, one of the sharers may ask that he be put in joint possession with the others of the whole land. (*Davis, C.J. and Weston, J.*) JAM BHAMBHO KHAN *v.* MAHOMED HASSAN SHAH. **I.L.R. (1942) Kar. 120=202 I C. 617=15 R.S. 55=43 Cr. L.J. 876=A.I.R. 1942 Sind 117.**

——S. 145—Applicability—Dispute not *bona fide*—Proceedings under—If improper. *See* Cr. P. CODE, SS. 107, 144 AND 145. **1942 P.W.N. 79.**

——S. 145—*Breach of peace—Present fear—if necessary for initiation of proceedings.*

S. 145, Cr. P. Code, requires that there must be a present fear that the dispute that exists is likely to cause a breach of the peace unless proceedings are taken under the section. (*Manohar Lall and Chatterji, JJ.*) SHIBNARAYAN DAS *v.* SATYADEO PRASAD. **203 I.C. 275=9 B.R. 73=15 R.P. 168=44 Cr. L.J. 25=A. I.R. 1943 Pat. 44.**

——S. 145—*Compromise—Effect on tenancy rights.*

(Per *Shirreff, S.M.*)—The compromise in a summary inquiry into possession in a criminal Court could not have the effect of deciding any question of tenancy right. Nor could it operate as estoppel. (*Shirreff, S.M. and Sathe, J.M.*) HARKESH *v.* MAJLIS. **1942 O.W. N. (B.R.) 27=1942 O.A. (Supp.) 25=1942 A.W.R. (Rev.) 25=1942 R.D. 43=1942 A.L.J. (Supp.) 4.**

——S. 145—*Duty of magistrate acting under—Existence of adjudication of rights by Civil Court.*

It is the duty of a magistare acting under S. 145, Cr. P. C. to maintain any order which has been passed by Civil Court as regards rights of parties concerned to the property in dispute. When there has been an adjudication of rights by a Civil Court, the dispute is at an end, and the magistrate should maintain the right of the successful party and not allow the other party to reagitate rights already decided by Civil Court. (*Yorke, J.*) MAKHAN LAL *v.* MANGAL. **1942 A.W.R. (H.C.) 361=1942 A.L.W. 664=1942 A.Cr.C. 211=1942 A. L.J. 629.**

CR. P. CODE (1898), S 145.

——S. 145—*Jurisdiction—Proceedings under—Grounds for.*

Proceedings under S. 145 cannot be validly initiated or continued without an apprehension of a breach of the peace. (*Dhavle, J.*). GOBARDHAN DAS *v.* SURESH CHANDRA. **203 I.C. 521=9 B.R. 91=A.I.R. 1942 Pat. 489.**

——S. 145—Locus standi *to apply—Dispute between tenant and sub-tenant—Right of landlord to apply for order.*

Where the dispute is between a tenant and his subtenants, the landlord is not a party to the dispute within the meaning of S. 145, Cr. P. Code. S. 145, Cr. P. Code, is concerned with persons in "actual" possession in contradistinction to "constructive" possession. But that does not mean that the landlord who is interested in the land and in his tenants has no *locus standi* to apply under S. 145. There is no legal objection to a Magistrate's taking notice of a dispute merely because his attention was drawn to the dispute by an absentee landlord. (*Horwill, J.*) RAJARAM DAS BAVAJI *v.* RAMANNA. **201 I.C. 477=43 Cr. L.J. 741=15 R. M. 350=1942 M.W.N. 372=55 L W. 297 (2)=A.I. R. 1942 Mad. 534 (1)=(1942) 1 M.L.J. 592.**

——S. 145—*Parties referring dispute to arbitration—Procedure to be adopted by Magistrate.*

S. 145, Cr. P. Code, no doubt contains no reference to arbitration proceedings; but there is nothing in the section to forbid the parties by mutual consent adopting any procedure on which they may agree for the amicable settlement of their dispute. If the dispute is amicably settled and no likelihood of a breach of the peace remains, the Magistrate can act under S. 145 (5) cancelling his previous order and staying all further proceedings but if he does not do that the only alternative is to decide the dispute and pass order under S. 145 (6). Such an order must be based on evidence and the Magistrate before making it is bound under S. 145 (4) to receive all such evidence as may be produced by the parties. If the award is the only evidence tendered by either party, the Magistrate in accepting the award and acting on it can be held to proceed in accordance with S. 145 (4). But if before he disposes of the case a petition is filed asking that evidence should be received and the dispute determined according to law, it becomes his duty to receive such evidence as may be produced, under sub-S. (4) unless he decides to drop the proceedings under sub S. (5). (*Roxeland, J.*) SUNDAR GIR GOSSAIN *v.* JADUNANDAN JHA. **197 I.C. 491=8 B.R. 226=43 Cr. L.J. 172=14 R.P. 321=A.I.R. 1942 Pat. 289.**

——S. 145—*Revision—Delay—Effect of.*

The revisional powers of the High Court under S. 439, Cr.P. Code, are discretionary and are exercised for the ends of justice. A party who waits for a year and allows the order initiating the proceeding under S. 145, Cr.P.Code, to go unchallenged so long, cannot thereafter be heard to complain of excess of jurisdiction, because the final order has gone against him. (*Manohar Lall and Chatterji, JJ.*). SHIBNARAYAN DAS *v.* SATYADEO PRASAD. **203 I.C. 275=9 B.R. 73=15 R.P. 168=44 Cr. L.J. 25=A.I.R. 1943 Pat. 44.**

——Ss. 145 and 439—*Revision—Scope—Evidence—If can be gone into.*

CR. P. CODE (1898), S. 145.

As a rule of practice, the High Court will not go into the evidence in revision in a case under S. 145 unless it is necessary to do so by reason of special circumstances or by reason of the character of the error of law. (*Dhavle, J.*). GOBARDHAN DAS *v.* SURESH CHANDRA. **203 I.C. 521=9 B.R. 91=A.I.R. 1942 Pat. 489**

——**S 145**—*Revision—Scope of enquiry—Sufficiency of materials for initiation of proceedings—High Court if can go into.*

Whether the materials on the record are sufficient or not for the initiation of a proceeding under S. 145, Cr.P. Code, is entirely for the consideration of the magistrate. The High Court cannot go into the sufficiency or otherwise of those materials. (*Manohar Lal and Chatterji, JJ.*) SHIBNARAYAN DAS *v.* SATYADEO PRASAD. **203 I.C. 275=9 B.R. 73=15 R.P. 168=44 Cr. L.J. 25=A.I.R. 1943 Pat. 44.**

——**S. 145**—Scope—Order based on statements to police not on record—Legality. *See* 1941 Dig., Col. 434. RAJU *v.* ABDUL RAHIMAN SAHEB. **198 I.C. 16 (1)=14 R.M. 429=43 Cr.L.J. 344.**

——**S. 145 (1) and (5)**—*Jurisdiction—Order under S. 145 (1)—Cancellation under S. 145 (5)—Effect of—Further order dividing crops—Legality of—Procedure.*

When once a Magistrate passes an order under S. 145 (5), Cr. P. Code, cancelling a previous order made by him under S. 145 (1) on the application of a co-sharer, he has no further jurisdiction to adjudicate upon the dispute between the parties or upon the division of the produce of the property other than to direct that the produce should be restored, if it had been taken, to the possession of the person from whom it had been taken. When an order under S. 145 (1) is cancelled under S. 145 (5), the parties must as far as possible be restored to the position which they occupied before the proceedings were started, not only with regard to the land, but with regard to the produce of the land or its proceeds. If that be not possible, the proceeds, if the produce had been sold, should be kept in the custody of the Court and the parties should be directed to seek redress of their grievances in a Civil Court. (*Davis, C.J. and Weston, J.*) JAM BHAMBHO KHAN *v.* MAHOMED HASSAN SHAH. **I.L.R. (1942) Kar. 120=202 I.C. 617=15 R.S. 55=43 Cr. L.J. 876=A.I.R. 1942 Sind 117.**

——**S. 145 (4)**—*Proviso—Period of two months—Computation of—Proceeding under S. 144 followed by proceeding under S. 145—Starting point of period.*

Where the proceeding under S. 144 is intended to be no more than a fore-runner of a proceeding under S. 145 the two months to be considered under the first proviso to sub-S. (4) should in such cases be counted backwards from the date of the order under S. 144. Else, manifest injustice might result to a party forcibly and wrongfully dispossessed in this period but more than two months before the date when the proceeding under S. 145 is actually drawn up. (*Dhavle, J.*). GOBERDHAN DAS *v.* SURESH CHANDRA. **203 I.C. 521=9 B.R. 91=A.I.R. 1942 Pat. 489.**

——**Ss. 146 (1) and 147**—Applicability—Dispute as to existence of right of easement—Magistrate unable to decide—Procedure—Order attaching land—Legality. *See* 1941 Dig., Col. 436. CHELLIAH PILLAI *v.* RAMIAH THEVAR. **1942 M.W.N. 424=43 Cr.L.J. 103=A.I.R. 1942 Mad. 77=(1941) 2 M.L.J. 375.**

——**Ss. 146 (1) and 561-A**—*Competent court—Meaning of—Magistrate releasing property from attachment after decision by trial Court—Decision of trial Court reversed on appeal—Magistrate if has*

CR. P. CODE (1898), S 154.

further jurisdiction to pass order regarding property—Inherent power of High Court—If can be invoked.

It is not at all necessary that the final Court of appeal should be considered to be the competent Court within the meaning of the words in sub-S. (1) of S. 146. Therefore a Magistrate can pass an order releasing the property from attachment in favour of a successful party on the decision of a suit by the trial Court even though an appeal from such decision is pending. And if the decision is reversed on appeal, the Magistrate has no further jurisdiction under S. 145 or S. 146 to pass an order regarding delivery of possession of the property. Nor can the High Court pass an order under S. 561-A, as it cannot be invoked to override an express provision of law or when there is another remedy open. Reversing the Magistrate's order would amount to overriding an express provision of law and further the party has the remedy of suing for possession on payment of proper court-fee. (*Soofi, J.*) MAHOMED ASHRAF KHAN *v.* ABDUL REHMAN. **198 I.C. 490=14 R. Pesh. 72=43 Cr. L.J. 384=A.I.R. 1942 Pesh. 11.**

——**S. 147**—Order directing Police to maintain *status quo*—If authorises them to demolish wall and reopen drain. *See* 1941 Dig., Col. 436. SUKAR SAO *v.* EMPEROR. **23 Pat.L.T. 232.**

——**S. 147**—*Order for drawing up proceedings drawn up in form of final order by mistake—Adjournments and addition of new parties—Fresh proceedings and notices ordered on discovering mistake—Proceedings, when deemed to have been instituted.*

On the 14th May, 1940, a Magistrate passed an order for proceedings to be drawn up under S.147, Cr.P. Code directing both parties to appear on a certain date and put in written statements. The clerk responsible for drawing up the order adopted in part by mistake the form in Form No. 24 of Sch. V of the Code with the result that a final order in the form required in S. 147 (2) was drawn up. The case was adjourned from time to time and further persons were added as parties. The attention of the Magistrate was then drawn to the error in the order as drawn up, and on 12th July, the Magistrate ordered fresh proceedings and fresh notices to issue upon both parties.

Held, that on the facts of the case the proceedings must be deemed to have been instituted on the 14th May, and not on 12th July, and that they must be deemed to be so even as regards the persons who were added subsequently. (*Lodge and Roxburgh, JJ.*) MOJAHEDUDDIN MIA *v.* HARI PRASANNA **46 C.W.N. 313.**

——**S. 147**—Scope—Obstruction caused by person not party to proceedings—Order for removal—If can be passed. *See* 1941 Dig., Col. 437. MAHALAKSHMI NAIDU *v.* SATYAM. **14 R.M. 356 (1)=43 Cr.L.J. 136.**

——**S. 147 (2)**—*Mandatory order—If can be made.*

A Magistrate acting under the powers conferred by S. 147 (2), Cr. P. Code, can make an order prohibiting the doing of an act but cannot order the doing of an act. He has, therefore, no power to issue a mandatory injunction directing the removal of an existing obstruction. (*Derbyshire, C.J., Bartley, Nasim Ali, Ledge and Pal, JJ.*) HEM CHANDRA BANERJI *v.* ABDUR RAHAMAN. **I.L.R. (1942) 2 Cal. 75=199 I.C. 297=14 R.C. 535=75 C.L.J. 100=46 C.W.N. 452=A.I.R. 1942 Cal. 244 (F.B.).**

——**S. 154**—First information report—Evidentiary value. *See* 1941 Dig., Col. 437. EMPEROR *v.* DUBAI. **21 Pat. 153=43 Cr.L.J. 90=A.I.R. 1942 Pat. 113.**

——**Ss. 154 and 162**—First information report—What may constitute—Statement, if falls under S. 154 or S. 162—Question of fact. *See* 1941 Dig., Col. 437.

CR. P. CODE (1898), S. 154.

QAMRUL HASAN *v.* EMPEROR. **43 Cr.L.J. 115=14 R.O. 280=A.I.R. 1942 Oudh 60.**

——**Ss 154 and 162**—First information— Telephone message—Subsequent statement—Nature of. *See* 1941 Dig., Col. 437. SHWE PRU *v.* THE KING. **197 I.C. 350=14 R.R. 118=43 Cr.L.J. 157.**

——**S. 156 (3)**—*Order directing police investigation after issue of process—Legality.*

S. 156 (3), Cr.P.Code, applies only to the stage before the issue of process and cannot apply to a case in which the Magistrate has already issued process and summoned the accused. After the process has been issued, the Magistrate must proceed in accordance with Ch 21, S. 252 and the following sections which are mandatory and which provide that the Magistrate shall proceed to hear the evidence. An order directing police investigation under S 156 (3) after the issue of process is, therefore, without jurisdiction. (*Young, C. J. and Sale, J.*) KEHR SINGH *v.* KIRPAL KAUR. **202 I.C. 609=15 R.L. 154=43 Cr. L. J. 865=44 P.L.R. 401=A.I.R. 1942 Lah. 256.**

——**S. 162**—Applicability — Departmental inquiry. *See* 1941 Dig., Col. 438. JAGDISH NARAIN *v.* EMPEROR. **197 I.C. 277=1941 A.Cr. C. 315=43 Cr.L. J. 139=14 R O. 298=A.I.R. 1942 Oudh 163**

——**S. 162** — *Applicability — Procedure under Ch. VIII—Previous statements of witnesses recorded by Police—Right of accused to copies—Refusal to grant—Irregularity—Effect.*

There is no reason why S. 162, Cr. P. Code, should not apply or should not be followed in security proceedings under Ch. VIII in view of the fact that S. 117, Cr. P. Code, lays down that as far as practicable such enquiry should be conducted in the manner prescribed for conducting trials and recording evidence in warrant cases. But when there is a cognizable case that is being tried, which had been preceded by an investigation by the police in which the statements of witnesses for the prosecution had been recorded. Either before the initiation of the proceedings or during the progress of the proceedings, the accused are entitled, under S. 145, Evidence Act, to cross-examine the prosecution witnesses thereon, and therefore to be given copies thereof, and the refusal by the magistrate to afford the accused persons copies of those statements and to cross-examine the prosecution witnesses thereon must be held to be an irregularity which has prejudiced the accused. Such irregularity can, however, be remedied by the Sessions Judge under the powers he has under S. 123 (3), Cr. P. Code, and it is not necessary that the proceedings should be quashed on that ground and a retrial or re-hearing ordered. Under S. 123, it is open to the Sessions Judge to send back the proceedings with the necessary directions in that behalf. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**S. 162**—*Copy of witness's statement—Application for—When to be made—Duty of Court to grant copies.*

The proper stage at which to apply for a copy of a witness's statement made under S. 162, Cr. P. Code, is at the beginning of the cross-examination of the witness; and if an application be made at that stage by the accused's counsel, the Magistrate is bound to grant the same. But the examination of the witness need not be held up as in practice the Court reads out the relevant part of the statement or the counsel for accused is allowed to look into the diary. Copies are also granted in advance in practice. Some co-operation between the counsel and the Court is necessary to make S. 162, Cr. P. Code, work smoothly. (*Horwill, J.*) SUBBARA-

CR. P. CODE (1898), S. 164.

MIAH, *In re*. **55 L.W. 223 (1)=1942 M.W.N. 595=A.I.R. 1942 Mad. 451=(1942) 1 M.L.J. 489.**

——**S. 162**—Police diary—Proof. *See* 1941 Dig., Col. 438. SHWE PRU *v.* THE KING. **197 I.C. 350=43 Cr.L.J. 157=14 R.R. 118.**

——**S. 162 and Evid. Act, S. 145**—*Proper procedure for admission and proof of statements made to police.*

Courts should not take any notice of a previous statement made by a witness which is in contradiction of the statement which he or she makes before the Court unless the previous statement alleged to be contradictory is put to the witness for admission or denial and he or she is given an opportunity of offering an explanation of how it is that on a previous occasion he or she made the contradictory statement. The statements may be reconcilable and opportunity should be given to reconcile them if possible. (*Yorke, J.*). IQBAL AHMAD *v.* EMPEROR. **1942 A.W.R. (H.C.) 379=1942 A.L.W 686=1942 A.L.J. 637.**

——**S. 162**—*Statement of accused leading to discovery of fact—Admissibility—Evidence Act, S. 27.*

A statement made by an accused person to the police in the course of an investigation under Chapter XIV, Cr. P. Code, is not admissible in evidence though it leads to the discovery of some fact, it being hit by S. 162, Cr P. Code. The effect of this section is that S. 27 of the Evidence Act is *pro tanto* repealed. (*Lodge and Pal, JJ.*) NARESH CHANDRA DAS *v.* EMPEROR. **I.L.R. (1942 1 Cal. 436=204 I C 111=75 C.L.J. 507=46 C.W.N. 180=A.I.R. 1942 Cal. 593.**

——**S. 162**—*Statement to police by person subsequently made an accused—Admissibility.*

Statements made to a police officer by an accused person in the course of an investigation are not admissible in evidence even though when the person making them was not accused at the time of making those statements. (*Mosely, J.*) RAMDAYAL MANGILAL *v.* THE KING. **1941 Rang L.R. 784=A.I.R. 1942 Rang. 62.**

——**S. 162**—*Statement under—Use of.*

A statement made by a witness to the police under S. 162 is not substantive evidence at all and can be used only to contradict statements made during the trial. (*Horwill, J.*) PACKIRISWAMI PILLAI, *In re*. **199 I. C. 833=14 R M. 669=43 Cr. L.J. 582=1942 M.W. N. 591=55 L.W. 771=A.I.R. 1942 Mad. 288 (2).**

——**S. 164**—*Approver—Corroboration—Accused and approver not on good terms—Accused found in possession of stolen property—If good corroboration of approver's statement.*

Although the accused was not on good terms with the approver, the fact that he was found in possession of valuable property, which has been proved to be the property stolen, is good corroboration of the approver's statement that the accused was a member of the conspiracy to commit dacoity. (*Mahomed Munir, J.*). SHERA *v.* EMPEROR. **203 I.C. 62=44 P.L.R. 545=44 Cr. L.J. 62=A.I.R. 1943 Lah. 5.**

——**S. 164**—*Approver — Corroboration—Sufficiency—Approver stating that accused used deadly weapons—Such weapons recovered from accused before statement.*

The statement of the approver that the accused used deadly weapons cannot be said to have been sufficiently corroborated by the mere fact that such weapons were produced by the accused, when the recoveries had taken place before the approver gave his evidence, as he could very easily be made to say that they were carrying the weapons recovered. (*Mahomed Munir, J.*). SHERA *v.* EMPEROR. **203 I.C. 62=44 P.L.R. 545=44 Cr. L.J. 62=A.I.R. 1943 Lah. 5.**

CR. P. CODE (1898), S. 164.

——**S. 164**—*Approver—Statement made after accused's arrest—Value of his evidence.*

It is not correct to state that the evidence of an accomplice in a case of dacoity is not entitled to any credence if he made his statement as an approver under S. 164, Cr. P. Code, after all the accused had been arrested and recoveries of stolen property made from them. This is a criticism to which the evidence of almost every approver is subject because the question whether pardon should be tendered to an accomplice is generally considered at a late stage when the investigation of the case is completed. Of course it is a circumstance which the Court will take into consideration when deciding the question whether the approver's evidence should or should not be believed. In such cases the question is not whether a story could be put into the mouth of the approver to fit in with the fact discovered but whether the circumstances show that this might have been done and its decision will depend upon the character of the approver, his position *vis-a-vis* the Police the incriminating facts discovered against him and the story alleged to have been narrated by him. (*Mahomed Munir, J.*). SHERA *v.* EMPEROR. **203 I.C 62=44 P.L.R. 545=44 Cr. L.J.62=A.I.R. 1942 Lah. 5**

——**S. 164**—*Duty of Court—Record not showing warning by Magistrate or that he satisfied himself about voluntariness of confession.*

Where the record of a confessional statement made by an accused does not contain anything to show that the recording Magistrate satisfied himself at the time that it was being made voluntarily or that he addressed any kind of warning or caution to the accused, and the accused, appears to have been in the company of the Sub-Inspector of Police until immediately before he made the statement, the Court ought to question the Magistrate and the Sub-Inspector as to the circumstances under which the statement came to be made and ought not to admit the statement in evidence unless the replies he receives are satisfactory and shows that the statement was a voluntary one. (*Rowland and Shearer, JJ.*) BHOLA GOPE *v.* EMPEROR. **198 I.C. 92=14 R.P. 410=8 B.R. 326=43 Cr.L.J. 301=23 P.L.T. 566=A.I.R. 1942 Pat. 283.**

——**S. 164**—Recording of confession—Question as to motive for confession—Duty of Magistrate to put. *See* 1941 Dig., Col. 439. DIKSON MALI *v.* EMPEROR. **23 P.L.T. 387=43 Cr.L.J. 36=A.I.R. 1942 Pat. 90.**

——**S. 164**—*Retracted confession—Value of.*

Courts will exercise a certain amount of caution in accepting a retracted confession unless it is corroborated by reliable evidence. (*Varma and Rowland, JJ.*) JHIKTU BHOGTA *v.* EMPEROR. **199 I.C. 307=14 R. P. 585=43 Cr. L.J. 544=23 P.L.T. 763=8 B.R. 542 =A.I.R. 1942 Pat. 427.**

——**S. 164**—Statement under—Admissibility—Evidence Act, Ss. 145 and 157. *See* 1941 Dig. Col. 440. MANIK GAZI *v.* EMPEROR. **197 I.C 815=14 R. C. 400=43 Cr.L.J. 277=A.I.R. 1942 Cal. 36.**

——**S. 164**—Voluntariness of confession—Questions to be put. *See* 1941 Dig., Col. 440. EMPEROR *v.* DUBAI. **21 Pat. 153=43 Cr.L.J. 90=A.I.R. 1942 Pat. 113.**

——**S. 164**—*Voluntary nature of confession—Questions as to—Duty of Magistrate.*

If the accused states in answer to a question put by the Magistrate that the statement is made voluntarily by him, it is not necessary to put any further question. (*Varma and Rowland, JJ.*) JHIKTU BHOGTA *v.* EMPEROR. **199 I.C. 307=14 R.P. 585=43 Cr. L.J. 544=23 P.L.T. 763=8 B.R. 542=A.I.R. 1942 Pat. 427.**

CR. P. CODE (1898), S. 172.

——**S. 167**—*Scope—Production of accused under—If amounts to taking cognizance or initiation of judicial proceedings.*

The production of accused persons before a magistrate under S. 167, Cr. P. Code, does not amount to taking coginzance or commencement of judicial proceedings. Production under S. 167 need not be before a magistrate having jurisdiction to try the case, and all that can be done under the section is to authorize detention of the accused. That does not amount to taking cognizance of a case or to the institution of judicial proceedings (*Rowland, J.*). EMPEROR *v.* SAJIWAN MAHTO. **23 Pat.L.T. 684=1942 P.W.N. 219.**

——**Ss. 172 and 174**—*Case diary—Use of—Absence of statement from diary—If evidence that statement was not made—Proper way to prove omission.*

Where the record made in the case diary does not purport to be either thorough or complete, the absence of a statement in the case diary is not in itself evidence that such a statement was not made. The proper way to prove an omission is to question the police officer who wrote the diary whether a particular statement was made to him. He may be able to say that it was not made to him because he feels sure that if it had been made it would have found a place in the case diary. If he cannot say so, an omission cannot be proved by filing the case diary. (*Horwill, J.*) PACKIRISAMI PILLAI. *In re.* **199 I C. 833=14 R.M. 669=43 Cr L.J. 582 =1942 M.W.M. 591=55 L.W. 771=A.I.R. 1942 Mad. 288 (2)**

——**S. 172**—Police diaries—Use of. *See* 1941 Dig., Col. 440. DIKSON MALI *v.* EMPEROR. **23 P.L.T 387=43 Cr.L.J. 36=A.I.R. 1942 Pat. 90.**

——**Ss. 172 and 174**—*Reference to police diary—Duty of police officer—Court inviting him to refresh his memory by reference to it.*

It is true that an accused is not entitled to call for the police diaries unless a police officer uses them to refresh his memory, or the Court uses them for the purpose of contradicting a witness. But it is not open to a witness to decide for himself whether or not he should disclose a material fact which might turn the scale in deciding whether and accused person was guilty or innocent, when he is in a position to clear up a point by reference to any notes taken by him during the course of investigation. If a police officer figuring as a prosecution witness suffers from a lapse of memory which can be remedied by reference to any memorandum prepared by him at the time, and the Court invites him to refresh his memory with reference to the writing the witness is under an obvious obligation to do so, this being part of the duty under which he lies to lay the whole truth before the Court to the best of his ability. Should the police officer refuse to assist the Court in this way he would not only be failing in his duty both as a witness and as an officer of public justice, but would also be liable to exactly the same penalty as any other witness who refuses to give evidence which is within his knowledge and is not affected by any particular claim of privilege. It is possible that a diary of steps taken by the police in course of investigation may contain confidential matters which would not in the public interest be disclosed and for which privilege might be claimed, but no such question can arise when it is merely a question of the presence of blood-stains or injuries. There is nothing in S. 174 to suggest that it was ever intended that information on any such point should be deliberately withheld if it should happen to be in any way necessary for the decision of the case. (*Young, C. J. and Beckett, J.*) FATNAYA LAL KHAN *v.* EMPEROR. **I.L.R.**

CR. P. CODE (1898), S. 172.

(1942) Lah. 470 = = 199 I C. 870 = 14 R.L. 438 = 43 Cr. L J. 588 = A.I.R. 1942 Lah. 89.

——S. 172—*Scope—Case diary—Use of—Statement by witness in Court alleged to be contradictory to that made to Police Officer—Mode of proof of contradiction—Filing of case diary and use of whole statement recorded therein—Propriety.*

Where the accused in a criminal case seek to show that a witness has made a statement in Court which is contrary to what he had told a police officer, the proper way of contradicting him is to ask the police officer, when he is in the witness-box about it, and to permit, if necessary, the filing of such portions of the record in the case diary as will support the police officer's statement. Where it is alleged that the statement made by the witness in Court was not made before the police officer, it is useless to refer to the record in the case diary at all. To allow the police officer to be asked whether certain copies of the case diary are true copies of the statements recorded from the witness, and then to permit the filing and making free use of the whole of the entry in the case diary relating to the statement of the witness, whether it is strictly relevant or not to the alleged contradiction, is to make an improper use of the case diary. (*Burn and Horwill, JJ.*) EMPEROR *v.* BANGARURAJU. **201 I. C. 390 = 15 R.M. 335 = 1942 M.W.N. 42 = A.I.R. 1942 Mad. 58.**

——S. 181 (2) and 179—*Criminal breach of trust—Place of trial—Place where breach of contract or liability to account took place.*

The offence of criminal breach of trust cannot be tried at a place where neither the entrustment nor any positive act of conversion of the monies entrusted took place, although a breach of contract by non-feasance or a failure to account took place there, as neither of them, however dishonest, is actually and in itself the offence which S. 405, I. P. Code, defines, but merely evidence of that offence. S. 179, Cr. P. Code, applies only to those offences which by their very definition consists of an act and its consequence. It does not apply to criminal breach of trust, as loss to some one forms no part of the statutory definition of that offence. (*Lodge, and Blagden JJ.*) DAITYARI TRIPATHY *v* SUBODH CHANDRA. **204 I.C. 26 = 46 C.W.N. 952 = A.I.R. 1942 Cal. 575.**

——S. 188 and Child Marriage Restraint Act, S. 9—Marriage in Native State—Complaint within one year but certificate obtained after one year—Trial, if legal. *See* 1941 Dig., Col. 461. HARNARAYAN *v.* GOVINDRAM. **I.L.R. (1942) Nag. 193.**

——S. 190—*Applicability — Offence under Indian Companies Act—Private person*—Locus standi *to file complaint—G. O. Nos.* 518 *of* 1916 *and* 3070 *of* 1932—*Effect of.*

As there are no provisions to the contrary in the Companies Act, the taking cognizance of an offence under the Act must be governed, as in the case of an offence under the Penal Code, by S. 190, Cr. P. Code. S. 190, Cr. P. Code, contains no restriction with regard to the person who may lay a complaint. It cannot therefore be said that a private person has no *locus standi* to file a complaint in respect of an offence under the Companies Act. The Government Notifications, G. O. Nos. 518 of 6th June, 1916 and 3070 of 23rd August, 1932, permitting the Registrar of Joint Stock Companies to file complaints, do not restrict the Magistrate in the exercise of his powers under S. 190, Cr. P. Code. There is no legal objection to proceedings being dropped by the Magistrate if he finds that he ought not to have taken cognizance of the offence. (*Horwill, J.*) MUTHUVEERAN CHETTIAR *v.* MOTTAVAN CHETTIAR. **202 I.C. 28 = 43 Cr. L. J. 785 = = 15 R.M. 470 = 1942 Comp. C. 86 = 1942 M.W.N. 121 = A.I.R. 1942 Mad. 283 = (1942) 1 M.L.J. 230.**

CR P. CODE (1898), S. 195.

——Ss. 190 (1) (b)—*Scope—Non-cognizable case—Charge sheet by police officer before Magistrate—Propriety.*

Where in a non-cognizable case, a sub-Inspector of Police files a charge-sheet with regard to an offence under S. 211, I. P. Code, alleging that a false complaint had been sent to him through the Village Magistrate of an offence under the Arms Act, it cannot be said that the filing of the charge, sheet is not regular. The filing of the charge-sheet is a proper method of bringing the case before the Court under S. 190, Cr. P. Code. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* MUNISWAMY NAIDU. **201 I.C. 517 = 43 Cr L.J. 775 = 15 R.M. 443 = 1942 M.W.N. 224 = 55 L.W. 63 (1).**

——S. 191 — *Applicability — Proceedings under Ch. VIII—Regular trials—Distinction.*

Weston, J.—S. 191, Cr. P. Code, has no application to proceedings under Ch. VIII, Cr. P. Code. Although a judicial procedure has to be followed in these proceedings there is an important difference between these proceedings and regular trials as to the manner in which proceedings are initiated. While in regular trials an accused has the right to claim not to be tried by the magistrate who takes cognizance under S. 190 (*c*), Cr.P. Code, a person proceeded against where an order has been made under S. 112, Cr. P. Code, has no such right to demand that further proceedings should be conducted by a magistrate other than the magistrate who passed the initial order, although such a person may apply for transfer under S. 526, Cr. P. Code, if he has any reasonable grounds for thinking that the magistrate is prejudiced against him and that by reason of such prejudice the inquiry by such magistrate would not be fair or impartial. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252 = A.I.R. 1942 Sind 122.**

——S. 195—Applicability—Defamation by witness in criminal case—Prosecution—Sanction or complaint by Court—Necessity for. *See* 1941 Dig., Col. 441. NALLAPPA GOUNDAN *v.* CHINNAMMAL. **I.L.R. (1942) Mad. 158 = 198 I.C. 809 = 43 Cr. L.J. 441 = 14 R.M. 511 = A.I.R. 1942 Mad. 19 = (1941) 2 M.L. J. 618.**

——S. 195—"*Complaint*"—*Complaint of theft to Village Magistrate—Report by latter to police and to Sub-Magistrate—Police laying charge under S.* 211, *I. P. Code—Conviction under S.* 182, *I. P. Code—Legality—Absence of charge under S.* 182, *I. P. Code—Effect.*

A Village Magistrate to whom the accused gave a complaint of theft sent his usual reports to the police and to the Sub-Magistrate, and the police who took cognizance of the matter reported the case as false, and later filed a charge-sheet against the accused purporting to be under S. 211, I. P. Code. The Sub-Divisional Magistrate who tried the accused found the offence to be one punishable under S. 182, I. P. Code, and convicted the accused. It was contended on behalf of the accused in appeal that the charge sheet by the police did not amount to a valid complaint such as is required by S. 195, Cr.P. Code. This contention was upheld and the accused acquitted.

Held, (1) that the charge-sheet amounted to a valid complaint within the meaning of S. 195, Cr. P. Code, because information given to a Village Magistrate amounts to a complaint to the higher authorities to whom he is bound to pass on the information; (2) that it could not be laid down as a general principle of law

that there cannot be a conviction under S. 182, I. P. Code, when there is a complaint under S. 211, I. P. Code; so long as there was a complaint setting out all the facts constituting the offence, it did not matter whether the complainant thought the offence to be one under S. 211, or S. 182, I P. Code. The conviction was not therefore illegal. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* DEVAMMA. 199 I.C. 688=14 R.M. 630=43 Cr. L.J. 574=55 L.W. 223 (2)=1942 M.W.N. 217=A.I.R. 1942 Mad. 513=(1942) 1 M.L.J. 382.

——S. 195—*Defamatory allegations in petition to public servant or Court—Complaint of defamation by aggrieved person—If maintainable.*

The mere fact that allegations constituting an offence of defamation are contained in a petition to a public servant or a Court, is *per se* no ground for holding that S. 195, Cr.P. Code, is a bar to the cognizance of the offence. The question whether the facts alleged in a complaint really constitute an offence falling within the provisions of S.195, Cr.P. Code, or not must depend upon the circumstances of each case. But if the facts alleged, *prima facie* constitute the offence under S. 500, C.P. Code, that offence can be taken cognizance of on a complaint by the aggrieved person. (*Bhide, J.*) CHANAN SINGH *v.* TARAK SINGH 199 I.C. 543=14 R.L. 428 ‖ 43 Cr. L J. 572=44 P L R. 7=A.I.R. 1942 Lah.76

——S. 195—*Intention of—'Complaint', if used in technical sense.*

The intention of S. 195 of the Cr. P. Code is only that the magistrate should not punish any person except at the instance of the public officer concerned or of his superior and the term 'complaint' in S. 195 (1) (*a*) is not used in the technical sense in which it is defined in S. 4. (*Allsop, J.*) EMPEROR *v.* BARKAT. 1942 A. L.J 608=1942 A.L.W. 581=1942 A.W R. (H.C.) 346 (1)=1942 A. Cr. C. 199=A.I.R. 1943 All. 6.

——Ss. 195 and 476—Offences under Ss. 193 and 471, I.P.Code, during proceedings which were *ultra vires* —Complaint—Legality. *See* 1941 Dig., Col. 442. SUMAT PRASAD *v.* EMPEROR. I.L R. 1942 All. 42=198 I.C. 148=14 R.A. 271=43 Cr. L.J. 319=A.I.R. 1942 All. 11.

——Ss. 195 and 196-A—*Scope—Conspiracy to commit forgery and extortion found to exist—Conspiracy to cheat also possible on the facts—Complaint of Court or sanction of Local Government—If dispensed with.*

Where the Sub-Divisional Magistrate has found that there was conspiracy to commit forgery and extortion, and the Subordinate Judge has made a complaint of a conspiracy to commit forgery and extortion, and the complainant himself complained of forgery and extortion, merely because it can be said on the facts that the offences of cheating and of conspiracy to cheat may also have been committed, the necessity of a complaint by a Court or the consent of the Local Government, as the case may be, does not cease to be necessary. (*Davis, C.J. and Weston, J.*) GOBINDRAM *v.* EMPEROR. I.L.R. (1942) Kar. 12=200 I C. 211=14 R.S. 208=43 Cr. L.J. 612=A.I.R. 1942 Sind 62.

——S. 195(1) (a)—*Offence under S. 186, I.P. Code—Warrant of attachment executed by peon—Latter assaulted by judgment-debtor—Duty of Court to make complaint—Judgment-debtor subsequently filing application under Bengal Agricultural Debtors' Act—Effect of.*

Where a peon to whom a warrant of attachment of movable property of a judgment-debtor issued and signed by a Subordinate Judge was entrusted for execution, was assaulted by the judgment-debtor while the warrant was executed.

Held, that both the Subordinate Judge and the peon were public servants within the meaning of S. 21, I. P. Code and the peon was subordinate to the Judge while he was carrying out his order and that it was the duty of the Judge to make a complaint under S. 186, I. P. Code, against the judgment-debtor.

Held, further, that the fact that the debtor had subsequently taken steps under the Bengal Agricultural Debtors Act in respect of his debts made no difference. (*Derbyshire, C.J. and Bartley, J.*) RAJSHAHI BANKING AND TRADING CORPORATION, LTD. *v.* SURENDRA NATH MITRA. I.L.R. (1942) 2 Cal. 108=198 I.C. 617=14 R.C. 499=43 Cr. L J. 410=A.I.R. 1942 Cal. 434.

——S. 195 (1) (a)—"*Subordinate*"—*Execution by amin of decree of Court of District Munsif—Obstruction to execution and removal of property attached—Nazrat under Nazar subject to supervision and control of Subordinate Judge of place—Authority to file complaint—District Munsif—Power of.*

Where a public servant is obstructed in the exercise of his duties he himself or any person to whom he is subordinate can complain. Where the charge is that the accused carried away the property which an amin had attached and in other ways obstructed him in executing a decree of the District Munsif's Court, and the Nazarat at the place to which the amin is attached is under the charge and direction of the Nazir, subject to the supervision and control of the Subordinate Judge of that place, the amin cannot be considered to be a subordinate of the District Munsif so as to entitle the latter to file a complaint under Ss. 183 and 186, I. P. Code, in respect of the obstruction to the amin and the carrying away of the property attached by him. The complaint can be filed by the amin himself, or by the Nazir or the Subordinate Judge or any of the superiors of the Subordinate Judge, but not by the District Munsif. (*Horwill, J.*) CHINA RANGIAH, *In re.* 1942 M.W.N. 819=55 L. W. 745=(1942) 2 M.L.J. 615.

——S. 195 (1) (b)—"*Court*"—*Registrar of Presidency Small Cause Court—When a "Court."*

The Registrar of a Presidency Small Cause Court cannot be deemed to be a "Court" within the meaning of S. 195 (1) (*b*), Cr. P. Code, unless he has been in some way or other specially empowered to be a Judge. The Registrar, taking security, and in order to do so incidentally taking from a party an affidavit, does not act as "a Court"; a complaint by the Registrar in respect of false statements in the affidavit, under Ss. 193 and 199, I. P. Code, is not a valid complaint under S. 195, Cr. P. Code. (*King, J.*) VARADARAMANUJALU NAIDU *v.* KAUNANOOR NAIDU. 204 I.C. 33=1942 M.W. N. 748=55 L.W. 700=A.I.R. 1942 Mad. 737 (2)=(1942) 2 M.L.J. 571.

——S. 195 (1) (b)—*Filing false affidavit in Court of Small Causes—Registrar asked to investigate—If 'Court' entitled to file a valid criminal complaint.*

Where the Registrar of the Presidency Small Cause Court under the directions of the Chief Judge made inquiries and satisfied himself that an affidavit filed by the accused was false and thereupon filed a complaint in the Court of the Chief Presidency Magistrate.

Held, that (1) the filing of the false affidavit was not "something purporting to be done under the Presidency Small Cause Courts Act" and the limitation under S. 97 of the Act of three months from the commission of the offence for a prosecution, did not apply to the case; (2) although the Registrar is a 'Court' for certain purposes *e.g.*, when trying a suit for a sum of Rs. 20 or less, the Registrar was acting not as a 'Court' but as a ministerial officer in the present case and therefore the complaint was not filed by the proper person and must be returned. (*Horwill, J.*) JAGANNATHA CHARI, *In re.* 201 I.C

CR. P. CODE (1898), S. 195.

437=43 Cr. L.J. 738=15 R.M. 351=55 L.W. 321=1942 M.W.N. 126=A.I.R. 1942 Mad. 326=(1942) 1 M.L.J. 105.

——**S. 195 (1) (b)**—"In or in relation to" a proceeding in Court—Proceeding before Official Assignee for composition or scheme—Offence under S. 200, I.P. Code, committed in such proceedings—Complaint by insolvency Court—If necessary—Presidency Towns Insolvency Act, S. 28. *See* 1941 Dig., Col. 443. KEDAR NATH SEN *v.* AMULYA RATAN. **I.L.R. (1942) 1 Cal. 278=198 I.C. 602=14 R.C. 503=43 Cr.L.J. 402=A.I.R. 1942 Cal. 79.**

——**S. 195 (1) (c) and (3)**—*Jurisdiction to prefer complaint—Offences under Ss. 467 and 471, I. P. Code, with reference to proceedings before Panchayat Court—Court competent to prefer complaint.*

It is either the Panchayat Court or the Court of Sessions Judge which can prefer a complaint in respect of offences under Ss. 467 and 471, I. P. Code, committed with reference to proceedings before a Panchayat Court. The District Magistrate is not competent to make the complaint in such a case. (*Bennett, J.*) SHEO NARAIN *v.* EMPEROR. **201 I.C. 389=15 R.O. 90=1942 O.W.N. 392=1942 A.W.R. (C.C.) 252=1942 A.Cr.C 116=43 Cr. L.J.. 668=1942 O.A. 273=A.I.R. 1942 Oudh 439.**

——**S. 195 (1) (c)**—"*Produced*"—*Meaning of.*

S. 195 (1) (*c*) does not require the document to be produced or given in evidence by a party to a proceeding. It may be produced by some one else and the word "produced" does not mean produced in evidence. A warrant with respect to which it was alleged a forgery was committed was produced in the Subordinate Court in the course of execution proceedings after it was returned endorsed by the bailiff as duly served and the claim as satisfied.

Held, that the forged warrant was produced in the Subordinate Court within the meaning of S. 195 (1) (*c*). (*Davis, C.J. and Weston, J.*) GOBINDRAM *v.* EMPEROR. **I.L.R. (1942) Kar. 12=200 I.C 211=14 R.S. 208=43 Cr. L.J. 612=A.I.R. 1942 Sind 62.**

——**Ss. 195 (1) (c) and 476-A**—*Subordinate Court—Village Court—Offence in relation to suit in—Proper Court to make complaint when Village Court has not made it—District Court or District Munsiff's Court—Madras Village Courts Act, S. 77.*

The Madras Village Courts Act (as amended in 1937) specifically provides in S 77 that the provisions of Ss. 403, 476, 476-A and 476-B of the Cr. P. Code, shall apply to a Village Court. In cases therefore where a Village Court or Panchayat Court has not itself made a complaint or rejected an application under S. 476, Cr. P. Code, in respect of an offence alleged to have been committed in relation to a suit in the Village Court, the Court empowered to exercise the powers conferred by S. 476 as explained in S. 195 (*c*), Cr. P. Code, is the District Court and not the District Munsiff's Court to which an application would lie under S. 73 of the Madras Village Courts Act. (*Happell, J.*) CHINNASWAMI NAIDU *v.* RAMASWAMI NAIDU. **201 I.C. 713=15 R.M. 373=55 L.W. 225=1942 M.W.N. 218=A.I.R. 1942 Mad 471=(1942) 1 M.L.J. 436.**

——**S. 195 (5)**—*Complaint under sub-S. (1) (a)—Interference by High Court.*

Under S. 195 (5), Cr. P. Code, where a complaint is made under sub-S. (1) (*a*), that complaint may be withdrawn by any authority to which the public servant who has made it is subordinate. The High Court in such circumstances will not exercise a jurisdiction which shall more properly be exercised by another authority. (*Bartley and Lodge, JJ.*) EMPEROR *v.* RAMJANAM SINGH. **200 I.C. 16=15 R.C. 63=43 Cr. L.J. 636=74 C.L.J. 580=A.I.R. 1942 Cal. 307.**

CR. P. CODE (1898), S. 202.

——**S. 196-A**—*Applicability—Conspiracy to commit forgery and extortion—Cognizability—Consent of Local Government—When necessary.*

So far as the offence of conspiracy to commit forgery is concerned, in the case of persons other than parties to the proceedings, and, in the case of the offence to commit extortion, in the case of all the accused, including parties to the proceedings, the previous consent of the Local Government under the provisions of S. 196-A is required, and if the consent has not been obtained, the Court could not take cognizance of the complaint. So far as the offence of conspiracy to commit forgery is concerned, in the case of the parties to the proceedings the consent of the Local Government is not necessary by reason of the proviso to S. 196-A. (*Davis, C.J. and Weston, J.*) GOBINDRAM *v.* EMPEROR. **I.L.R. (1942) Kar. 12=200 I.C. 211=14 R.S. 208=43 Cr.L.J. 612=A.I.R. 1942 Sind 62.**

——**S. 197**—Applicability—Beating of person by Sub-Inspectors of police under orders of Assistant Commissioner—Prosecution of latter—Sanction of Governor—Necessity. *See* 1941 Dig., Col. 444. AHMED MOHIDEEN *v.* YUSUF ALI SYED. **43 Cr.L.J. 133=14 R.M. 356 (2)=A.I.R. 1942 Mad. 81 (1)=(1941) 2 M.L.J. 486.**

——**S. 197**—*Applicability—Municipal Health Officer—Interference with person tying cow to tree and striking person—Complaint—Sanction of Local Government—Necessity.*

A Municipal Health Officer purporting to act in the discharge of his official duties objected to the tying by the complaint of his cow to a tree, and also gave him a smack on the neck; again on account of some words spoken by the complainant, the Health Officer lost his temper and gave him some further blows on the cheeks and on the head. On a complaint against the Health Officer *held*, that though it was no part of the duty of the Health Officer to strike the complainant or to commit any offence he was undoubtedly acting as a public servant when he interfered with the complainant and struck him, and therefore the sanction of the Local Government was necessary under S. 174, Cr.P. Code, before the complaint could be filed. (*Horwill, J.*) RAMACHANDRA RAO *v.* CHINNAYYA GOUNDAR. **203 I.C. 421=55 L.W. 524=1942 M.W.N. 490=44 Cr. L.J. 13=A.I.R. 1942 Mad. 664 (1)=(1942) 2 M.L.J. 217.**

——**S. 202**—Direction for investigation under—Police papers and report—Right of accused to inspect and to get copies. See 1941 Dig., Col. 445. MAUNG SHEIN *v.* THE KING. **A.I.R. 1942 Rang. 51 (1).**

——**S. 202**—*Jurisdiction—Case transferred under S. 202—Power of transferee Magistrate to direct inquiry by police.*

The question whether a Subordinate Magistrate to whom a case has been transferred under S. 192, Cr. P. Code, by a superior Magistrate has jurisdiction to order an investigation under S. 202, Cr. P. Code, or not would depend upon whether the superior Magistrate had or had not passed beyond that stage when he transferred the case. The fact of transfer is itself no indication of the stage which the Magistrate taking cognizance had reached, because under S. 200, Cr. P. Code, he can transfer the case even before the sworn statement is taken. The transferring Magistrate's intention has to be judged by the order which he passed. The mere fact of his "taking the case on file" is not sufficient to indicate an intention that no investigation or inquiry under S. 202 was necessary. Where the intention is doubtful, the

CR. P. CODE (1898), S. 202.

Subordinate Magistrate has jurisdiction to order an inquiry under S. 202. (*Horwill, J.*) KASTURI CHAND *v.* VAIKUNTAM. 201 I.C. 387=15 R.M. 339=43 Cr. L.J. 670=55 L.W. 215=1942 M.W.N. 220=A.I.R. 1942 Mad. 426=(1942) 1 M.L.J. 378.

——S. 202 (1), Proviso and S. 537—*Omission to record statement of complainant on oath—Illegality.*

The object of S. 202 (1), Proviso is that the Magistrate should thoroughly understand the case before he decides to postpone the issuing of the process and embarks upon the unusual procedure of getting the matter investigated by some other agency. The omission by a Magistrate to record the statement of the complainant on oath as required by the proviso to S. 202 (1) before he sends a complaint for inquiry under S. 202 (1) is an illegality and not mere irregularity curable under S. 537. (*Mir Ahmad, J.*) JIT SINGH *v.* AYUB KHAN. 202 I.C. 210=15 R. Pesh. 40=43 Cr. L.J. 803=A.I.R. 1942 Pesh. 61.

——S. 203—*Dismissal of complaint—Fresh complaint—If barred—Revision.*

A dismissal of a complaint under S. 203 does not bar the entertaining of a second complaint upon the same facts as the first. But the order of dismissal will not be set aside unless that order is manifestly perverse or foolish or based on a record of evidence which was obviously incomplete. 10 P.R. 1911 (Cr.), Foll. (*Mir Ahmad, J.*) ABDUL GHANI *v.* ROKHAN SHAH. 200 I.C. 60=15 R. Pesh. 4=43 Cr.L.J. 611=A.I.R. 1942 Pesh 24.

——S. 208—Defence witnesses not examined—No request by accused—Commitment, if liable to be quashed. *See* 1941 Dig., Col. 445. AHMAD DIN *v.* EMPEROR. 14 R.L. 194=43 Cr.L.J. 104.

——Ss. 208, 209 and 210—Scope—Committal proceedings—Examination of defence witnesses before charge—Permissibility *See* 1941 Dig., Col. 445. GANGA PRASAD NAEK *v.* BHAGWAT DEO. 23 P.L.T. 534=A.I.R. 1942 Pat 38.

——S. 209—Duty of committing Magistrate in inquiry—Grounds for commitment and for discharge. *See* 1941 Dig., Col. 446. GANGA PRASAD NAEK *v.* BHAGWAT DEO. 23 P.L.T. 534=A.I.R. 1942 Pat. 38.

——S. 209—Duty of committing Magistrate—Procedure in case of charge against a number of persons. *See* 1941 Dig., Col. 447. MOINUDDIN *v.* SHEOGOBIND SAHU. 23 Pat.L.T. 62.

——Ss. 209 and 210—*Duty of Magistrates in commitment proceedings.*

In commitment proceedings what the Magistrate has to see is whether there are sufficient grounds for conviction. Where there is a good *prima facie* case the Magistrate is bound to commit the accused and is not empowered to enter into nice questions of the probabilities of the case and discharge the accused on the ground that in his opinion the evidence was not sufficient to sustain a conviction; while a Magistrate should not be a mere post office and commit an accused to the Court of Session when there is not even a remote possibility of the case ending in a conviction, he cannot assume the functions of the Sessions Judge and take upon himself the duty of sifting the evidence in cases which are on the border line. (*Iqbal Ahmad, C. J. and Baipai, J.*) BILAS SINGH *v.* EMPEROR. 202 I.C. 623=1942 A.L.J. 341=1942 A.W.R. (H.C.) 223=1942 A.Cr.C. 128=43 Cr.L.J. 879=1942 A.L.W. 376=A.I.R. 1942 All. 334.

——S. 209 (1)—Committal—Desirability—Test—Offence, doubtful if under S. 302 or S. 304, I. P. Code—Course to be adopted. *See* 1941 Dig., Col. 447. EMPEROR *v.* HIMLU. I.L.R. (1942) Nag. 438.

CR. P. CODE (1898). S. 222.

——S. 215—Ground for quashing commitment—Competency of Magistrate to inflict adequate punishment. *See* 1941 Dig., Col. 447. DANA MIA *v.* MAMTAZAL KARIM. 14 R.C. 326=43 Cr.L.J. 16.

——S. 215—*Jurisdiction under—Nature of—Original or appellate—Judge presiding over High Court Criminal Sessions—Power to quash illegal commitment.*

When the High Court is called upon to quash a commitment on the ground of an illegality under S. 215, Cr. P. Code, it clearly does not do so in the exercise of its original criminal jurisdiction. It is a power that it exercises in its appellate or revisional jurisdiction. A Judge of the High Court presiding over the High Court Criminal Sessions has no jurisdiction to quash an order of commitment under S. 215 or to consider its legality. (*Chagla, J.*) EMPEROR *v.* HUSEINALLI VILAYATALLI. I.L.R. (1942) Bom. 534=201 I.C. 735=15 R.B. 122=43 Cr.L.J. 773=44 Bom.L.R. 433=A.I.R. 1942 Bom. 212.

——S. 221—Scope—Charge under S. 182, I. P. Code—Conviction under S. 211, I. P. Code—Legality. *See* CR. P. CODE, S. 195. 1942 M.W.N. 217=(1942) 1 M.L.J. 382.

——S. 222 (2)—*Requirement under—Prosecution if bound to show how 'gross sum embezzled is arrived at.*

All that S. 222 (2), Cr. P. Code, requires is that the total amount which according to the prosecution has been embezzled by the accused may be mentioned in the charge as one lump sum. It cannot be said that the prosecution must show how the 'gross' sum mentioned in the charge was arrived at. (*Mulla, J.*) EMPEROR *v.* DAULAT RAM ASTHANA. 1942 A.L.W. 627=1942 A. Cr. C. 208.

——Ss. 222 (2) and 234 (1)—*Scope—Charge under S. 409, I. P. Code, in respect of gross sum made up of three items and three charges under S. 477-A, I. P. Code, in respect of 28 entries—Joint trial—Legality—Offences disclosed in respect of items covered by series of entries—Conviction without charge—Permissibility.*

S. 222 (2), Cr. P. Code, refers only to the offence of criminal breach of trust or dishonest misappropriation of money and not to falsification of accounts. A series of charges under S. 477-A, I. P. Code, in respect of twenty eight items of falsification relating to three different registers cannot be permitted to be lumped up together, although committed in the course of one year. The accused was charged under S. 409, I. P. Code, with commission of criminal breach of trust in respect of Rs. 76-9-6, including three different sums of Rs. 42, Rs. 31-9-0 and Rs. 3-0-6 each. The prosecution case was that the accused committed a series of falsification of accounts which were made the subject of three charges under S. 477-A, I. P. Code, and which were alleged to have been committed in order to conceal and cover the criminal breach of trust of Rs. 76-9-6. The prosecution alleged that the criminal breach of trust was committed between 12 4-1938 and 16-1-1939. The three charges under S. 477-A, I. P. Code, related to 28 entries, the first charge relating to two entries in respect of Rs. 42 and Rs. 31-9-0, in one book, the 2nd relating to 22 entries in another book, and the 3rd relating to four entries in another book and covered by four subsidiary headings. The prosecution case was not that the accused set about to defalcate the amount of Rs. 76-9-6 from the very beginning, but that as occasion arose and opportunities offered themselves he went on defalcating such sums as he could conveniently do without attracting the attention of his superiors, each defalcation thus being a separate offence. It was not the prosecution case that all these series of entries in the accounts were

CR. P. CODE (1898), S. 225.

falsified in order to cover up one single defalcation. He was tried for all the charges at one trial.

Held, (1) that the joint trial was illegal as there was clear misjoinder of charges, which vitiated the trial; (2) that though it would be permissible to try the accused for one charge under S. 409, I.P. Code, and for three charges under S. 477-A, relating to that charge of misappropriation, it was not legal or permissible to try the accused for one charge under S. 409 and 28 charges under S. 477-A, I. P. Code; (3) that in the absence of evidence of misappropriation of the items specified, the accused was entitled to be acquitted of the charge under S. 409, I. P. Code, and the accused could not be convicted in respect of other items disclosed by the evidence as having been misappropriated by the accused as being included in the numerous charges under S. 477-A, I. P. Code, as it would be unfair to convict the accused of the offence of criminal breach of trust with reference to items for which he had never been charged. (*Manohar Lal and Meredith, JJ.*) EMPEROR *v.* RAMAUTAR LAL. **21 Pat. 113=200 I.C. 380=14 R P. 664=8 B.R. 675=43 Cr. L.J. 625=23 Pat.L.T. 108=A.I.R. 1942 Pat. 401.**

——Ss. 225 and 537—*Error of date in charge sheet—Absence of prejudice—Conviction if can be quashed.*

The mere fact that there was an error of date in the charge sheet is not enough to quash a conviction when the error has not occasioned a failure of justice and the accused had not been prejudiced. (*Agarwal, J.*) BARSATI *v.* EMPEROR. **200 I.C. 805=15 R O. 58=1942 A. Cr. C. 110=43 Cr.L.J. 721=1942 O.W N. 380=1942 A.W.R. (C.C.) 254=1942 O.A. 275=A. I.R. 1942 Oudh 394.**

——S. 226—*Powers of clerk of Crown—Withdrawal of charge.*

S. 226, Cr. P. Code, gives the widest powers to the clerk of the Crown to revise and re-draft charges with reference to any offence in respect of which the committing Magistrate has framed a charge. But when the Magistrate comes to the conclusion that an offence has been committed and frames a charge accordingly, it is not open to the clerk of the Crown to withdraw that charge on the ground that there is no evidence to go to the jury and therefore the charge would fail. That is a judicial act which can only be performed by the Court by the procedure laid down in S. 273, Cr. P. Code. (*Chagla, J.*) EMPEROR *v.* HUSEINALLI VILAYATALLI. **I.L.R. (1942) Bom. 534=201 I C. 735=15 R.B. 122=43 Cr.L.J. 773=44 Bom.L.R. 433=A.I.R. 1942 Bom 212.**

——Ss. 233 and 235 and Penal Code (1860), Ss. 409 and 477-A—*Charge under Ss. 409 and 477-A in respect of offences committed in different capacities—Legality.*

Where a charge under S. 409, I. P. Code, relates to certain acts which an accused is said to have committed in his capacity as chairman of a District Board and a charge under S. 477-A relates to an act which he is said to have committed in his capacity as President of the District Board Employee's Thrift Society which is obviously an entirely different capacity, the two charges being distinct cannot be joined together in a single trial. (*Mulla, J.*) EMPEROR *v.* DAULAT RAM ASTHANA. **1942 A.L W. 627=1942 A. Cr C. 208**

——Ss. 233 and 235—*Joint trial in respect of discovery of charas and opium—Legality.*

Where on a raid of the house of the accused some charas and opium were recovered and a joint trial was held in respect of offences under S. 60 (*a*) read with S. 69 of the Excise Act and S. 9 of the Opium Act it was held that as it could not be said that the offence of keeping charas and opium were committed in one series of acts so connected together as to form part of the same transaction the accused committed two distinct offences, not in the same transaction, and hence there should have been separate charges and each charge should have been tried separately. (*Agarwal, J.*) BANKEY LAL *v.* EMPEROR. **203 I.C. 12=1942 A.W. R. (C.C.) 278=1942 O.W.N. 564=1942 A. Cr. C. 179=43 Cr.L.J. 912=1942 O.A. 306=A.I.R. 1942 Oudh 462.**

——S. 233—Scope—Charge under S. 409, I. P. Code, in respect of specific sums—Charge under S.477-A, in respect of 28 items of falsification—Absence of evidence of misappropriation of items specified—Evidence disclosing misappropriation of other items included in the charges under S. 477-A—Conviction in respect of such items in the absence of charge relating to them—Permissibility. *See* CR. P. CODE, SS. 222 (2) AND 234 (1). **23 Pat.L.T. 108.**

——S. 234—Charges under Ss. 420, 467 and 477-A, I. P. Code—Joint trial—Legality. *See* 1941 Dig., Col. 448. HUGH FRANCIS BELLGARD *v.* EMPEROR. **198 I.C. 499=14 R.C. 471=43 Cr.L.J. 389.**

——Ss. 234, 239 (d) and 537—Joinder of charges—What is prohibited—Curability under S. 537. *See* 1941 Dig., Col. 448. ASTELL *v.* ENG TAKE. **199 I.C. 27=14 R.R. 237=43 Cr.L.J. 448.**

——Ss. 234 and 235—*Joinder of three charges under S. 409, I. P. Code and one charge under S. 477-A, I. P. Code—Legality.*

Where the accused, a money-order clerk in a post office, was placed on his trial upon three charges under S. 409, I. P. Code, on the allegation that on three separate occasions he committed criminal breach of trust with regard to three sums of money handed over to him by different persons for transmission to other people, and in connection with the third charge there was in addition a charge under S. 477-A, I. P. Code, to the effect that he mutilated a money order receipt, and evidence was led in support of all the four charges and the accused was called upon to plead to the charge framed under S. 477-A, I P. Code.

Held, that although the accused was acquitted on the charge under S. 477, I. P. Code, for lack of necessary sanction, he was actually put on trial upon four charges, that the case was therefore excluded from the scope of S. 234, Cr. P. Code, and that consequently the trial was vitiated by misjoinder of charges. (*Bartley and Lodge, JJ.*) JOGENDRA CHANDRA GHOSH *v.* POSTAL DEPARTMENT OF THE GOVERNMENT OF INDIA. **46 C.W.N. 287.**

——Ss. 234 and 235—Joint effect—Joinder of charges arising out of three transactions of same kind carried out within twelve months—Legality. *See* 1941 Dig., Col. 448. HUGH FRANCIS BELLGARD *v.* EMPEROR. **198 I.C. 499=14 R.C. 471=43 Cr.L.J. 389.**

——Ss. 234 and 239—*Scope—Charges under Ss. 380 and 411, I. P. Code.—Permissibility—Misjoinder*—"*Offences of the same kind.*"

S. 234 read with S. 239, Cr. P. Code, permits of the joinder of more offences than one of the same kind committed within the space of 12 months; but offences under Ss. 380 and 411, I. P. Code, are not of the same kind. Therefore the charging of one or more persons of offences under Ss. 380 and 411 would amount to a misjoinder of charges. (*Horwill, J.*). CHINNAPPA CHETTY *v.* EMPEROR. **1942 M W.N. 726=(1942) 2 M.L.J. 686.**

——S. 234 (1)—Scope—Single charge under 409, I. P. Code, in respect of gross sum made up of three items—Three charges under S. 477-A, in respect of 28

CR. P. CODE (1898), S. 235.

entries in relation to items misappropriated—Joint trial —Legality. *See* CR. P. CODE, SS. 222 (2) AND 234 (1). **23 Pat.L.T. 108.**

——S. 235—Applicability—Three offences of cheating—Advances on misrepresentation—Subsequent advances on same misrepresentation—Same transaction *See* 1941 Dig., Col. 448. ASTELL *v.* ENG. TAKE. **199 I.C 27=14 R.R. 237=43 Cr. L.J. 448.**

——S. 235—Charges under Ss. 468 and 408, I. P. Code—Joinder—Legality. *See* 1941 Dig., Col. 448, JUGAL KRISHNA DEY *v.* WILCOX, LTD. **199 I.C. 362=14 R C. 582=43 Cr.L.J. 553=A.I.R. 1942 Cal. 237.**

——S. 235—*Same transaction—Test.*

To ascertain whether a series of acts would form part of the same transaction the most important point to be considered is whether there was a common purpose and design and continuity of action. Where the common object of an unlawful assembly was to beat and extort money from a person and people from a neighbouring village come to rescue him but were chased back and the tiles in their houses in that village were broken and the people of another village who came to remonstrate against such action were assaulted, it was held that the assault of the second batch of villagers was not because they interfered with the extortion and beating but because of their interference with the breaking of the tiles of houses in another village and hence it was a separate transaction and could not be tried jointly with the offence under Ss. 147 and 384/511, I. P. Code. (*Agarwal, J.*) HIRALAL *v.* EMPEROR. **201 I.C. 737 =15 R.O. 114=1942 A.W.R. (C.C.) 272=1942 A. Cr.C. 136=43 Cr.L.J. 776=1942 O.W.N. 427=A.I. R. 1942 Oudh. 441.**

——S. 236—*Applicability—Conditions—Alternative charges of kidnapping and abduction—Legality of.*

In order that S. 236, Cr. P Code, may apply, there must be a single act or series of acts of a certain nature and, that nature must raise a doubt about which of several offences the facts, which can be proved, will constitute. That doubt may include a doubt as to what exact facts within the ambit of the series of facts postulated can be proved. At the time the charge is framed the prosecution can never know exactly what facts they can succeed in establishing and they are entitled to say that if they prove certain of the alleged facts, then such and such an offence will be committed but that if they prove other of such facts then it would be another offence, and to charge the offence in the alternative.

Where in a case the prosecution is in doubt as to whether they can prove that a girl, who is the victim of an offence, was under sixteen, they are entitled to charge the accused in the alternative of abduction or kidnapping under S. 362 or 361 of the Penal Code. (*Beaumont, C. J., Wadia and Sen, JJ.*) EMPEROR *v.* KASAMALLI MIRZALLI. **I.L.R. (1942) Bom. 384=199 I.C. 202 =14 R.B. 357=43 Cr.L.J. 529=44 Bom L.R. 27= A.I.R. 1942 Bom. 71 (F.B.).**

——S. 238—*Charge under S. 302/149 I. P. Code —Verdict of guilty under S. 326/149 or 324/149—If can be accepted.*

A charge under S. 302/149, I. P. Code, includes the minor charge under S. 326/149 or S. 324/149. In a trial on a charge under S. 302/149, the Judge can accept a verdict of guilty under S. 326/149 or 324/149. (*Rowland and Manohar Lall, JJ.*) JANAK SINGH *v.* EMPEROR. **197 I.C. 504=8 B R. 237=43 Cr.L.J. 205=14 R.P. 334=23 P.L.T. 707=1942 P.W.N. 119=A.I.R. 1942 Pat. 446.**

——S. 239—*Applicability—Preliminary inquiry by committing Magistrate—Single inquiry and commitment in respect of several accused not triable jointly—Legality.*

CR. P. CODE (1898), S. 239.

S. 239, Cr. P. Code, does not apply to enquiries held by the Magistrates in cases triable by the Court of Session. There is nothing to prevent the committing Magistrate from holding one single inquiry against several accused although they could not be tried jointly consistently with S. 239, Cr. P. Code, though one order of commitment may be made in respect of several accused, it is competent to the Sessions or trial Court to order separate trials in order to give effect to the provisions of the Code. (*Chagla, J.*) EMPEROR *v.* HUSEINALLI VILAYATALLI. **I.L.R. 1943 Bom. 534= 201 I.C. 735=15 R.B. 122=43 Cr.L.J. 773=44 Bom. L.R. 433=A.I.R. 1942 Bom. 212.**

——S. 239—Applicability—Requisites. *See* 1940 Dig., Col. 476. BHAGOLELAL *v.* EMPEROR. **I.L.R. (1942) Nag. 208.**

——Ss 239 and 537—*Joint trial—Allegation of conspiracy, if necessary—Identity of purpose on the part of the accused—Sufficiency—Absence of prejudice—Curability under S. 537.*

A conspiracy is not necessary to be specifically alleged in order to permit of a joint trial. It is enough if the allegations made by the complainant indicate an identity of purpose on the part of several accused persons. Where the trend of complaint in case of defamation was to show that the accused were acting with one mind in spreading false informations against the wife of the complainant, the accused can be tried jointly. In the absence of prejudice the irregularity, if any, is technical and the case would be covered by S. 537. (*Niyogi, J.*) GAZIDIN *v.* KADEDIN. **1942 N.L.J. 336.**

——S. 239—Joint trial—Legality—Manager and Accountant—Charge under S. 408, I. P. Code and charges under Ss. 408 and 408/109, I. P. Code. *See* 1941 Dig., Col. 449. WAZIR SINGH *v.* EMPEROR. **17 Luck. 353=197 I.C. 255=14 R.O. 306=43 Cr.L.J. 153=A.I.R. 1942 Oudh 89.**

——S. 239—Misjoinder—Joint trial of two sets of accused—Absence of common object or intention—Effect—Conviction—If to be set aside—Presumption of prejudice. *See* 1941 Dig., Col. 449. MOONGAN *v.* ROSHIN ALI SAHIB. **I.L.R. (1942) Mad. 322=197 I.C. 588=14 R.M. 374=43 Cr.L.J. 215=(1941) 2 M.L.J. 534.**

——S. 239 (c)—Offences of the same kind—Charges under Ss. 380 and 411—Legality. *See* CR. P. CODE, SS. 234 AND 239. **1942 M.W.N. 726=(1942) 2 M.L. J. 686.**

——S 239 (d)—Joinder of charges under Ss. 211, 323 and 342, I. P. Code—Legality. *See* 1941 Dig., Col. 450. BALAK RAM *v.* EMPEROR. **A.I.R. 1942 Oudh 100.**

——S 239 (d)—Joint trial—When justified. *See* 1941 Dig., Col. 457. HUGH FRANCIS BELLGARD *v.* EMPEROR. **198 I.C. 499=14 R.C. 471=43 Cr. L.J. 389.**

——S. 239 (d)—*Same transaction—One accused taking girl to room of another—Rape of girl by latter in room—Former escorting girl back to her house and cheating her of ornaments on way—Joint trial for rape and cheating—Legality.*

Where a person takes a girl to the room of another who there commits rape on the girl, and the former then escorts the girl back from the room and to her house and on the way he cheats her of her ornaments, it is impossible to separate the two offences of rape and cheating as they are inextricably mixed up together. The two charges can in such a case be tried together jointly

CR. P. CODE (1898), S. 239.

at one trial under S 239 (*d*), Cr. P. Code. (*Beaumont, C.J., Wadia and Wassoodeo, JJ.*) EMPEROR *v.* MAHADEO TATVA. **200 I.C. 261=43 Cr.L.J. 621=15 R.B. 1=44 Bom.L.R. 216=A.I.R. 1942 Bom. 121 (F.B.).**

——— **S. 239 (d)**—*Same transaction—Rioting to secure release of arrested person—Theft by one rioter—Joinder of charge of theft with other charges—Legality.*

In the course of a rioting the object of which was to secure the release of a person who had been arrested by a police constable, one of the rioters committed theft of a purse,

Held, that though theft was not one of the common objects of the unlawful assembly, it certainly was committed during the course of the transaction in which all the other offences were committed, and so the charge of theft could properly be joined with the other charges of rioting and other offences. (*Horwill, J.*). MAHOMED MEERA SAHIB *v.* EMPEROR. **1942 M.W.N. 723=(1942) 2 M.L.J. 710.**

——— **S. 242**—*Scope of—Failure to state particulars of offence—Evidence not directed to such particulars—Effect on trial—Conviction—Sustainability.*

S. 242, Cr. P. Code, only dispenses with a formal charge in a summons case, but it does not dispense with the statement of the particulars of the offence for which the accused is to be dealt with. When the particulars of the offence are not so stated, and the evidence too is not directed to any such particulars, the trial is entirely defective and a conviction in such a trial cannot stand. (*Dhavle, J.*) RAM SAKAL SINGH *v.* EMPEROR. **197 I.C. 359=8 B.R. 192=43 Cr.L.J. 160=14 R.P. 319=1941 P.W.N. 677=A.I.R. 1942 Pat. 130**

——— **S 247 and Penal Code (1860), S. 408**—*Acquittal of accused charged under S. 408 on complainant's default to appear—Legality—Magistrate's duty in such cases.*

A magistrate is not entitled to acquit the accused of a non-compoundable and cognizable offence of criminal breach of trust under S. 408, I. P. Code, after framing a charge merely because the complainant did not appear to prosecute the charge. In the trial of warrant cases the burden is upon him to discover from the complainant or otherwise what evidence is available and to see that the evidence is produced and that a proper enquiry is made by him. If the case is compoundable and non-cognizable, it is open to a magistrate to dismiss the complaint if the complainant does not appear before a charge is framed, but once the charge has been framed or if the case is non-compoundable and cognizable, it is the duty of the magistrate in the interests of the general public to see whether an offence has been committed and to punish it if he thinks that the accused is guilty. (*Allsop, J.*) CHIRANJI LAL *v.* RAM SWARUP. **1942 A.L.W. 575=1942 A.W.R. (H.C.) 336 (1)=1942 A.L.J. 577=1942 A.Cr.C. 203=A.I.R. 1943 All. 9.**

——— **S 247**—Complainant absent—Magistrate proceeding with case—Legality of procedure. *See* 1941 Dig., Col. 451. SUDHIR KUMAR NEUGI *v.* EMPEROR. **23 Pat.L.T. 291=43 Cr.L.J. 27=A.I.R. 1942 Pat. 46.**

——— **S. 247**—*Order of acquittal—Subsequent revival of case—Legality.*

Where a Magistrate acquitted the accused under S. 247, Cr. P. Code, owing to the absence of the complainant on a day fixed for hearing of the case and his successor dismissed an application for its revival on the ground that he had no power to set aside the order of acquittal, the case cannot be revived by another Magistrate on a second application for revival on the ground that the order of acquittal was passed without jurisdiction and therefore a nullity. (*Lodge and Roxburgh, JJ.*) NATIONAL IRON AND STEEL CO., LTD. *v.* ELECTRIC INSPECTOR, BENGAL. **I.L.R. (1942) 2 Cal. 403=203 I.C. 256=44 Cr.L.J. 11=46 C.W.N. 847=A.I.R. 1943 Cal 29.**

CR. P. CODE (1898), S. 256.

——— **Ss. 247 and 403**—*Scope—Summons case—Trial—When begins—Adjourned hearing—Absence of complainant—Acquittal—Effect—Fresh complaint—Bar of—Jurisdiction of succeeding Magistrate to entertain.*

The trial in a summons case commences with the issue of notice to the accused, and if subsequently at an adjourned hearing, the complainant is absent and the accused is acquitted, it must be held that the accused is both tried and acquitted for purposes of S. 403, Cr. P, Code. S. 403 would operate as a bar to a further trial on the same charge. A successor of the Magistrate acquitting the accused has no jurisdiction to entertain a second complaint, as that in effect would be to revise or review the order of his predecessor. (*Horwill, J.*) KUTUMBAYYA *v.* LAKSHMINARASIMHA RAO. **55 L.W. 525=1942 M.W.N. 601=A.I.R. 1943 Mad. 6=(1942) 2 M.L.J. 221.**

——— **S. 250**—Applicability—False and frivolous or vexatious—Meaning. *See* 1941 Dig., Col. 452. VENKAYYA *v.* SEETHAYYA. **197 I.C. 333=14 R.M. 362=43 Cr.L.J. 156.**

——— **S. 250**—Order of compensation—Sustainability—Conditions—Duty of Magistrate. *See* 1941 Dig., Col. 452. NAMBERUMAL NAIDU *v.* MUTHU KALATHI MUDALI. **198 I.C. 258=14 R.M. 431=1942 M.W.N. 426 (2)=55 L.W. 756=43 Cr.L.J. 336=A.I.R. 1942 Mad. 241=(1940) 2 M.L.J. 1038.**

——— **S. 252 (2)**—Powers under—If can be exercised only once. *See* 1940 Dig., Col. 480. HANSRAJ *v.* EMPEROR. **I.L.R. (1942) Nag. 333.**

——— **S. 253 (2)**—Applicability—Test to determine whether charge is "groundless"—Duty of Magistrate—If bound to examine all witness named by complainant. *See* 1941 Dig., Col. 452. MAHOMED IBRAHIM *v.* NAUGHTON. **43 Cr.L.J. 73.**

——— **S 253 (2)**—*Order of discharge—When may be made.*

S. 253 (2), Cr. P. Code, empowers a Magistrate to discharge an accused person only if for reasons to be recorded by such Magistrate he considers the charge to be groundless. The Magistrate has no jurisdiction to pass an order discharging an accused without applying his mind to the evidence before him on the ground that the whereabouts of the accused are not known and it is useless to drag on the case indefinitely. (*Lodge and Roxburgh, JJ.*) WAHED BUX WAESHI *v.* FAKHARADDIN PIRACHA. **199 I.C. 435=43 Cr.L.J. 491=14 R.C. 597=A.I.R. 1942 Cal. 428 (2).**

——— **S. 256**—"Any remaining witnesses—Meaning. *See* 1940 Dig., Col. 481. HANSRAJ *v.* EMPEROR. **I.L.R. (1942) Nag. 333.**

——— **S. 256**—*Construction—"Remaining witnesses"—Meaning of—Right of Crown to examine new witnesses.*

The words "remaining witnesses" in S. 256, Cr. P. Code, cannot be construed in the limited sense of "those witnesses who were in the list of witnesses who could have been examined by the prosecution in the first instance, but were not actually examined under S. 252." S. 256 clearly enables the Crown to examine witnesses who had not been examined, or whose names had not been disclosed, before the charge was framed. If the accused desires time to enable him to cross-examine witnesses whose names had not been disclosed, it is open to the Magistrate to give time, just as it is open to the Magistrate to give time to the prosecution to enable them to ascertain the antecedents of the witnesses produced by the accused at the trial. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* NAGINDAS NARATTAMDAS.

CR. P. CODE (1898), S. 256.

I. L. R. (1942) Bom. 540=201 I. C. 503=43 Cr.L.J. 761=15 R.B. 109=44 Bom.L.R. 452=A.I.R. 1942 Bom. 214.

——S. 256—*List of witnesses—Accused if bound to submit.*

It is not obligatory on the accused to submit a list of defence witnesses at the stage of the trial reached under S. 256. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* NAGINDAS NARATTAMDAS. I L.R. (1942) Bom. 540 =201 I.C. 503=43 Cr.L.J. 761=15 R.B. 109=44 Bom.L.R. 452=A.I.R. 1942 Bom. 214.

——S. 256—Right of further cross-examination—Enquiry under S. 117. *See* CR. P. CODE, SS. 110, 117 AND 256. 1942 A.L.J. 557.

——Ss. 256 and 260—*Scope of—Offence under S. 504, I. P. Code—Summary trial of—Omission to ask accused whether he wished to cross-examine—If vitiates trial.*

The offence punishable under S. 504, I. P. Code, can be tried by summary procedure, but the rules laid down for the trial of warrant cases must be adopted in the absence of any rules under the summary procedure chapter modifying it. Failure to ask the accused to state at the commencement of the hearing of the case whether he wishes to cross-examine, and if so, which of the prosecution witnesses whose evidence has been taken, is a serious irregularity and the omission is a grave one. (*Horwill, J.*) SUBBIAH *v.* VENKATASUBBAMMA. 203 I.C. 321=44 Cr.L.J. 10=55 L.W. 421=1942 M.W. N. 437=A.I.R. 1942 Mad. 672=(1942) 2 M.L.J. 101.

——S. 256 (1)—*Recalling prosecution witnesses for cross examination—Proper stage.*

The stage at which the prosecution witnesses can be recalled at the instance of the accused for cross examination follows and not precedes the statement of the accused pleading guilty or not guilty. This stage is not reached until the statement of the accused has actually been recorded. Hence it is not open to a magistrate to direct a complainant to bring his witnesses for cross-examination before the statements of the accused pleading guilty or not guilty has been recorded. (*Ghulam Hasan, J.*) EMPEROR *v.* RAM CHARAN 1942 O.W. N. 786=1942 O.A. 634.

——S. 257—*Attendance of defence witnesses—Duty of Court.*

When a Criminal Court issues process against a witness for the defence, it is the duty of the Court to secure the attendance of that witness unless the accused decides that he does not want to examine him. The accused cannot be said to have a fair trial if the Magistrate does nothing to assist him except issuing the summons. (*Agarwala, J.*) PANCHU SWAIN *v.* EMPEROR. 8 B. R. 402=198 I.C. 256=14 R.P. 454=43 Cr.L.J. 337= 23 P.L.T. 313=A.I.R. 1942 Pat. 185 (1).

——S. 257—*Duty of Court—Refusal to summon defence witnesses—Grounds—Discretion—Matters to be considered.*

Lobo, J.—The refusal to summon a witness called for by an accused person can only be justified on the grounds set out in S. 257, Cr. P. Code, and it is not a sufficient ground to state that a particular witness is not to be summoned because he is an Amil, or because he does not live in the district in which the accused lives or because he is a member of a Legislative Assembly or a Minister who cannot be having any relevant evidence to give. Refusal to summon defence witnesses on such grounds is a serious irregularity.

Weston, J.—The probable irrelevancy of evidence is not of itself enough to justify the conclusion that the purpose of the accused seeking to adduce it is vexation or

CR. P. CODE (1898), S. 285.

delay or the defeat of justice. But such purpose must necessarily be inferred from circumstances. The number of witnesses cited, the difficulty and delay involved in securing their attendance, and the materiality of their evidence are all circumstances which may be considered. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. I. L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.

——S. 257 (1)—Duty of Magistrate—Application by accused for process to witnesses—Rejection on ground that many witnesses have been already examined and that the case would be prolonged—If justified. *See* 1941 Dig., Col. 453. JUMO LAL BAKHSH *v.* EMPEROR. 197 I.C. 781=14 R.S. 119=43 Cr.L.J. 265.

——S. 257 (1)—Recall of prosecution witnesses for cross-examination—Accused, when may be allowed to. *See* 1941 Dig., Col. 453. KARAM DAD *v.* EMPEROR. 197 I.C. 446=43 Cr.L.J. 170=14 R.L. 249.

——S. 258 (1)—*Power of Magistrate—Complainant absent day after framing of charge—Acquittal of accused—Legality.*

Where a Magistrate has framed a charge, he cannot dismiss the case for default. Where on the day after the charge is framed, the complainant is absent, and the Magistrate passes an order purporting to be under S. 258 (1), Cr. P. Code, acquitting the accused, the order of acquittal is illegal and must be set aside. (*Horwill, J.*) VARADARAJULU CHETTY *v.* JANAKIRAMA CHETTY. 55 L.W. 240 (1)=203 I.C. 672= 1942 M.W.N. 444=A.I.R. 1942 Mad. 552 (1)= (1942) 1 M.L.J. 527.

——S. 260—Applicability—Offence under S. 504, I. P. Code—Procedure for trial. *See* CR. P. CODE, SS. 256 AND 260. (1942) 2 M.L.J. 101.

——Ss. 263 and 264—*Order of acquittal—Duty of Magistrate to give reasons—Omission to give reasons—If ground for interference.*

Ss. 263 and 264, Cr. P. Code, do not require that a Magistrate trying cases summarily should in case of acquittals give reasons for his acquitting the accused. It is only in cases of convictions that reasons have to be given. The fact that no reasons have been given for the acquittal is not a ground for interfering with an order of acquittal in revision or reference. (*Davies, C.J. and Weston, J.*) EMPEROR *v.* SUGNOMAL BHOJRAJ. I.L.R. (1941) Kar. 545=199 I.C. 119=14 R. S. 165=43 Cr.L.J. 473=A.I.R. 1942 Sind 52.

——S. 263 (h) (i)—Summary trial—Judgment—Reasons for sentence, if should be given. *See* 1940 Dig., Col. 482. PROVINCIAL GOVERNMENT, C. P. AND BERAR *v.* BHIVRAM. I.L.R. (1942) Nag. 143.

——S. 284—Trial with three assessors—Necessity—Discharge of one on the ground of personal knowledge of relevant facts—Continuation of trial with two—Legality. *See* CR. P. CODE, SS. 285 (1) AND 284. 1942 A.W.R. (H.C.) 3.

——Ss. 285 (1) and 284—*Scope and applicability of S. 285 (1)—Discharge of one of the three assessors on ground of personal knowledge of relevant facts—Trial with the aid of remaining two assessors—Legality.*

Sub-S. (1) of S. 285, constitutes an exception to S. 284, Cr. P. Code, and is confined in its operation only to cases where the assessor himself is prevented from attending the trial by reason of infirmity or some other physical disability. It does not contemplate a case where the trial judge himself discharges one of the assessors on the ground that he is disqualified from acting as an assesor because of the knowledge that he has concerning the facts in issue in the case. In view of the provisions of S. 284 it is imperative that a sessions trial must start with three assessors who are qualified to act as such. But when in fact only two were qualified to

CR. P. CODE (1898), S. 288.

act and the third was discharged and the trial proceeded with, with the help of the two alone, it is vitiated. (*Iqbal Ahmad, C.J. and Dar, J.*) SIPATTAR SINGH *v.* EMPEROR. **I.L.R. (1942) All. 182=199 I.C. 510=1942 A.L.J. 36=1942 O.A. (Supp.) 58=1942 A. Cr. C. 43=43 Cr.L.J. 486=14 R.A. 391=1942 A.W.R. (H.C.) 3=A.I.R. 1942 All. 140.**

——**S. 288**—*Case of murder—Circumstantial evidence—Statement before committing Magistrate—Witness not speaking truth before Sessions Judge—Power of Judge to act under S.* 288.

In a case of wife murder there was no direct evidence of the offence. The evidence of one witness proved the presence of the accused near where the deceased lady was found and another witness had deposed before the Committing Magistrate that she saw the accused running away immediately after she had heard cries from the deceased and that his clothes were stained with blood. In her evidence before the Sessions Judge however the latter witness denied that she was anywhere near the spot on the date of offence. The Judge held that the said witness was not giving true evidence before him and admitted her evidence before the Committing Magistrate under S. 288, Cr. P. Code.

Held, that there could be no legal objection to the Sessions Judge taking action under S. 288, Cr. P. Code, after he came to the conclusion that the witness was not giving true evidence before him. 4 C.W.N. 49; 7 C. W.N. 345, Cons. (*King and Happell, JJ.*) SHANMUGA KONE, *In re.* **203 I.C. 591=55 L.W. 519=1942 M.W.N. 489=A.I.R. 1942 Mad. 700=(1942) 2 M.L.J. 240.**

——**S. 288**—*Discretion—Statements made in committal Court—When to be admitted as substantive evidence in Sessions Court in preference to evidence given in Sessions Court—Rule.*

The question as to whether statements made in the Committing Magistrate's Court should be brought on record under S. 288, Cr. P. Code and be preferred as substantive evidence to statements made by the witnesses in the Sessions Court is a matter of prudence and not of law and when the statements made in the Committing Magistrate's Court appear to reason and experience to be in all probability true and the statements made in the Sessions Court appear to reason and experience to be in all probability untrue, it is not imprudent for the Sessions Judge to rely upon those statements made in the Committing Magistrate's Court, especially when there is corroboration of these statements by previous statements made under S. 164, Cr. P. Code. (*Davis, C.J. and Weston, J.*) DODO BAHADUR *v.* EMPEROR. **I.L.R. (1942) Kar. 299=203 I.C. 482=44 Cr.L.J. 73=A.I.R. 1942 Sind 139.**

——**S. 288**—*Statements admitted under—Evidentiary value—If can be corroborated by statements under S.* 164, *Cr. P. Code.*

Statements made in the Committing Magistrate's Court, when brought on the record under S. 288, Cr. P. Code, are as much evidence as statements made in the Sessions Court itself, and previous statements under S. 164, Cr.P. Code, made by the witnesses can be used just as much for the purpose of corroborating evidence given in the Committing Magistrate's Court as they can be used for the purpose of corroborating or contradicting evidence given in the Sessions Court. Once the Sessions Judge decides that the statements should be brought on the record as substantive evidence under S. 288, Cr.P. Code then as substantive evidence such statements can be corroborated by previous statements made under S. 164, Cr. P. Code. (*Davis, C.J. and Weston, J.*) DODO

CR. P. CODE (1898), S. 297.

BAHADUR *v.* EMPEROR. **I.L.R. (1942) Kar. 299=203 I.C. 482=44 Cr.L.J. 73=A.I.R. 1942 Sind 139.**

——**S. 288**—*Statement of witness before committing Magistrate transferred to Sessions Court—Use of—Such statement, if should be specifically put to witness—Evidence Act, Ss.* 145 *and* 155.

S. 288, Cr. P. Code, makes evidence transferred under that section substantive evidence for all purposes. The discretion is given to the Sessions Judge to transfer the statement made before a committing Magistrate to his own record. Once he has done so, the evidence before the committing Magistrate is as good as that recorded by himself and is useable for all purposes. It is not necessary that the statement should be specifically put to the witness before it could be used in evidence. The words "subject to the provisions of the Indian Evidence Act" appearing in S. 288, Cr. P. Code, cannot be read so as to limit the purpose for which the deposition may be used, and neither S. 145 nor S. 155 of the Evidence Act governs the position. (*Blacker and Ram Lall, JJ.*) MAHOMED SARWAR *v.* EMPEROR. **202 I.C. 340=15 R.L. 119=43 Cr.L.J. 828=44 P.L.R. 269=A.I.R. 1942 Lah. 215.**

——**S. 289**—*Duty of Judge—Judge inviting attention of jury to decisions in Law Reports—Propriety.*

It is undesirable and indeed improper for the Judge who is charging a jury to invite their attention to the decisions of cases reported in Law Reports. The jury being laymen are unlikely to understand the import of such decisions in the time available to them and it is no part of their business to do so. They have to take the law from the Judge and it is the duty of the Judge to the best of his ability to explain to them what the law in his opinion is. If the Judge considers it necessary in the heads of charge to note any case he had in mind in laying down the law, it is desirable that he should make it clear that the jury was not asked to consider it. (*Agarwala and Shearer, JJ.*) JANAK SINGH *v.* EMPEROR. **203 I.C. 159=9 B.R. 65=15 R.P. 158=43 Cr.L.J. 915=23 P.L.T. 699=A.I.R. 1942 Pat. 444.**

——**S. 289**—Duty of Judge—No evidence to go to Jury—Withdrawal of case from Jury—Discretion—Exercise of. *See* 1941 Dig., Col. 456. EMPEROR *v.* SULAIMAN AHMAD (DAWOOD HASHAM). **I.L.R. (1941) Bom. 515.**

——**S. 289 (2)**—Duty of Judge under—Offence not made out on facts found and evidence recorded—Duty to direct Jury to return verdict of not guilty—Reference to High Court after perverse verdict of guilty—Propriety. *See* 1941 Dig., Col. 456. CHITRAVELU THEVAR, *In re.* **43 Cr.L.J. 106=(1941) 2 M.L.J. 207.**

——**S. 296**—*Limits to the complainant's right to examine witnesses.*

It is clear from S. 296, Cr. P. Code that a complainant has a right to examine witnesses only till the accused is called upon to enter upon his defence. Hence he has no right to produce any evidence on the day on which the accused had been asked to produce his evidence. (*Agarwal, J.*) NOOR MOHAMMAD *v.* IMTIAZ AHMAD. **197 I.C. 839=14 R.O. 363=1942 A.Cr.C. 1=43 Cr. L.J. 280=1941 O.W.N. 1290=1941 A.W.R. (C.C.) 397=1941 O.A. 1008=A.I.R. 1942 Oudh 130.**

——**Ss. 297 and 423 (2)**—Charge to the jury—Directions on the question of law—Failure to give—Effect. *See* 1941 Dig., Col. 456. ISRAR HUSAIN *v.* EMPEROR. **17 Luck. 128.**

——**Ss. 297 and 423 (2)**—*Charge to jury—Reading out of written charge—Legality—If a misdirection.*

S. 297 Cr. P. Code does not say either that the charge should be reduced to writing or that it should be delivered *extempore*. The reading out of a written charge

CR. P. CODE (1898), S. 297.

therefore does not violate any provision of the section, nor does it amount to misdirection. Where the case is long and involved an *extempore* speech by way of charge to the jury is more likely to be confused and defective than one written out beforehand. A speech *extempore* is not by virtue of its delivery necessarily more effective than one read out. (*Niyogi and Gruer, JJ.*) MOTIRAM GANPATKOLI *v.* EMPEROR. **I.L.R. (1942) Nag. 775=203 I.C. 573=1942 N.L.J. 523=A.I.R. 1942 Nag. 126.**

——**S. 297**—*Charge to jury—Reference to standard text-book—Right of judge.*

A judge trying a case of murder is competent to refer to a standard text-book like Lyon's Medical Jurisprudence when dealing with the question whether the injury was homicidal or suicidal. In doing so he cannot be held to have misdirected the jury. (*Bartley and Lodge, JJ.*) ABU PRAMANIK *v.* EMPEROR. **199 I.C. 610=14 R. C. 636=43 Cr.L.J. 565=74 C.L.J. 423=A.I.R. 1942 Cal. 239.**

——**Ss. 297 and 423 (2)**—*Charge to Jury—Scope and contents of—Non-direction—Interference.*

The charge to the jury must be read as a whole, that if upon the general view taken the case has been fairly left to the jury's province and all the important salient points have been brought out, no interference should be made. The principal test which should be applied to determine the character of the charge is whether or not the Judge directed the attention of the jury to the essential points and the charge read as a whole is sound. Mere non-direction unless it amounts to misdirection should never be considered fatal to the charge. Failure to address the jury on every one of the suggestions made by the defence counsel is not non-direction. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck. 516=198 I.C. 714=14 R.O. 449=43 Cr.L.J. 416=1941 O.W.N. 1369=1942 A.Cr.C. 20=1941 A.W.R. (C.C.) 402=1941 O.A. 1018=A.I.R. 1942 Oudh 221.**

——**S. 297**—*Charge to jury—Separate dealing with regard to case of each accused—Limits of the rule.*

In cases where there are a large number of witnesses against each of the accused it may be advisable to deal with the case of each accused separately as it is likely to cause prejudice to the accused. Where the evidence is common to all the accused and is very brief, it is not necessary for the judge to keep on repeating the same evidence in the case of each accused. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck 516=198 I.C. 714=14 R.O. 449=43 Cr.L.J. 416=1941 O.W.N. 1369=1942 A. Cr. C. 20=1941 A.W.R. (C.C.) 402=1941 O.A. 1018=A.I.R. 1942 Oudh 221.**

——**Ss. 297 and 299**—*Charge to jury—Witness, if an accomplice—Necessity for corroboration—Proper direction.*

The question whether a witness is or is not an accomplice is a question for the jury to determine, and it would amount to a misdirection on the part of the judge to say that a witness is not an accomplice. The Judge ought to point out to the jury whether there is any corroborative evidence or not, and, if there is none, he should tell the jury so. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck. 516=198 I.C. 714=14 R.O. 449=43 Cr.L.J. 416=1941 O.W.N. 1369=1942 A. Cr.C. 20=1941 A.W.R. (C.C.) 402=1941 O.A. 1018 A.I.R. 1942 Oudh 221.**

——**Ss. 297 and 298**—Duty of Judge—Charge of rape—Failure of Judge to tell jury not to act on uncorroborated evidence of complainant—Non-direction—Effect on verdict. *See* PENAL CODE, S. 376. **44 Bom. L.R. 216 (F.B.).**

CR. P. CODE (1898), S. 297

——**Ss. 297 and 298**—*Duty of Judge—Charge to jury—Contents and frame of—Omission of trifle or failure to exhaustively enumerate all points in favour of the accused—If vitiates charge.*

In a jury trial the Judge must present the main case for the prosecution and for the defence fairly for the consideration of the jury. But this does not mean that he must in every particular and in every detail address himself to every suggestion put forward by the defence. His duty is fairly and candidly to point out the main and salient features of the case from the point of view of the prosecution and of the defence respectively. In doing so he is entitled to take into consideration the speeches made upon both sides by the Crown and by the accused's counsel, in considering his presentation of the evidence to the jury. It is for the appellate Court to construe the heads of charge as prepared by the Judge and to see if from such heads the Judge has fairly and properly directed the jury in point of law and whether he has fairly and properly reviewed the evidence in support of the prosecution and of the defence. Whers the Judge has taken pains to put fairly to the jury the defence of each of the several accused and the materials on the record bearing on it, a trifling omission or the fact that the enumeration of points in favour of the accused is not absolutely exhaustive ought not to be considered as vitiating the charge unless there is some reason to suppose that a different direction might have influenced the result. (*Varma and Rowland, JJ.*) RAMDEO SINGH *v.* EMPEROR. **21 Pat. 258=202 I.C. 381==15 R.P. 112=8 B.R. 879=43 Cr.L.J. 817=A.I.R. 1942 Pat. 481.**

——**Ss. 297 and 298**—Duty of Judge—Several persons charged with offences triable by jury and offences triable with Judge with aid of assessors—Duty to sum up evidence against each accused—Charges under Ss. 395, 148 and 460, I. P. Code, on same facts—Judge failing to place evidence against each accused or to express definite opinion as to credibility of witness—Verdict of guilty—Sustainability. *See* 1941 Dig., Col. 458. ARJUN PANDA *v.* EMPEROR. **21 Pat. 130=197 I.C. 647=8 B.R. 264=14 R.P. 367=43 Cr.L.J. 230 =1942 P.W.N. 124=23 P.L.T. 494=A.I.R. 1942 Pat. 199.**

——**S. 297**—Misdirection—Charge to jury—Attack on one party by some members of other—Omission on part of Judge to point out distinction between members who took part in attack and those who did not—Effect. *See* PENAL CODE, S. 149. **A.I.R. 1942 Pat. 444.**

——**S. 297**—*Misdirection—Infringement of S. 162.*

If a Judge in referring to the evidence of a prosecution witness who has deposed in Court entirely against the prosecution, tells the jury that had his statement to the Investigating Officer not been favourable to the prosecution it is unlikely that he would have been called, he in effect tells the jury what he had previously stated to the Investigating Officer. The summing up in this respect is a bad misdirection infringing the mandatory provisions of Ss. 161 and 162, Cr. P. Code. This misdirection in itself is sufficient to justify setting aside the conviction. (*Derbyshire, C.J. and Gentle, J.*) SITAL CHANDRA DUTTA *v.* EMPEROR. **202 I.C. 153=15 R.C 308=43 Cr.L.J. 797=46 C.W.N. 775=A.I.R. 1942 Cal 495.**

——**S. 297**—*Non direction—Hostile witness—Absence of reference to F. I. R.*

The only evidence in a murder case beyond the dying declaration of the deceased was the evidence of a witness who was examined under S. 164, but was declared hostile in the Sessions Court and cross-examined on the statement made under S. 164. No reference was made

CR. P. CODE (1898), S. 297.

in the charge to the jury to the details of the first information report filed by the deceased's brother who was alleged to have seen a person *A* with a dagger with which the deceased was killed. Although the dying declaration was recorded before arrival of investigating officer and although the doctor, who recorded it came back to the house during the investigation, the dying declaration was not made over to the investigating officer for four days after the date of the occurrence :

Held, that in the circumstances it was incumbent upon the Judge to emphasize to the jury to exercise a very considerable amount of caution before making up their minds to rely upon the statement of the witness upon whom even the prosecution did not rely to any considerable extent. The absence of any such direction in the charge must be held to have prejudiced the case of the accused. Similarly the failure to make a reference in the charge to the details of the first information report and the name of *A* and the failure to mention the delay in making over the dying declaration rendered the charge defective and the majority verdict of jury finding the accused guilty could not be sustained. (*Bartley and Mohamad Akram, JJ.*) MANIK GAZI *v.* EMPEROR. **197 I C. 815=14 R.C. 400=43 Cr.L.J.277=A.I.R. 1942 Cal. 36.**

——**S. 297**—*Non-direction—If amounts to misdirection.*

Mere non-direction is not necessarily misdirection. An accused alleging misdirection must show that something wrong was said or something was said which would make wrong that which was left to be understood. Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the prosecution and defence respectively. (*Varma and Rowland, JJ.*) RAMDEO SINGH *v.* EMPEROR. **21 Pat. 258=202 I.C 331=15 R.P. 112=8 B.R. 879=43 Cr. L.J. 817=A.I.R. 1942 Pat. 481.**

——**S. 297**—*Proper direction—Circumstantial evidence.*

In a case where the whole evidence is circumstantial, the jury should be warned that unless they are in a position to say that the circumstances all pointed only to the guilt of the accused and to nothing else and that they are not at all consistent with his innocence, they should not find against the accused. (*Akram and Pal, JJ.*) EMPEROR *v.* NAIBULLA. **200 I.C. 604=15 R.C. 374 =75 C.L.J. 10=43 Cr.L.J. 860=46 C.W.N. 108= A.I.R. 1942 Cal. 524.**

——**S. 297**—*Proper direction—First information report.*

However important the first information report may be, either from the point of view of the prosecution or of the defence, it should not be admitted in evidence or placed before the jury unless it is admissible under one of the provisions of the Evidence Act. If, however, it is admissible, it should be placed before the jury with proper directions. Ordinarily such a report is not substantive evidence, but, if the first informant had died before the matter came before the Court, it is admissible under S. 32 (1) of the Evidence Act. In such a case the jury should be informed that the first information report is admissible as a substantive piece of evidence under that provision, and at the same time they should be reminded that the statement in question had not been made on oath nor had it been tested by cross-examination, but that after bearing these points in mind, it would be for the jury to attach to it such weight as they considered necessary. (*Edgley and Akram, JJ.*) EMPEROR *v.* MAHOMED SHAIKH. **I.L.R. (1942) 2 Cal. 144.**

CR. P. CODE (1898), S. 337.

——**Ss. 297 and 423 (2)**—*Scope and object of summing up—Verdict, interference in appeal—Misdirection and non-direction.*

The object of summing up under S. 297, Cr. P. Code, is to place before the jury the facts and circumstances of the case both for and against the prosecution so as to help them in arriving at a right decision on the points which arise for their consideration. S. 423 (2) of Cr. P. Code renders the verdict of a jury erroneous when it is due to a misdirection by the Judge. It does not speak of non-direction. It is therefore obvious that mere non-direction unless it amounts to misdirection cannot invalidate the charge. "It is no misdirection not to tell the jury everything which might have been told them. Again, there is no misdirection unless the Judge has told them something wrong or unless what he has told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood". Hence non-direction must be of such a nature as would have the positive result of misleading the jury. (*Niyogi and Gruer, JJ.*) PROVINCIAL GOVERNMENT, C. P. AND BERAR *v.* RAGHURAM. **I.L.R. (1942) Nag. 749 =203 I.C. 214=44 Cr.L.J. 18=1942 N.L.J. 491=A. I.R. 1942 Nag. 127.**

——**S. 298**—*Duty of Judge—Explanation of law—Sufficiency—Test to decide—Appellate Court—If can go behind statement of trial Judge saying that the relevant sections have been explained.*

Whether the statement of the law by the Judge in a particular case is adequate or not must depend on the facts of the particular case and the points which arise for determination; the question is whether there has been a danger of the jury being misled.

Varma, J.—In a case of dacoity where the Judge has explained Ss. 391, 390, 378 and Ss. 22, 23 and 24 the Penal Code, not much is left except explaining the definitions by illustrations. When the Sessions Judge says that he explained the relevant sections to the jury, it would not be proper for the appellate Court to hold that his explanations were erroneous, unless it is definitely pointed out by the party impeaching the charge. (*Varma and Rowland, JJ.*) RAMDEO SINGH *v.* EMPEROR. **21 Pat. 258=202 I C. 331=8 B.R. 879=15 R.P. 112=43 Cr.L.J. 817=A.I.R. 1942 Pat. 481.**

——**Ss. 303 and 304**—*Scope—Power of Judge to recharge jury and to ask them to reconsider verdict.*

A Sessions Judge is not obliged to accept an absurd verdict, and he can give fresh instructions to the jury and ask them to retire and to re-consider their verdict. (*Rowland and Manohar Lall, JJ.*) JANAK SINGH *v.* EMPEROR. **197 I.C. 504=8 B.R, 237=43 Cr.L.J. 205=14 R.P. 334=23 P.L.T. 707=1942 P.W.N. 119 =A,I,R. 1942 Pat. 446.**

——**S. 337 (2-A)**—*Person accepting pardon disclaiming knowledge of offence—Effect of—Right of accused to trial by Sessions Court or High Court.*

In the course of his evidence, the person to whom pardon has been tendered may disclaim any connection with or knowledge of the offence, but this does not mean that the tender of pardon thereby ceases to be effectual. It may be that the witness by his evidence renders himself liable to forfeiture of the pardon and to a subsequent prosecution, but so far as the accused then being tried is concerned, his position and his right to trial by the Sessions Court or by the High Court are not dependent upon the nature of the evidence given by the person who has accepted the pardon. The words of S. 337 (1), Cr. P. Code, are that a pardon is tendered to

CR. P. CODE (1898), S. 342.

a person "supposed" to have been directly or indirectly concerned in or privy to the offence, and even if the supposition turns out to be ill-founded, the operation of other clauses of the section will remain uneffected. (*Davis, C. J. and Weston, J.*) DOST MAHOMED *v.* EMPEROR. I.L.R. (1942) Kar. 69=200 I.C. 728=15 R.S. 1=43 Cr.L.J. 707=A.I.R. 1942 Sind 100.

——S. 342—Applicability—Additional evidence taken under S. 428. *See* 1940 Dig., Col. 493. NATHU SINGH *v.* EMPEROR. I.L.R. (1942) Nag. 34.

——S. 342—*Form of questions to be put to accused.*

S. 342 does not intend that the Magistrate should question the accused on all points in the prosecution case nor, permit the Magistrate to cross-examine the accused. The Magistrate is not supposed to review the prosecution case from the beginning to the end and to put one by one the points in the prosecution case to the accused, and to question the accused upon them. The words "question him generally" in S. 342 do not mean that the questions should be of a general nature. The questions should refer generally to the case, but should relate to particular points in the case. The general question "What have you to say about the prosecution case" does not satisfy the provisions of S. 342 (1). (*Davis, C.J.*) BHAGWAN DAS *v.* EMPEROR. I.L.R. (1942) Kar. 112=202 I.C. 206=43 Cr.L.J. 799=15 R.S. 33 =A.I.R. 1942 Sind 102.

——S. 342—*Non compliance with provisions of—Interference with conviction—When justified.*

No omission to comply strictly with S. 342 can render a conviction liable to be set aside unless it has in fact occasioned a failure of justice within the meaning of S. 537, Cr. P. Code. Prejudice to accused cannot be presumed. (*Bennett, J.*) RAM UDIT *v.* JAGANNATH. 200 I.C. 90=43 Cr. L.J. 503=14 R.O. 597=1942 A. W.R. (C.C.) 204=1942 O.W.N. 303=1942 A. Cr. C. 91=1942 O.A. 216=A.I.R. 1942 Oudh 342.

——S. 342—Omission to examine accused after charge—Illegality. *See* 1941 Dig., Col. 461. GHAUS MAHOMED *v.* EMPEROR. 197 I.C. 413=43 Cr.L.J. 165=14 R.L. 250.

——S. 342—*Scope—Accused examined after prosecution witnesses' examination in proceedings under Ch. VIII—Filing of written statement by one accused—Others adopting same—Withdrawal of statment and filing of fresh statement reproducing original matter except objectionable matter—Fresh examination—Necessity for.*

In proceedings under Ch. VIII, Cr. P. Code, against three accused against whom orders under S. 112, Cr. P. Code, had been passed, the accused were examined under S. 342 after the prosecution examination of the witnesses. The 1st accused put in a written statement and the others merely relied on the written statement filed by the 1st. This written statement was withdrawn the next day as it was objected to by the Public Prosecutor on the ground that it contained scandalous matter, and another written statement signed by the 1st accused alone was substituted, which contained identically the same matter as the first except that the scandalous matter was omitted. It was contended that the accused should have been examined again under S. 342 in respect of the second written statement and that since they were not so examined, the proceedings were irregular.

Held, that the omission to examine the accused again was no doubt a technical defect, but it was difficult to conceive that any possible prejudice had resulted therefrom. Since the second written statement was a reproduction of the original statement with the omission of the objectionable matter, it was certainly not necessary that the magistrate should again examine the accused under

CR. P. CODE (1898), S. 344.

S. 342, Cr. P. Code and that the irregularity was very trivial. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.

——S. 342—Scope—Examination of prosecution witness after charge—Omission to examine accused thereafter—Effect on trial. *See* 1941 Dig., Col. 461. MAHOMED ABDUL WAHEB *v.* EMPEROR. 199 I.C. 52=14 R.M. 552=43 Cr.L.J. 452.

——S. 342—*Scope—Failure to question accused on vital point — Effect — Miscarriage of justice—If curable.*

The fact that an accused puts in a written statement does not absolve the Magistrate of the duty imposed upon him by S. 342. S. 342 must operate whether the accused filed a written statement or not and the practice of filing a written statement should not be encouraged, as it tends to defeat the object of the section. Where the Magistrate has omitted to question the accused as required by S. 342 on a crucial point on which alone he has been convicted, merely relying upon the omission by the accused of any explanation on that crucial point in his written statement the omission to question the accused on the crucial point under S. 342 amounts to a miscarriage of justice within S. 537. (*Davis, C. J.*) BHAGWANDAS *v.* EMPEROR. I.L.R. (1942) Kar. 112=202 I.C. 206=43 Cr.L.J. 799=15 R.S. 33=A.I.R. 1942 Sind 102.

——S. 342—*Statement made in previous trial—Admissibility.*

A statement made by an accused person under S. 342, Cr. P. Code, in a previous trial can be admitted in evidence in a subsequent trial for the same offence, as the line of defence taken by him in the previous trial is a relevant fact. (*Lodge and Pal, JJ.*) AYUB ALI *v.* EMPEROR. 200 I.C. 328=15 R.C. 64=43 Cr.L.J. 693=74 C.L.J. 547=A.I.R. 1942 Cal. 277.

——S. 344—Adjournment *sine die*—Legality of Order. *See* 1941 Dig., Col. 461. EMPEROR *v.* EBRAHIM. 199 I.C. 269=43 Cr.L.J. 539=14 R.C. 554=A.I.R. 1942 Cal. 219.

——S. 344 — Applicability — Adjournment under S. 526 (8) on accused intimating intention to move for transfer—Power of Magistrate to order payment of costs of the day to prosecution. *See* 1941 Dig., Col. 462. VENKATARAMA CHETTI, *In re.* I.L.R. (1942) Mad. 661=199 I.C. 54=14 R.M. 522=43 Cr.L.J. 454= 1942 M.W.N. 384=A.I.R. 1942 Mad. 178=(1941) 2 M.L.J. 854.

——S. 344—*Order adjourning case sine die—Legality—Adjournment granted for giving complainant opportunity to collect evidence—Magistrate directing police investigation—If proper.*

There is no warrant in the Criminal Procedure Code for an adjournment of the hearing of a case *sine die*. It is no doubt open under S. 344, Cr. P. Code, to a Magistrate to adjourn the enquiry to a given date for any reasonable cause which may no doubt cover a case in which he considers that the complainant should be given an opportunity to collect evidence; but under such circumstances it will be for the complainant to take such action and not for the Magistrate to direct the complainant to go to the police or to direct the police to start a separate investigation. An adjournment for such a purpose should however only be sparingly granted, and will not affect the Magistrate's duty to proceed with the hearing according to law, after the adjournment. (*Young, C.J. and Sale, J.*) KEHR SINGH *v.* KIRPAL KAUR. 202 I.C. 609=15 R.L. 154=43 Cr.L.J. 865 =44 P.L.R. 401=A.I.R. 1942 Lah 256.

CR. P. CODE (1898), S. 344.

——**S 344**—*Powers of magistrate—Stay of trial—Grounds—Pendency of civil suit in superior Court—If sufficient—Order from superior Court—If necessary.*

Under S. 344, Cr.P. Code a magistrate trying a criminal case has himself jurisdiction to adjourn the trial before him for any reasonable cause; the pendency of a civil suit between the parties, in which an issue is to be tried identical with one arising in the criminal case is a reasonable cause. The fact that the civil suit is pending in the Chief Court does not deprive the magistrate of his power to stay the trial until an order is made for stay by the Chief Court. (*Weston and Tyabji, JJ.*) MOTI RAM *v.* EMPEROR. **I.L.R. (1942) Kar. 193=A.I.R. 1943 Sind 10.**

——**Ss. 344, 439 and 561-A**—*Stay under S. 344—Discretionery—Revision.*

Chief Court has power to interfere with an order under S. 344, Cr. P. Code, whether under S. 439 or S. 561-A, Cr. P. Code. The question of stay of proceedings under S. 344 is a matter of discretion and interference might be justified only if it has been exercised unwisely. (*Bennett, J.*) SHATRUNJAYA SINGH *v.* D. S. SAXENA. **1942 O.W.N. 496=1942 O.A. 395=1942 A.W.R. (C.C.) 315.**

——**S. 345**—Complaint or police report mentioning offence under S. 448 read with S. 117, I. P. Code—Facts disclosing offence under Ss. 143 and 117, I. P. Code—Order allowing compounding of offence under S. 448 but refusing offence under S. 143 to be compounded—Legality—S. 117—If includes S. 143—Complaint—Construction. *See* 1941 Dig., Col. 462. AGHA NAZARALI SULTAN *v.* EMPEROR. **43 Cr.L.J. 68.**

——**S. 345 (5)**—Applicability—Offence under S. 345 (1)—Refusal of application to compound on ground of offence falling under S. 345 (2)—Conviction—Appeal—Appellate Court finding offence falling under S. 345 (1) while writing judgment—Power to allow compounding—Procedure. *See* 1941 Dig., Col. 463. AKAN SABZALI *v.* EMPEROR. **197 I.C. 868=14 R.S. 129=43 Cr.L.J. 293.**

——**S. 346**—*Case submitted under*—De novo *trial—Duty of Magistrate to hold.*

If a case is submitted by a Magistrate to the District Magistrate under S. 346, Cr. P. Code, the District Magistrate or the Magistrate to whom the case has been assigned by him is bound to hold a *de novo* trial. A conviction based on evidence partly recorded by the Magistrate, who originally tried the case, and partly recorded by the Magistrate to whom the case was sent for trial under the section is illegal. (*Tek Chand, J.*) GURA *v.* EMPEROR. **203 I.C. 178=43 Cr.L.J. 925=44 P.L.R. 455.**

——**S. 346 (2)**—*Superior Magistrate—No power to revise view of referring Magistrate and send case back to him.*

A superior Magistrate to whom a case is submitted under S. 346 (1) of the Cr. P. Code, is empowered under S. 346 (2) to—(1) try the case himself, if the offence can be tried by him or (2) refer it to any Magistrate subordinate to him having jurisdiction, or (3) commit the accused for trial. He cannot revise the opinion of the subordinate Magistrate who has submitted the case and refer the case back to that very Magistrate. The superior Magistrate acting under S. 346, is not a revising or appellate authority. He must assume the case presented in the report submitted to him as correct for the purpose of dealing with it under S. 346 (2). "Any Magistrate subordinate to him" in S. 346 (2) means a Magistrate other than the one who made the reference or report, and competent to deal with the case as submitted. (*Broomfield and Wassoodew, JJ.*) HAIDARSHA

CR. P. CODE (1898), S. 350-A.

LALSHA *v.* DHONDU ABAJI. **I.L.R. (1942) Bom. 198=199 I.C. 351=14 R.B. 381=43 Cr.L.J. 562=44 Bom.L.R. 53=A.I.R. 1942 Bom. 84.**

——**Ss. 349 (1) and (2)**—*Sub-Magistrate finding accused guilty and submitting proceedings to Sub-divisional Magistrate on ground that order under S. 106, Cr. P. Code, was necessary—Superior Magistrate—If can say that such order was unnecessary and send case back.*

A Sub-Magistrate found an accused guilty of an offence under S. 324, I.P. Code, but as he thought that an order under S. 106, Cr. P. Code, had to be passed against him and he himself had no power to do so, he submitted the proceedings and forwarded the accused to the Sub-divisional Magistrate under S. 349 (1), Cr. P. Code.

Held, that the Sub-divisional Magistrate had no power to send the case back saying that order under S. 106 was unnecessary but was bound to dispose of the case himself under S. 349 (2), Cr. P. Code, though he was not obliged to pass an order under S. 106, Cr. P. Code. (*Horwill, J.*) SUDALAMADAKUDAMBAN, *In re.* **199 I.C. 50=14 R.M. 549=55 L.W. 40 (1)=1942 M.W.N. 124 (2)=43 Cr.L.J. 457=A.I.R. 1942 Mad. 281 (2)=(1942) 1 M.L.J. 48.**

——**S. 350**—*Passing order or judgment after handing over charge to successor—Pronouncing of order by successor—Legality.*

Where a Magistrate who has heard the case is transferred and hands over charge to his successor before passing any order or judgment, he cannot thereafter write the order or judgment and have it pronounced by his successor, as he had ceased to have jurisdiction to deal with the case, S. 350 does not authorise the successor in office to pronounce the order passed by his predecessor in office. (*Niyogi, J.*) EMPEROR *v.* PHULCHAND **1942 N.L.J. 302.**

——**S. 350 (1)**—Case retransferred to original Magistrate—*De novo* trial—If can be demanded. *See* 1941 Dig., Col. 464. GHAUS MAHOMED *v.* EMPEROR. **197 I.C. 413=14 R.L. 250=43 Cr.L.J. 165.**

——**S. 350 (1), Proviso (a)**—Construction and relative scope—Re-commencement of trial by Magistrate and commencement under proviso re-summoning witnesses—Distinction—Effect on charge already framed. *See* 1941 Dig., Col. 465. PIR MOOSAJAN *v.* BACHAYO SILU. **43 Cr.L.J. 82.**

——**S. 350 (1), Proviso (a)**—Right of accused—Accused recalling witnesses but not desiring to examine all—Discretion of Magistrate to examine all. *See* 1941 Dig., Col. 465. PALAYAN, *In re.* **I.L.R. (1942) Mad. 410=197 I.C. 583=14 R.M. 373=43 Cr.L.J. 218=(1941) 2 M.L.J. 401.**

——**S. 350 (3)**—*Applicability—Sessions Judge acting under S. 123 (3).*

Weston, J.—S. 350 (3) Cr. P. Code, does not apply to a case where a Sessions Judge acts under S. 123 (3). (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**S. 350-A**—*Scope of—Conviction by Bench of two Magistrates of whom one who had not heard the case throughout—Legality.*

The legality of a conviction by a Bench of two Magistrates of whom one had not heard the case throughout, cannot be questioned later on where the accused when asked whether they wanted a *de novo* trial had replied that they did not want it. (*Allsop, J.*) HAR NARAIN *v.* EMPEROR. **1942 A.L.W. 546=1942 A.W.R. (H.C.) 325 (1)=1940 A.L.J. 609=1942 A.Cr.C. 184=A.I.R. 1943 All. 20.**

CR. P. CODE (1898), S. 351.

——— **S. 351**—*Scope—If subject to S.* 193 *—Sessions trial—Person present in Court against whom no proceedings have been taken or inquiry held—Addition as co-accused in trial—Jurisdiction of Sessions Judge to direct.*

S. 351, Cr.P. Code must be read subject to S. 193 Cr. P.Code. A Sessions Judge holding a trial has consequently no jurisdiction to join or add as a co-accused in the trial before him a person present in Court but against whom no proceedings had hitherto been taken when no inquiry of any sort had been held by a magistrate into charges against him. The cognizance taken by a Court of Session is, as shown by S. 193, not merely cognizance of the offence, but is restricted to the "accused" in respect of whom an order of commitment has been made by a competent magistrate. (*Davis, C. J. and Weston, J.*) MIR FATEH KHAN *v.* EMPEROR. **I L.R. (1942) Kar. 323 = 204 I.C. 31 = A I R 1942 Sind 161.**

———**Ss. 356 (2) and 357**—*Evidence recorded in English—Authenticated translation—Necessity for.*

S. 356 (2) is governed by S. 357, Cr. P. Code. Under the proviso to S. 357 and in virtue of orders issued by the Provincial Government in Bengal all evidence in whatever language it is given is to be recorded in the English language. Therefore, if a witness happens to depose in English, there is no occasion to call in aid the provisions of sub S. (2) of S. 356 to justify recording that evidence in English and hence the requirement of that sub-section of an authenticated translation of such evidence in Bengali cannot operate. (*Lodge and Roxburgh, JJ.*) NABI RASOOL *v.* EMPEROR. **I.L.R. (1942) 2 Cal. 136 = A.I.R. 1943 Cal. 32.**

———**Ss 366, 367 and 537**—*Sentence passed without recording judgment—Legality.*

Under Ss 366 and 367, Cr. P. Code, the Court must record a proper judgment and date and sign it at the time of pronouncing it and passing the sentence. It is consequently illegal for a Magistrate to pass a sentence without recording a judgment. S. 537, Cr. P Code, however, applies to such a case and if the accused had deliberately waived his objection to the procedure of the Magistrate, he may be taken to have admitted that there had been no prejudice to him. (*Bhide, J.*) GULLA *v.* EMPEROR. **200 I C. 106 = 14 R.L. 465 = 43 Cr L J. 619 = 44 P.L R. 38 = A.I.R. 1942 Lah. 100.**

———**S. 367**—Duty of Court—Accused of or above 16 years age convicted of murder—If ground for not passing sentence of death. *See* CRIMINAL TRIAL—SENTENCE. **55 L.W. 552 = (1942) 2 M.L J. 312.**

———**Ss. 367 and 424**—*Judgment of appellate Court—Contents.*

A judgment of an appellate Court setting out the case of the accused and the prosecution and then dealing with the evidence of both sides, is a legal judgment. (*Agarwal, J.*) DEBI DAYAL *v.* EMPEROR. **201 I C 791 = 15 R.O. 110 = 1942 A.W.R. (C.C.) 286 = 1942 A.Cr.C. 143 = 43 Cr L.J. 781 = 1942 O.A. 332 = 1942 O W.N. 440 = A I.R. 1942 Oudh 444.**

———**S. 367**—*Scope—Non-compliance—Effect—Duty of appellate Court.*

Disregard of the provisions of S. 367, Cr. P. Code is a grave irregularity although it is doubtful whether such disregard is a mere irregularity and not an illegality. It is even more essential that an appellate Court should give reasons for its orders than that the trial Court should do so. The High Court acting in revision from an order made in an appeal has to be satisfied that the appeal was properly disposed of as well as heard (*Horwill, J.*) APPADU, *In re.* **55 L.W. 720 = 1942 M.W.N. 818 (1) = A.I.R. 1943 Mad. 942 (1) = 662 M L.J. 580.**

CR. P. CODE (1898), S. 397.

———**Ss. 367 and 369**—*Slip in pronouncing judgment—Power of Magistrate to correct.*

A pronouncement that is not in accord with the signed judgment is not pronouncement of the judgment and has no validity; consequently a Magistrate who makes a slip in pronouncing judgment can correct it subsequently. (*Horwill, J.*) PATTABHIRAMAYYA, *In re.* **203 I.C. 461 = 55 L.W. 517 = 1942 M.W.N. 581 = 44 Cr L J. 5 = A.I.R. 1942 Mad 668 = (1942) 2 M.L J. 278.**

———**S. 367 (1)**—Duty of Court—Disposal of appeal under S. 424—Accused on bail and absent—Counsel also absent—Dismissal of appeal without giving reasons—Legality. *See* CR. P. CODE, S. 424. **(1942) 2 M L J. 579.**

———**S. 369**—Bench Court—Power to review or rectify errors in judgment Illegal disposal of case by Bench of Magistrates—Subsequent review and re hearing—Legality. *See* 1941 Dig., Col. 465. NARAYANASAMI *v.* NARAYYA. **198 I.C. 515 = 14 R M. 491 = 55 L.W. 30 (2) = 43 Cr.L J. 401 = 1942 M.W.N. 428 = A.I.R. 1942 Mad. 240 = (1941) 2 M.L J. 1049.**

———**S 370 (1)**—*Scope—Duty of Magistrates under—Conviction—Judgment merely saying that prosecution witnesses are believed—If proper judgment.*

Although when there are no defences it would be sufficient if the Magistrates say that they believe the the prosecution witnesses, when there is defence evidence which is inconsistent with the prosecution story, some brief reasons should also be given why the defence evidence should be discredited. (*Horwill, J.*) DAKSHINAMURTHI, *In re.* **202 I.C. 603 = 15 R.M 535 = 43 Cr.L J. 859 = 55 L.W. 467 = 1942 M.W.N. 441 = A I R. 1942 Mad 603 = (1942) 2 M.L.J. 146.**

———**Ss. 376 and 423**—*Power of High Court—Appeal by accused successful—Retrial, if should be directed.*

Obiter.—The power conferred on the High Court on a reference under S. 374, Cr. P. Code, to convict the accused on its own appreciation of facts, is subject to the result of the appeal, if any, filed by the accused under S. 418, Cr. P. Code. If in the appeal the accused makes out his grounds of appeal and thus succeeds in having the conviction set aside, there will be nothing before the High Court for confirmation under S. 376 (*a*). An order of re-trial by the jury would be the only course left to the High Court on such an occasion, if it does not acquit or discharge the accused. (*Akram and Pal, JJ.*) EMPEROR *v.* NAIBULLA. **202 I.C. 604 = 15 R. C. 374 = 43 Cr.L.J 860 = 75 C.L J. 10 = 46 C.W.N. 108 = A I R. 1942 Cal. 524.**

———**S. 380**—Applicability—Police Patel acting under S. 14, Bombay Village Police Act—If "Criminal Court"—Right of accused to appear by pleader in proceeding before Patel. *See* BOMBAY VILLAGE POLICE ACT, S. 14. **44 Bom.L.R. 442.**

———**S. 397**—*Separate sentences on two convictions—One to start on expiration of other—Setting aside of first conviction and sentence—Effect—Second sentence—Date of commencement—Date of conviction or date of reversal of first conviction—Bombay Jail Manual, R.* 392.

Prima facie R. 392 of the Bombay Jail Manual is invalid. It is not the function of the jail authorities to determine the length of a sentence passed upon a prisoner. Where a person has been convicted of two offences and given separate sentences on each, the second to commence on the expiration of the first, and the first of those convictions is subsequently set aside, with the result that there is no sentence of that Court, the necessary result is that the second sentence of the Court which is upheld will commence from the date when that sentence was imposed, *i.e.* from

CR. P. CODE (1898), S. 397.

the date of the conviction, and not from the date on which the 1st sentence was set aside. (*Beaumont, C.J. and Wassoodew, J.*) EMPEROR *v.* BABIBAI 204 I.C. 23=44 Bom.L.R. 807=A.I.R. 1942 Bom. 342.

——S. 397, Second Proviso—Scope—Order directing substantive sentence of imprisonment to take effect after sentence under S. 123—Legality. *See* 1941 Dig., Col. 466. KORA VATHAN, *In re.* 197 I.C. 867=14 R.M. 404=43 Cr.L.J. 303=(1941) 2 M.L.J. 694.

——S. 403—Applicability—Prosecution on three specific acts of misappropriation—Acquittal—Subsequent prosecution in respect of other specific and distinct acts of misappropriation—If barred. *See* 1941 Dig., Col. 466. MAYADHAR SWAIN *v.* NETRANANDA MAHANTY. 197 I.C. 832=14 R.P. 375=8 B.R. 308=43 Cr.L.J. 286.

——S. 403—*Applicability—Security proceedings.*

S. 403, Cr. P Code, which embodies the principle of *autrefois acquit*, does not apply to proceedings for taking security either under S. 107 or 110, as there is no conviction of any offence. (*Blacker and Ram Lall, JJ.*) SUBEG SINGH *v.* EMPEROR. 199 I.C. 532=14 R.L. 431=43 Cr.L.J. 564=44 P.L.R. 71=A.I.R. 1942 Lah. 84.

——S. 403—Applicability—"Trial and acquittal"—What amount to—Summons case—Absence of complainant at adjourned hearing—Acquittal—Effect of—Bar of fresh complaint and trial. *See* CR. P. CODE, SS. 247 AND 403. (1942) 2 M.L.J. 221.

——S. 403—*Conviction under S. 420, I. P. Code—If bars trial under S. 409, I. P. Code.*

The conviction of a person under S. 420, I. P. Code does not bar second trial for an offence under S. 409, I. P. Code. Where the offence of embezzlement is quite distinct from the offence under S. 420 and where the accused could not have been tried in the former trial for that offence. (*Agarwal, J.*) RAMNATH DAVE *v.* EMPEROR. 202 I.C. 382=15 R.O. 123=1942 O.W.N. 485=1942 A.W.R. (C.C.) 295=1942 A. Cr. C. 151=43 Cr.L.J. 830=1942 O.A. 341=A.I.R. 1942 Oudh 473.

——Ss. 403 and 258—*Cross-cases—Order of acquittal in one on conviction in the other—Conviction set aside on appeal—Further trial of accused in former case—If barred.*

A Magistrate before whom two cross-cases were pending, recorded evidence in one of them and convicted the accused in that case, and then in view of the judgment passed in that case acquitted the accused in the other under S. 258, Cr. P. Code. On appeal, the conviction was set aside and the Magistrate thereupon revived the second case holding that in his former order the wording "acquitted" meant only discharged under S. 259, Cr. P. Code.

Held, that the order of acquittal was passed by a Court of competent jurisdiction even though it was passed after an irregular procedure, and as such that order could not be set aside by the Magistrate who passed it, nor could it be treated by him as a nullity nor as an order different from the one which he had passed, and that S. 403, Cr. P. Code, was a bar to a further trial of the accused in the second case on the same facts. (*Lodge and Roxburgh, JJ.*) NAWABALI HAZI *v.* KHATUN BIBI. 46 C.W.N. 1027.

——S. 403—Scope—Charge of cheating under S. 420, I. P. Code—Acquittal—If bar to prosecution under S. 120-B on charge of conspiracy to commit series of acts of cheating. *See* 1941 Dig., Col. 467. EMPEROR *v.* GOURISHANKAR BOHIDAR. 43 Cr.L.J. 44=A.I.R. 1942 Pat. 58=22 P.L.T. 825.

CR. P. CODE (1898), S. 415.

——Ss. 407 and 413—*Applicability—Trial—If includes judgment—Trial commenced by Magistrate with second class powers—Magistrate invested with first class powers before judgment—Sentence of fine of Rs. 20—Right of appeal.*

The petitioners were charged under S. 379, I. P Code and the trial opened before a Magistrate with second class powers on 11th March, 1941 and after subsequent hearings and conclusion of arguments was adjourned to 27th June 1941. On 10th May, 1941, the Magistrate was invested with first class powers. On 27th June, 1941, the Magistrate delivered judgment convicting the accused and ordering them to pay a fine of Rs. 20 each. The District Magistrate before whom an appeal was preferred took the view that as the Magistrate was invested with first class powers before he delivered judgment the forum of appeal was the Court of Session and not the Court of the District Magistrate. The Sessions Judge held that as the sentence of fine was one of Rs. 20 only, no appeal lay.

Held, (1) that the judgment was no part of the trial, and the trial must therefore be considered to have been held by a Magistrate of the second class for purposes of S. 407, Cr. P. Code; (2) that although the trial must be taken to have been held by a Magistrate of the second class, the sentence was passed by a Magistrate of the first class, and being a sentence of Rs. 20 only, no appeal lay in view of S. 413, Cr. P. Code. (*Agarwala, J.*) DRONANDAN MAHTON *v.* CHALITAR MAHTON. 197 I.C. 87=8 B.R. 150=43 Cr.L.J. 7=22 Pat.L.T. 963=A.I.R. 1942 Pat. 107

——S. 407 (1) and (2)—Applicability—Appeal under S. 486 (1) against sentence under S. 480—Transfer by District Magistrate to first class Magistrate—Jurisdiction of latter to hear appeal. *See* 1941 Dig., Col. 467. D. K. REDDY, *In re.* I.L.R. (1942) Mad. 181=198 I.C. 549=14 R.M. 484=43 Cr.L.J. 397=A.I.R. 1942 Mad. 181=(1941) 2 M.L.J. 852.

——S. 409—Order of compensation out of fine—Misappropriation of Bank's money—Order for payment of fine if recovered to creditor of Bank at whose instance prosecution started—Propriety. *See* 1941 Dig., Col. 468. MARUDAMUTHU PILLAI *v.* EMPEROR. 198 I.C. 765=14 R.M. 504=1942 M.W.N. 54=43 Cr.L.J. 425.

——S. 413—Applicability—Trial commenced by Magistrate of second class—Subsequent investment of first class powers—Sentence of fine of Rs. 20—Appeal—If lies. *See* CR. P. CODE, SS. 407 AND 413. 22 Pat. L.T. 963.

——S. 415—*Applicability—Three fines under three separate sections of the Indian Penal Code.*

Different sentences of fine under different sections of the Penal Code do not amount to a sentence under S. 415, Cr. P. Code, by which two or more punishments were combined so as to give a right of appeal under that section. (*Allsop, J.*) LALJI *v.* EMPEROR. 1942 A.L.W. 554=1942 A.W.R. (H.C.) 322=1942 A.L.J. 607=1942 A.Cr.C. 188=A.I.R. 1943 All. 18.

——S. 415—Interpretation. *See* 1940 Dig., Col. 501. PROVINCIAL GOVERNMENT, C. P. AND BERAR *v.* BHIVRAM. I.L.R. (1942) Nag. 143.

——S. 415—*Interpretation—Applicability—"Any two or more punishments therein mentioned"—Meaning.*

In view of the history of Ss. 413 and 414, Cr.P. Code, as they originally stood before the amendments made in them in 1923 it is plain that the phrase "any two or more of the punishments therein mentioned" in S. 415 refers to two or more of the punishments of different kinds. S. 415 has no application in a case in which two appealable sentences of fine have been passed and the aggregate of fine does not exceed Rs. 50. (*Ganga Nath,*

CR. P. CODE (1898), S. 417.

J.) GORAKH PRASAD *v.* EMPEROR. **200 I.C. 768 = 15 R. A. 44 = 1942 A.W.R. (H. C.) 125 = 1942 A. Cr. C. 105 = 43 Cr L.J. 716 = 1942 A.L.J. 295 = 1942 A. L.W. 295 = A.I.R. 1942 All. 336.**

——**S. 417**—Acquittal — Appeal—Interference by High Court—Principles. *See* MADRAS DISTRICT MUNICIPALITIES ACT, S. 182. (1942) 1 M.L.J. 586.

——**S. 417**—*Acquittal—Interference—Grounds—Magistrate misappreciating and misinterpreting or failing to understand evidence—If justifies interference.*

Where the Magistrate or Court trying the case has entirely misappreciated the position and misinterpreted or failed to understand the evidence in the case in respect of a particular aspect of the case relating to a specific charge, the High Court will interfere with and set aside an order of acquittal. (*Lobo and Tyabji, JJ.*) EMPEROR *v.* PINILADHO SHAH. **I.L.R. (1941) Kar. 532 = 199 I.C. 78 = 14 R.S. 160 = 43 Cr.L.J. 458 = A. I.R. 1942 Sind 33.**

——**S. 417**—Acquittal under S. 345—Appeal against—Maintainability. *See* 1941 Dig., Col. 468. EMPEROR *v.* GOURISHANKAR BOHIDAR. **43 Cr.L.J. 44 = A.I.R. 1942 Pat. 58.**

——**Ss. 421 to 423**—*Withdrawal of appeal—Power of Court or appellant.*

Once an appeal has been lodged and admitted, it is not in the power of any Court nor in the power of the appellant to allow the appeal to be withdrawn. The Court is bound once the appeal is admitted to proceed under S. 421 or under Ss. 422 and 423, Cr. P. Code, to decide the appeal on the merits. (*Dalip Singh, Bhide and Ram Lall, JJ.*) EMPEROR *v.* GHULAM MAHOMED. **I.L.R. (1942) Lah. 241 = 203 I.C. 501 = 44 Cr.L.J. 14 = A.I.R. 1942 Lah. 296 (F.B.).**

——**S. 422**—*Appeal against conviction—Absence of notice to complainant to whom compensation out of the fine was ordered under S. 545, Cr. P Code—No ground for interference in revision.*

Where an appeal against a conviction has been fairly heard after notice to the Crown and after hearing the Public Prosecutor and a proper judgment has been written, it would be grossly unfair to require an accused who had been acquitted to go through a fresh ordeal because the appellate Judge had heard only the Public Prosecutor—which is all that is required under S. 422 of the Code of Criminal Procedure—and not the complainant's vakil also. There is no irregularity—much less illegality—in not giving notice of such appeal to the complainant merely because he was awarded compensation under S. 545 of the Code of Criminal Procedure. (*Horwill, J.*) MARIASOOSAI *v.* AROKKIAM. **201 I.C. 521 = 15 R.M. 357 = 43 Cr.L.J. 743 = 1942 M.W.N. 125 = 55 L.W. 176 (2) = A.I.R. 1942 Mad 465 = (1942) 1 M.L.J. 108.**

——**S. 422**—*Scope—Appeal from conviction—Disposal on same day without notice to Crown—Order of acquittal—Legality.*

An order of acquittal in a criminal appeal from a conviction passed on the same day on which the appeal is filed and without notice to the officer appointed by the Provincial Government under S. 422, Cr. P. Code, is illegal and cannot be sustained. (*Lakshmana Rao, J.*) PUBLIC PROSECUTOR *v.* KARUPPA KONE. **201 I.C. 515 = 15 R.M. 469 = 43 Cr.L.J. 768 = 55 L.W. 170 (1) = 1942 M.W.N. 128 (1) = A.I.R. 1942 Mad. 356.**

——**Ss. 422 and 423**—*Scope—If exhaustive—Complainant—Right to appear by advocate.*

There is no provision in the Cr. P. Code for appearance or argument by the complainant's advocate in an appeal even in a non-cognizable case in addition to or in substitution for appearance or argument by the Public Prosecutor and although Ss. 422 and 423 are not exhaustive they clearly indicate that the Legislature has by necessary implication excluded the appearance in appeal of an advocate for the complainant. Should the Public Prosecutor not appear, it would necessarily be in the discretion of the Court to allow the complainant's advocate to argue the case. Where the Public Prosecutor appears, the complainant's advocate can as an advocate attend the Court and be prepared to assist the Court if the Court requires his assistance. (*Davis, C.J.*) P. C. TARAPORE *v.* EMPEROR. **198 I.C. 281 = 14 R.S. 139 = 43 Cr.L.J. 345 = A.I.R. 1942 Sind 5.**

CR. P. CODE (1898), S. 423.

——**S. 423**—*Alteration of conviction—Conviction under S. 304, I. P. Code—Alteration by appellate Court into one under S. 302, I. P. Code—Permissibility.*

In an appeal from a conviction on a charge under S 304, Penal Code, the appellate Court cannot convict the accused on a charge under S. 302 even though the lower Court could have convicted him under S. 302 on the finding arrived at by it, as a conviction under S. 304 amounts to an acquittal of the offence under S. 302. (*Almond, J.C. and Mir Ahmad, J.*) SHER ALI *v.* EMPEROR. **201 I.C. 705 = 15 R. Pesh. 29 = 43 Cr. L. J. 766 = A.I.R. 1942 Pesh. 51.**

——**S. 423**—Alteration of conviction—Conviction under S. 323, I. P. Code—Alteration into one under S. 323/114—Legality. *See* 1941 Dig., Col. 468. JANAK SINGH *v.* EMPEROR. **21 Pat. 138.**

——**S. 423**—*Powers of appellate Court—Finding of acquittal—If can be altered into one of conviction.*

An appellate Court has power to alter a finding of acquittal to a conviction, either on a point of law or a point of fact, where the acquittal has proceeded upon an erroneous view of the law. (*Manohar Lall and Meredith, JJ.*) EMPEROR *v.* BARKA JETHA MAJHI. **20 Pat 881 = 199 I.C. 475 = 14 R.P. 593 = 23 P.L.T. 368 = 1942 P.W.N. 18 = 8 B.R. 569 = 43 Cr.L.J. 493 = A.I.R. 1942 Pat. 190.**

——**Ss. 423 and 107**—*Power of appellate Court—Order for retrial on allowing appeal in case under S. 107—Competency.*

An appellate Court has no power to order retrial while allowing an appeal in a case under S. 107, Cr. P. Code. (*Bennett, J.*) ABDULLA *v.* EMPEROR. **201 I.C. 60 = 15 R.O. 61 = 1942 O.W.N. 387 = 1942 A.W.R. (C.C.) 251 = 1942 A. Cr. C. 112 (2) = 43 Cr. L.J. 729 = 1942 O.A. 272 = A.I.R. 1942 Oudh 416.**

——**S. 423**—Powers of appellate Court—Power to order retrial on ground of defect in charge—Exercise of—Considerations—Finding as to failure of justice—Necessity. *See* 1941 Dig., Col. 469. BHOLA NATH MITRA *v.* JITENDRA NATH MUKHERJI. **14 R.P. 295 = 8 B. R. 171 = 43 Cr.L.J. 134 = A.I.R. 1942 Pat. 143.**

——**S. 423**—Trial by Jury—Appeal from conviction—High Court holding that there has not been legal trial—Power to order that there should not be fresh trial. *See* 1941 Dig., Col. 469. HUGH FRANCIS BELLGARD *v.* EMPEROR. **198 I.C. 499 = 14 R.C. 471 = 43 Cr.L.J. 389.**

——**S. 423 (1) (b)**—*Enhancement — What may amount to.*

It can be stated as a general proposition, that to impose a substantial fine in place of a sentence of imprisonment and increase of sentence of imprisonment in default in payment of fine does amount to an enhancement of the sentence. But the question depends on the facts of each case. (*Thomas, C.J.*) GANGA *v.* EMPEROR. **200 I.C. 809 = 15 R.O. 47 = 1942 O.W.N.**

CR. P. CODE (1898), S. 423.

376=1942 A.W.R. (C.C.) 249=1940 A. Cr.C. 112=43 Cr.L.J. 719=1942 O. A. 270=A.I.R. 1942 Oudh 399 (1).

——**Ss. 423 (1) (b) and 439**—Power of High Court—Charge under S. 302 but conviction under S. 304, Part I, Penal Code—Appeal by convict—Power of High Court to alter conviction to one under S. 302, I. P. Code and enhance sentence. *See* 1941 Dig., Col. 470. BAWA SINGH *v.* EMPEROR. **I.L.R. (1942) Lah 129=197 I C. 669=14 R.L. 273=43 Cr.L.J. 235=44 P.L.R. 59 (F.B.).**

——**S. 423 (1) (c) and (d)**—*Security proceedings*—De novo *enquiry—If can be ordered.*

The Legislature could never have intended that a person, who was being proceeded against under S. 107 or 110, Cr. P. Code, should get off scot free merely on account of some error of procedure by the Magistrate. If in the case of a person, who *prima facie* ought to be bound over the order has to be reversed on account of an illegality in the proceedings, the appellate Court has to apply its mind to the question whether there should be a *de novo* enquiry or not, and then pass an order incidental to its order reversing the order for security directing either there should be a *de novo* enquiry, or, if the matter had become stale or for any other reason, that there should not be a *de novo* enquiry. (*Blacker and Ram Lall, JJ.*) SUBEG SINGH *v.* EMPEROR. **199 I C. 532=14 R.L. 431=43 Cr.L.J. 564=44 P.L.R. 71=A.I.R. 1942 Lah. 84.**

——**Ss. 423 (2) and 537 (d)**—Misdirection—Interference—When not justified. *See* 1941 Dig., Col. 470. HARAKCHAND, *In re.* **I.L.R. (1942) Nag. 510=14 R.N. 159=43 Cr.L.J. 129.**

——**S. 423 (2)**—Misdirection—Reading out of written charge if amounts to. *See* CR. P. CODE, SS. 297 AND 423 (2). **1942 N.L.J. 523.**

——**S. 424**—*Duty of Court in disposing of appeal—Reasons for conclusion—If to be given—S.* 367 (1).

Where notice has gone to the Public Prosecutor in an appeal from a conviction and the accused who have been released on bail pending appeal are absent the appellate Court in dismissing the appeal must give reasons for the conclusion it comes to. A judgment dismissing the appeal reciting that the accused and their counsel are absent and that the Court has carefully perused the case record and does not find any grounds to interfere with the conviction is not a proper judgment under S. 367 (1), Cr. P. Code and cannot be upheld. Such a judgment would be enough if the disposal were one *in limine* under S. 421, Cr. P. Code. (*Horwill, J.*) CHINNATHAMBI, *In re.* **55 L.W. 712 (1)=1942 M. W.N. 746=A.I.R. 1943 Mad. 9=(1942) 2 M.L.J. 579.**

——**S. 428**—Additional evidence—Power of appellate Court—Re-trial—If to be ordered on ground of additional evidence being necessary. *See* 1941 Dig., Col. 470. BHOLA NATH MITRA *v.* JITENDRA NATH MUKHERJI. **14 R.P. 295=8 B.R. 171=43 Cr.L.J. 134=A.I.R. 1942 Pat. 143.**

——**Ss. 435 and 439**—Court subordinate to High Court—Bihar and Orissa Municipal Act, S. 198—Magistrate acting under—If acts judicially—Orders—If open to revision. *See* 1941 Dig., Col. 470. CHAIRMAN, BIHAR MUNICIPALITY *v.* RAMNANDI KUER. **8 B.R. 145=43 Cr.L.J. 110.**

——**Ss. 435 and 439**—Enhancement—Principles governing *See* 1941 Dig., Col. 471. HLA SAN *v.* THE KING. **199 I.C. 147=14 R.R. 269=43 Cr L.J. 525=A.I.R. 1942 Rang. 49.**

——**Ss 435 and 439**—*Limitation.*

CR. P. CODE (1898), S. 435.

Where a criminal revision petition has been admitted the question of limitation is not of much importance there being no limitation fixed by statute for a criminal revision. (*Varma, J.*) LALO MAHTO *v.* EMPEROR. **199 I C. 218=14 R.P. 577= 22 Pat.L.T. 976=1942 P.W N. 13=8 B R. 534=43 Cr.L.J. 537=A.I.R 1942 Pat. 150.**

——**Ss. 435 and 439**—*Objection as to forum after admission of revision and sending for records—Maintainability.*

Once an application for revision has been admitted and the record called for an objection that the application should have been made to the Sessions Judge in the first instance should not be entertained. (*Agarwal, J.*) SURAJBALI *v.* EMPEROR. **201 I C 466=15 R.O. 103=1942 O.A. 303=1942 O.W.N. 425=1942 A.W.R. (C.C.) 275=1942 A Cr.C. 134=43 Cr.L J. 739=A.I. R. 1942 Oudh 438.**

——**Ss. 435 and 439**—*Power of Court—Irregularity in petition of revision—Affidavit sworn to by accused—If bar to maintainability of petition or to interference.*

The mere fact that a criminal revision petition is not in order is no ground for rejecting it on the ground that the affidavit in support of it is sworn to by the accused himself in contravention of the rules. Once the case has come before the High Court, the Court has power to deal with the matter under Ss. 435 and 439, Cr. P. Code. (*Varma, J.*) LALO MAHTO *v.* EMPEROR. **199 I.C. 218=14 R.P. 577=22 Pat.L.T. 976=1942 P W. N 13=8 B.R. 534=43 Cr.L.J. 537=A.I.R. 1942 Pat. 150.**

——**Ss. 435 and 436**—*Powers of District Magistrate—Case submitted under S.* 346 (1)—*Power to revise opinion of referring Magistrate.*

Although a District Magistrate has powers of revision under Ss. 435 and 436, Cr. P. Code, those powers can only be exercised for the limited purpose indicated in those sections. Except for that special purpose, he has no power to revise the opinion of a subordinate Magistrate in a case reported to him under S. 346 (1), Cr. P. Code. (*Broomfield and Wassoodew, JJ.*) HAIDARSHA LALSHA *v.* DHONDU ABAJI. **I.L R. (1942) Bom 198=199 I.C. 351=14 R B 381=43 Cr.L J. 562=44 Bom.L.R. 53=A.I.R. 1942 Bom. 84.**

——**(as amended in 1923), S. 435**—Powers of High Court—Revision against order under S. 145—Power to bring on record legal representatives of deceased party—Inherent powers—S. 561-A. *See* 1941 Dig., Col. 471. SURYANARAYANA RAJU *v.* VISWANADHARAJU. **199 I.C. 320=14 R.M 615=1942 M. W.N. 38=43 Cr.L J. 487=A.I.R. 1942 Mad. 249=(1941) 2 M.L J. 1047**

——**Ss. 435 and 439**—Questions of fact—Power to go into evidence. *See* 1941 Dig., Col. 472. A. H. GANDHI *v.* THE KING. **198 I.C. 455=14 R.R. 210=43 Cr.L. J. 373.**

——**S. 435**—*Revision against acquittal on the motion of private party—Interference by High Court—Circumstances.*

A revision at the instance of a private person against an order of acquittal is an extraordinary remedy. The High Court will not be prepared to interfere unless there are exceptional circumstances compelling it to do so, as for example where the Magistrate does not appearg to have exercised an impartial judicial mind in considering evidence or has entirely left evidence out of consideration or has relied upon evidence not on the record. (*Agarwal, J.*) NOOR MOHAMMAD *v.* IMTIAZ AHMAD. **197 I.C. 839=14 R.O 363=1942 A.Cr.C. 1=43 Cr.L J. 280=1941 O.W.N. 1290=1941 A.W.R. (C.C.) 397=1941 O.A. 1008=A.I.R. 1942 Oudh 130.**

CR. P. CODE (1898), S. 438.

——Ss. 438 and 439—Acquittal—Interference—Summary trial—Magistrate not giving reasons for acquittal—If justifies interference. *See* CR. P. CODE, SS. 263 AND 264. I.L.R. (1941) Kar 545.

——S. 438—Criminal circulars—Cir. No. 38, R. 7—Reference—Explanation from inferior Court—Necessity to call for. *See* 1941 Dig., Col. 473. HARBHAJAN SINGH, *In re*. I.L.R. (1942) Nag. 494=43 Cr.L.J. 323=198 I.C. 228=14 R.N. 215=A.I.R. 1942 Nag. 38.

——S. 438—*Interference with acquittal on reference—Competency—Grounds.*

Where an order of acquittal is in clear defiance of the provisions of law and has resulted in manifest injustice to the complainant, it could be interfered with on a reference made upon the complainant's application for revision. (*Ghulam Hasan, J.*) EMPEROR *v.* RAM CHARAN. 1942 O.W.N. 786=1942 O.A. 634.

——S. 438—Reference pending appeal—If competent. *See* 1941 Dig., Col. 473. EMPEROR *v.* KUMHRAO MUNDA. A.I.R. 1942 Pat. 64.

——Ss. 438 and 439 (2)—*Reference to High Court—Notice to accused—Necessity.*

There is no provision in law for the issue of a notice to the accused before a reference is made to the High Court by either District Magistrate or Sessions Judge. The accused cannot be prejudiced because before the final orders are passed on the reference the High Court is bound to give him notice under the provisions of S. 439 (2), Cr. P. Code. (*Agarwal, J.*) EMPEROR *v.* RAM DEO. 201 I.C. 506=15 R.O. 109=1942 O.A. 309=1942 O.W.N. 432=1942 A.W.R. (C.C.) 285=1942 A.Cr.C. 140=43 Cr.L.J. 763=A.I.R. 1942 Oudh 443.

——S. 439—Acquittal—Revision against by private party—Interference by High Court—Rule—Exception—Defamation cases. *See* 1941 Dig., Col. 474. VINAYAK ATMARAM *v.* SHANTARAM JANARDAN. 197 I.C. 502=14 R.B. 230=43 Cr.L.J. 174.

——S. 439—Acquittal—Revision against—Interference—Application by private prosecutor to vindicate position—Propriety. *See* 1941 Dig., Col. 474. CANTONMENT BOARD OF DINAPORE *v.* DWARKA PRASAD. 21 Pat. 102.

——S. 439—*Acquittal—Revision against—Interference—Order for retrial—Discretion of Court.*

Under S. 439 (4), Cr. P. Code, the High Court cannot convert a finding of acquittal into one of conviction, but it can order the accused to be retried by a Court of competent jurisdiction subordinate to it. In considering the question whether such a retrial should or should not be ordered, the discretion of the Court is legally unlimited. In actual fact, however, the Court seldom exercises this discretion and an order of acquittal will not as a rule be interfered with merely because the High Court disagrees with the finding of the Magistrate. It is only when the record is incomplete or there is a flaw in jurisdiction or where the finding is manifestly wrong or perverse that the High Court will interfere in such cases. Where the evidence has been mis-stated, it is much the same position as if the Judge, who combines the functions of a judge and jury, had misdirected himself as to what the evidence was in the particular case. It will be open for the High Court, however, to consider whether in spite of the misdirection, any finding other than one of acquittal would have been come to in the circumstances of the particular case and the High Court would not order a retrial unless it came clearly to the conclusion that but for the misdirection the Court might have or should have come to a different finding to what it actually did. (*Dalip Singh, Ram Lall and Sale, JJ.*)

CR. P. CODE (1898), S. 439.

PARTAP SINGH *v.* HARNAM SINGH. I.L.R. (1942) Lah. 125=199 I.C. 49=14 R.L. 380=43 Cr.L.J. 453=44 P.L.R. 29=A.I.R. 1942 Lah. 70 (F.B.).

——S. 439—*Acquittal—Revision against—Justifying circumstances.*

Where a learned Magistrate's judgment of acquittal is summary and shows that he has not examined the complainant's case with that care and thoroughness which the nature of the allegations and circumstances of the case demanded, it cannot be allowed to stand. Where there has been a failure of justice the complainant is entitled to have his complaint properly investigated. The Chief Court of Oudh will interfere in exceptional circumstances in revision against an order of acquittal where there has been a miscarriage of justice. (*Ghulam Hasan, J.*) RANSOM *v.* TRILOK NATH. 17 Luck. 663=199 I.C. 757=14 R.O. 530=1942 A. Cr.C. 82=43 Cr.L.J. 578=1942 A.W.R. (C.C.) 112=1942 O.W.N. 161=1942 O.A. 91=A.I.R. 1942 Oudh 318.

——S. 439—Acquittal—Revision against—Power of High Court. *See* 1941 Dig., Col. 475. GHULAM JILANI *v.* EMPEROR. 14 R.L. 203=43 Cr.L.J. 113.

——Ss. 439 and 476—*'Any proceeding' in S. 439, meaning of—Order of Revenue Court under S. 476—If revisable under S. 439.*

S. 439, Cr. P. Code, cannot be divorced from the preceding sections particularly S. 435. This group of sections authorises the specified superior Court to send for the records of the Criminal Court only and consequently the words 'any proceeding' occurring in S. 439 must be confined to proceedings before any inferior Criminal Court. Hence an order passed by a Revenue Court under S. 476, Cr. P. Code, directing the trial of a person for an offence committed in the course of proceedings before it cannot be revised under S. 439, Cr. P. Code, by the High Court. (*Niyogi, J.*) GANPATAPPA *v.* SHANKARAYA. 1942 N.L.J. 242.

——S. 439—Enhancement—Application by private complainant—Interference—Principles. *See* 1940 Dig., Col. 508. SHANKAR *v.* RAMA. I.L.R. (1942) Nag. 277.

——S. 439—Enhancement by High Court—Application by complainant—Principles. *See* 1941 Dig., Col. 508. BHAGOLELAL *v.* EMPEROR. I.L.R. (1942) Nag. 208.

——Ss. 439, 369 and 430—*Enhancement—Competency of revision for—Jail appeal of accused already dismissed.*

Though an appeal by the accused from Jail has been dismissed by a single Judge, nevertheless a revision for the enhancement of the sentence would lie, S. 369, Cr.P. Code, is no bar to the exercise of the power of enhancement by the High Court as that section must be read subject to the provisions of S. 430, Cr. P. Code, the exception to which covers the power of enhancement. (*Ganga Nath and Yorke, JJ.*) EMPEROR *v.* DEBI CHARAN. 202 I.C. 586=1942 A.W.R. (H.C.) 293=1942 A.L.W. 505=1942 A.Cr.C. 161=43 Cr.L.J. 867=1942 A.L.J. 376=A.I.R. 1942 All. 339.

——S. 439—*Enhancement of sentence—Principles.*

The High Court does not interfere in revision unless the sentence is manifestly inadequate. It is also slow to interfere when the convict has already been discharged from jail—though this is not an insuperable obstacle. (*Bhide, J.*) EMPEROR *v.* KHURSHID AHMAD MINTO. 44 P.L.R. 167.

——S. 439—*Findings of fact—Interference—When justified.*

The Chief Court does not interfere in revision with findings of fact except in exceptional cases such as where the lower Courts have approached the case from a

CR. P. CODE (1898), S. 439.

wrong point of view and the evidence produced has not received due consideration, where the findings of fact are not based on evidence on the record and is proved to be wrong from the record itself, where the Judgment of the lower Court is palpably wrong, where there has been a miscarriage of Justice or where the case appears to be doubtful against the accused and the benefit of doubt has not been given. (*Agarwal, J.*) RAM NATH DAVE *v.* EMPEROR. 202 I.C. 382=15 R.O. 123=1942 O. W.N. 485=1942 A.W.R. (C.C.) 295=1942 A. Cr.C. 151=43 Cr.L.J. 830=1942 O.A. 341=A.I.R. 1942 Oudh 473.

——S. 439 and High Court Rules, Ch. IV, R. 15 (C.P.)—Order of Criminal Court of Appeal—High Court, if can revise directly. *See* 1941 Dig., Col. 478. NATHURAM, *In re*. 43 Cr.L.J. 24.

——Ss. 439 and 435—Pending case—Interference in revision—Powers. *See* 1941 Dig, Col. 477. HARBHAJAN SINGH, *In re*. I.L.R. (1942) Nag. 494=43 Cr.L.J. 323=198 I.C. 228=14 R.N. 215=A.I.R. 1942 Nag. 38.

——S. 439—Powers of High Court—Alteration of finding and sentence. *See* 1941 Dig., Col. 477. BECHAN JHA *v.* EMPEROR. 23 Pat.L.T. 81.

——S. 439—*Proceedings under S.* 144—*Revision.*

The opinion of a District Magistrate, expressed in an order under S. 144, Cr. P. Code, although entitled to great weight, is not absolute and cannot interfere with the right of the High Court under the revisional sections of the Code to interfere with such orders or set them aside. (*Young, C.J., Bhide and Mahomed Munir, JJ.*) P. T. CHANDRA, EDITOR, 'TRIBUNE' *v.* EMPEROR. I.L.R. (1942) Lah. 510=201 I.C. 572=15 R.L. 65=43 Cr.L.J. 747=44 P.L.R. 297=A.I.R. 1942 Lah. 171 (F.B.).

——S. 439—*Proceedings under S.* 144—*Revision.*

It cannot be doubted at least after the amendment in 1923 of S. 435, Cr. P. Code, by which sub-S. (3) of that section has been omitted, that the High Court has revisional jurisdiction also in cases disposed of under S. 144, Cr. P. Code. Although the Magistrate is responsible for the peace of his district, the High Court has a duty to see whether this responsibility has been properly discharged in any particular instance. (*Akram and Pal, JJ.*) RASHID ALLIDINA *v.* JIWANDAS KHEMJI. I.L.R. (1942) 1 Cal. 488=46 C.W.N. 136 =A.I.R. 1943 Cal. 35.

——S. 439—*Quashing pending proceedings—Principles governing.*

The High Court in revision will interfere with a pending criminal case only in exceptional cases such as where a person is being harassed by an illegal prosecution; where there is some manifest and patent injustice apparent on the face of the proceedings and calling for prompt redress; where the evidence on record for the prosecution clearly does not justify a charge of any offence; or where the trial is on the face of it an abuse of the process of the Court. One test of the exceptional nature of the application is that a bare statement of the facts without any elaborate argument should be sufficient to convince the High Court that the case is a fit one for its interference at an intermediate stage. But a question of territorial jurisdiction that is as to which of two or more Courts should inquire into any offence arising during the pendency of the trial must be decided by the High Court. Where the funds of the deceased father standing in the Bank in the name of his sons as joint executors are withdrawn and deposited in his own account by one of the sons, a charge against him under S. 405, Penal Code, is not unjustified and the High Court will not interfere in revision by quashing the proceedings. (*Mosely, J.*) GULAM SHERAZEE *v.* KING. 199 I.C. 473=14 R.R. 273=43 Cr.L.J. 492 =A.I.R. 1942 Rang 48.

CR. P. CODE (1898), S. 439.

——S. 439—*Quashing proceedings—Revision—Practice.*

There is, in the anxiety shown to quash proceedings at the earliest possible stage, a tendency to bring revision applications for that purpose before the High Court before the facts have been fully ascertained. It is not the practice of the Allahabad High Court to take evidence in revision applications and in many cases it is desirable that the trial should proceed and the question of law involved be dealt with in the regular way in the first instance as part of the trial. (*Iqbal Ahmad, C. J. Braund and Dar, JJ.*) KANHAIYA LAL *v.* EMPEROR. I.L.R. (1942) All 344=199 I.C. 507=14 R.A. 389=43 Cr.L.J. 490=1942 O.A. (Supp.) 92=1942 A.Cr. C. 60=1942 A.L.J. 85=1942 A.L.W. 79=1942 A. W.R. (H.C.) 42=A.I.R. 1942 All. 148 (F.B.).

——S. 439—*Quashing proceedings—Third complaint after dismissal of two similar complaints.*

The fact that a person has been harassed already by two similar complaints, both of which have been dismissed or he himself discharged, is ample ground for quashing a third complaint made on the same facts. (*Young, C.J.*) FAQIR CHAND *v.* KARAM CHAND. 200 I.C. 446=15 R.L. 1=43 Cr.L.J. 632=44 P.L.R. 104=A.I.R. 1942 Lah. 122.

——S. 439—*Question of fact—Whether evidence is to be believed or not—Interference in revision.*

The question whether evidence is or is not worthy of credit is a question of fact and is not a ground of interference in revision. (*Manohar Lall and Meredith, JJ.*) LAKHAN SINGH *v.* EMPEROR. 20 Pat. 898=199 I.C. 638=14 R.P. 629=1942 P.W.N. 23=23 P.L.T. 332 =8 B.R. 589=43 Cr.L.J. 570=A.I.R. 1942 Pat. 183.

——S. 439—*Revision against acquittal in the absence of appeal by Government—Interference.*

Though there is no legal bar to the High Court interfering in revision in proper cases with an order of acquittal when there is no appeal by Government, it will not ordinarily do so. (*Agarwal, J.*) EMPEROR *v.* RAM DEO. 201 I.C. 506=15 R.O. 109=1942 O.A. 309=1942 O.W.N. 432=1942 A. W.R. (C.C.) 285=1942 A.Cr.C. 140=43 Cr.L.J. 763=A.I.R. 1942 Oudh 443.

——S. 439—*Revision against acquittal—Materials on which the propriety of the order is to be judged.*

The Court sitting in revision has merely to see whether the case as laid by the prosecution was properly tried or not. An order of acquittal has to be judged in the light of the case as presented by the complainant for trial in the original Court and not on the consideration of hypothetical case, that is a case which could have been but was not raised in that Court. (*Niyogi, J.*) NOTIFIED AREA COMMITTEE, KOTA *v.* GOKUL BHAI. 1942 N.L.J. 329.

——S. 439—*Revision against framing of charge—Sufficiency of evidence, if can be gone into.*

Where a revision is preferred against the framing of a charge after the examination of some only of the P. Ws., the High Court would be extremely reluctant at that stage to enter into the merits of the evidence produced in the case to find out whether it is sufficient and reliable to support the charge. It is an undesirable procedure. (*Mulla, J.*) EMPEROR *v.* DAULAT RAM ASTHANA. 1942 A.L.W. 627=1942 A.Cr.C. 208.

——Ss. 439 and 145—Revision against order under S. 145—Evidence if can by gone into. *See* CR. P. CODE, SS. 145 AND 439. A.I.R. 1942 Pat. 489.

CR. P. CODE (1899), S. 439.

——S. 439—*Scope—Duty of Court to give reasons for order.*

Ch. XXXII of the Cr. P. Code governing references and revisions says nothing about the giving of reasons for any order passed, and it must be taken that the Legislature did not intend to make it obligatory on Courts of revision and reference to give reasons for their orders. Nevertheless it is, as a rule, desirable that reasons should be given so that in exercising its revisional jurisdiction the High Court might know what was in the mind of the lower revisional Court when that Court passed its order. (*Horwill, J.*) VENKATAPPA *v.* LATCHANNA. 203 I.C 205=55 L.W. 424=1942 M. W.N. 438=44 Cr.L.J. 70=A.I.R. 1942 Mad. 653=(1942) 2 M.L.J. 103.

——S. 439—*Scope—Jurisdiction of High Court—Sessions trial for offence under S.* 366, *I. P. Code—Order for stay by Sessions Judge under S.* 13 (2) *of Sind Frontier Regulations—Legality and propriety—If falls under S.* 17 *of the Regulations—Revision by High Court—Jurisdiction—Sind Frontier Regulations, Ss.* 8 *and* 13.

It cannot be said that an order staying proceedings under S. 13 of the Sind Frontier Regulations is an order which by necessary implication falls within the provisions of S. 17 of the Regulation, and that therefore it cannot be revised by the High Court under S. 439, Cr.P. Code. S. 13 of the Regulations must be read with and in the light of S. 8, S. 8 is a governing section so far as Ss. 12 and 13 are concerned. An offence under S. 366, I.P. Code, does not fall under S. 8 of the Regulations and is not an offence which can be tried by a Council of Elders, and a Sessions Judge has therefore no jurisdiction to pass an order of stay under S. 13 (2) in respect of such an offence. If he passes such an order, it is an unlawful and improper order, but it is still an order passed by him in a trial held under the Cr.P. Code and his order therefore falls within the scope of the revisional powers of the High Court under S. 439 read with S. 423 (1) (*c*), Cr. P. Code. The High Court has therefore jurisdiction to set aside in revision the order of the Sessions Judge purporting to be passed under S. 13 (2) of the Regulations, but which in law is not passed under that section at all. (*Davis, C.J. and Tyabji, J.*) EMPEROR *v.* SHER MAHOMED ALI. I.L.R. (1942) Kar. 246.

——S. 439—Scope—Revision against order under S. 476—Powers of High Court—If limited by S. 476-B—Order for proper inquiry—If can be made. *See* 1941 Dig., Col. 478. VALIRAM LILARAM *v.* GOVINDRAM. 197 I.C. 774=14 R.S. 120=43 Cr.L.J. 259.

——S. 439—Time limit fixed by the Nagpur High Court—If inflexible—Time spent in moving District Magistrate to prefer appeal—If can be deducted—Proper procedure to be followed. *See* 1940 Dig., Col. 510. NATHU RAMJI *v.* JAGANNATH. I.L.R. (1942) Nag. 255.

——Ss. 439 (5) and 476-B—*Failure to appeal under S.* 476-*B—Objection as to jurisdiction to entertain complaint if can be raised in revision after conviction.*

According to S. 439 (5), Cr. P. Code, where an appeal lies and no appeal is brought, no proceedings by way of revision could be entertained at the instance of the party who could have appealed. Hence where there has been no appeal under S. 476 B, objection that the Court had no jurisdiction to entertain the complaint could not be raised in revision against the conviction. (*Bennett, J.*) SHEO NARAIN *v.* EMPEROR. 201 I.C. 389=15 R.O. 90=1942 O.W.N. 392=1942 A.W.R. (C.C.) 252=1942 A.Cr.C. 116=43 Cr.L.J. 668=1942 O.A. 273=A.I.R. 1942 Oudh 439.

CR. P. CODE (1898), S. 476.

——S. 443—*Order accepting claim of accused—Revision.*

Although an order of a trial Magistrate accepting the claim made by an accused person under S. 443, Cr. P. Code, and committing the accused for trial by the Sessions Court is not appealable and cannot be set aside by the Sessions Judge himself, there is nothing to prevent him from reporting the case for revision to the High Court for the commitment being quashed, if he considers it to be illegal. (*Bhide, J.*) EMPEROR *v.* L. GULATI. 202 I. C. 759=43 Cr.L J. 901=A.I.R. 1943 Lah. 8.

——S 443 (1) (a) and (b)—*Applicability—Complaint against Indian British subject under order of Court on application made by European British subject.*

A complaint under Ss. 193 and 406, I.P.Code, against an Indian British subject made under an order of Court as a result of an application filed by an European British subject, does not come within the purview of cl. (*a*) of S. 443 (1), Cr. P. Code, but falls within cl. (*b*) of that sub-section. (*Bhide, J.*) EMPEROR *v.* C. L. GULATI. 202 I C. 759=43 Cr.L J. 901=A.I.R. 1943 Lah. 8.

——Ss. 469 and 470—Lunatic accused—Procedure—Examination by Medical Officer—When required. *See* 1941 Dig., Col. 479. THE KING *v.* KALA NYO. 197 I C. 654=14 R.R. 151=43 Cr.L.J. 228.

——S. 476—"*Court*"—*District Magistrate acting under S.* 8 (2), *Sind Frontier Regulation—Status of.*

The hearing of evidence is not an essential preliminary before a Magistrate can be held to be acting as a Court. Therefore even though a District Magistrate acting under S. 8 (2), Sind Frontier Regulation, does not act upon evidence which he himself has heard, he is still a Court within the meaning of S. 476, Cr. P. Code. (*Davis, C.J. and Weston, J.*) KARAMDIN *v.* EMPEROR. I.L.R. (1942) Kar. 66=200 I.C. 630=15 R.S. 2=43 Cr.L.J. 705=A.I.R. 1942 Sind 75.

——S. 476—Duty of Court—Inquiry under—Considerations for Court—Duty to proceed against all who are found involved in offence made out besides persons complained against in application. *See* 1941 Dig., Col. 480. VALIRAM LILARAM *v.* GOVINDRAM. 197 I C. 774=14 R.S. 120=43 Cr.L.J. 259.

——S. 476—Expediency of prosecution—Contradictory statements by witness under S. 164, Cr. P. Code, and later in committing Magistrate's Court—Alternative charge of perjury—Sanction for prosecution—Duty of Court. *See* 1941 Dig., Col. 481. NINGAPPA RAMAPPA *v.* EMPEROR. I.L.R. (1942) Bom. 26=197 I C. 416=14 R.B. 228=43 Cr.L.J 167.

——S. 476—*Nature of application—S.* 250, *if applicable.*

An application under S. 476, Cr. P. Code, is not a complaint, but is merely an application that a complaint be made. Therefore, S. 250, Cr. P. Code, has no applicability. (*Blacker, J.*) ABDUL HAMID *v.* AHMAD SHAH. 202 I.C. 724=44 P.L.R. 510=43 Cr.L.J. 904.

——S. 476—*Order under, based on the opinion of the appellate Court—Validity.*

Where a suit decreed by the trial Court was dismissed on appeal and the defendant applies to the trial Court for an order under S. 476 it is incumbent on the trial Court to judge the truth or falsity of the evidence uninfluenced by the opinion of the appellate Court, as the Court which makes the complaint should bring its own independent judgment to bear upon the facts of the case. (*Niyogi, J.*) ASGARALI MULLA IBRAHIMJEE *v.*

CR. P. CODE (1898), S. 476.

EMPEROR. **I.L.R. (1942) Nag. 695=201 I.C. 170 =15 R.N. 45=43 Cr.L.J. 649=1942 N.L.J. 257= A.I.R. 1943 Nag. 80.**

——**Ss. 476 and 94**—*Powers of Civil Court considering application under S.* 476—*Recourse to S.* 94, *if permitted.*

A Civil Court does not cease to be a Civil Court when it is considering an application made to it under S. 476, Cr. P. Code. Hence it cannot have recourse to S. 94, Cr. P. Code, in such proceedings and the parties should not be compelled against their will to submit to examination or to produce documents. (*Gruer, J.*) BISHAMBARDAS *v.* MUKTA KALKA. **I.L.R. (1942) Nag. 667=200 I.C. 68=14 R.N. 317—1942 N.L.J. 188=A.I.R. 1942 Nag. 73.**

——**S. 476**—*Prosecution under—Propriety—False statements made in family dispute.*

The circumstance that false statements were made in a family dispute is not a sufficient reason for refraining from action by prosecution under S. 476, Cr. P. Code, against those who made those false statements. If in fact the false statements have been made from motives not in themselves evil, the trying Magistrate may take that circumstance into account when awarding punishment. (*Davis, C. J. and Weston, J.*) DIPOMAL MURIJMAL *v.* EMPEROR. **I.L.R. (1942) Kar. 64= 15 R.S. 5=200 I.C. 814=43 Cr.L.J. 720=A.I.R. 1942 Sind 98.**

——**S. 476 (1) and (2)**—*Jurisdiction—Expediency of prosecution—Magistrate to whom complaint is made—Power to send back proceedings to complaining Magistrate for making further inquiries—Procedure.*

It is the Court which considers the question whether it shall lay a complaint or not that has to be satisfied whether it is expedient in the interests of justice that an inquiry should be made; and S. 476 (1) gives to that Magistrate complete discretion whether to conduct the preliminary inquiry or not. When once the complaint is sent to the Magistrate having jurisdiction, he must proceed under S. 476 (2) which says that he shall proceed thereupon according to law as if upon complaint made under S. 200. It is not for the Magistrate to whom the complaint is made to consider whether it is in the interests of justice to make a complaint and such Magistrate has no jurisdiction to send back the proceedings to the Magistrate making the complaint to make further inquiries. (*Horwill, J.*) RATHNASWAMY PILLAI *v.* RAJARATNAM PILLAI. **55 L.W. 591=1942 M.W.N. 594=A.I.R. 1943 Mad. 50=(1942) 2 M.L.J. 381.**

——**S. 476-A**—Additional District Judge—Complaint in respect of proceedings in Court of Subordinate Judge—Competency. *See* 1941 Dig., Col. 483. HARNANDAN GIR *v.* BAWAN SINGH. **23 P.L.T. 235.**

——**S. 476-A.**—Applicability—Complaint by superior Court—When can be made. *See* 1941 Dig., Col. 483. HAR NANDAN GIR *v.* BAWAN SINGH. **23 P.L.T. 235.**

——**S. 476-A**—"Subordinate" Court—Village Court under Madras Village Courts Act—If subordinate to District Judge or District Munsif for purposes of S. 476. *See* CR. P. CODE, SS. 195 (1) (*c*) AND 476-A. **(1942) 1 M.L.J. 436.**

——**S. 476 B**—Appeal—Competency—No complaint by original Court and no application made therefor—Appeal—If lies. *See* 1941 Dig., Col. 483. HARNANDAN GIR *v.* BAWAN SINGH. **23 P.L.T. 235.**

——**S. 476-B**—*Construction—Appeal against "complaint"—Appeal filed along with certified copy of order finding that complaint should be made—If proper and valid—Certified copy of complaint not filed—Summary dismissal of appeal—If justified.*

CR. P. CODE (1898), S. 476-B.

S. 476-B, no doubt, contemplates an appeal against the complaint which is directed to be filed. But the section is not happily worded, because it is clear that an appeal must in reality be against the order finding that a complaint should be made and not against the complaint itself; it will be only in the said order that reasons for the making of the complaint would be given. S. 419, Cr. P. Code, only refers to copies of judgment, or order appealed against, and a complaint cannot be said to be a judgment or order. A complaint under S. 476 follows as the result of the order. An appeal under S. 476-B, generally speaking, must, in the nature of the proceedings, lie not against the complaint, but against the order finding that a complaint should be made. While an appellate Court dealing with an appeal under S. 476-B Cr. P. Code, might say that it is desirable that a copy of the complaint also should be before it and not merely a copy of the order, or might even direct a certified copy of the complaint to be produced before it would deal with the appeal; it is not justified in dismissing an appeal summarily on the ground that only a copy of the order, and not a copy of the complaint, has been filed along with the appeal, without giving the appellant an opportunity to produce a copy of the complaint. According to the proper construction of S. 476-B, an appeal against the complaint itself necessarily includes an appeal against the order finding that a complaint should be made—the order and the complaint made in pursuance thereof being for the purpose of appeal, part of one and the same thing. (*Davis, C.J. and Weston, J.*) CHABALDAS *v.* EMPEROR. **I.L.R. (1942) Kar. 371.**

——**S. 476 B**—*Costs—Power of Court to award.*

Proceedings under S. 476, Cr. P. Code, and the connected sections, whether they originate in a Civil or Criminal or Revenue Court, are criminal proceedings. Consequently, a court acting under S. 476 B has no jurisdiction to award costs. (*Blacker, J.*) ABDUL HAMID *v.* AHMAD SHAH. **202 I.C. 724=44 P.L.R. 510=43 Cr. L.J. 904.**

——**S. 476-B**—*Jurisdiction—Appeal against order making complaint—Jurisdiction to entertain and hear—Power of District magistrate to send appeal for hearing to subordinate magistrate.*

A person against whom a complaint is made under S. 476, Cr. P. Code, has a remedy, which is by way of appeal to the Court to which appeals ordinarily lie from the Court which lays the complaint as provided by S. 476-B. The remedy does not lie in the Court to which the complaint is made. A District magistrate to whom an appeal is preferred under S. 476-B, has no power to send the appeal for hearing to a subordinate magistrate to whom the complaint was made. It is only an appeal under S. 407 (1) that can be sent by the District magistrate to a subordinate magistrate. (*Horwill, J.*) RATHNASWAMY PILLAI *v.* RAJARATNAM PILLAI. **55 L.W. 591=1942 M.W.N. 594=A.I.R. 1943 Mad. 50 =(1942) 2 M.L.J. 381.**

——**S. 476-B**—*Order of Sub-Judge in proceedings under Guardians and Wards Act—Appeal—Forum.*

An appeal from an order made by a Subordinate Judge under S. 476, Cr. P. Code, arising from proceedings under the Guardians and Wards Act, lies to the District Court and not to the Chief Court. Although appeals under S. 47 of that Act from orders passed by him lie not to the District Court but to the Chief Court, the Court to which appeals ordinarily lie from appealable decrees passed by him is not the Chief Court, but the District Court. (*Davis, C. J. and Weston, J.*) DIPOMAL MURIJMAL *v.* EMPEROR. **I.L.R. (1942)**

CR. P. CODE (1898), S. 476 B.

Kar. 64=200 I.C. 814=15 R.S. 5=43 Cr.L.J. 720=A.I.R. 1942 Sind 98.

——S. 476 B—*Powers of appellate Court—Jurisdiction to remand case directing Court of first instance to file complaint.*

S, 476-B, Cr.P. Code, in express terms empowers the appellate Court either to direct withdrawal of the complaint (which has been made by the lower Court under S. 476) or to make a complaint which the lower Court might have made under that section (where the lower Court has refused or omitted to do so). Reading Ss. 476 and 476 B, together it is evident that the law requires the Court deciding to lay a complaint to make the complaint itself. Hence in an appeal under S. 476 B, Cr. P. Code, the appellate Court has no jurisdiction to remand the case directing the Court of first instance to file a complaint, but must do so itself. (*Mya Bu, J.*) BABU RAMNIRANJAN *v.* MUK NATH SINGH. **1941 Rang.L.R. 764=199 I C. 613=14 R.R. 274=43 Cr. L.J. 569=A.I.R. 1942 Rang. 64 (1)**

——Ss. 476-B and 195 (1) (a) and (3)—Refusal to make complaint in respect of offence under S. 182, I. P. Code—Appeal—Forum *See* 1941 Dig., Col. 483. CHANDRAKUMAR DIKSHIT *v.* RAMESH CHANDRA. **43 Cr.L.J. 50=A.I.R. 1942 Oudh 50.**

——S. 476-B—Right of appeal—Court issuing notice to witness *suo motu*—Order subsequently declining to take action—If appealable. *See* 1941 Dig., Col. 483. SITA RAM *v.* BRIJ BEHARY. **23 Pat.L.T. 210.**

——S. 480—*Procedure—Offence under S. 228, I. P. Code—Magistrate hearing evidence and postponing sentence to subsequent day—Legality.*

The power given to a Court under S. 480, Cr.P.Code, is a special power to deal with a case of insult offered to the Court in its presence. The Court is not bound to hear any evidence. It can rely on its own opinion of what happened, and can detain the offender in custody, take cognizance of the offence and sentence the offender. But all this must be done before the rising of the Court, *i.e.*, on the same day. There is no power in the Magistrate to hear the evidence and postpone sentence until a later day. He acts illegally if he acts upon a subsequent day. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* SHANKAR KRISHNAJI. **201 I.C. 606=15 R. B. 120=43 Cr.L.J. 769=44 Bom L.R. 439=A.I.R. 1942 Bom. 206 (1).**

——S. 488—Amount of maintenance—Maintenance to child—If to cover cost of education—Bare maintenance—If sufficient. *See* 1941 Dig., Col. 484. TEKCHAND *v.* KALAWANTIBAI. **197 I.C. 849=14 R.S. 130=43 Cr L.J. 290.**

——S. 488—*Child—Right to maintenance—Separation of husband and wife—Wife retaining custody of child—Application for maintenance from husband—Competency—Plea that father is entitled to custody of child—If open.*

Where a husband and wife have separated under an agreement by which the husband gives the wife land yielding income for her maintenance and undertakes to maintain their child, as long as the child remains with the mother, the latter is entitled to receive from the husband sufficient funds to maintain the child and to institute proceedings under S. 488, Cr. P. Code, against the husband for that purpose. It would be improper for the Court to refuse maintenance for the child merely because it is of opinion that the mother has no right to the custody of the child. It is for the husband (father) to institute proceedings to obtain custody of the child if he has a right to it. (*Horwill, J.*) KRISHTAPPA *v.* PREMALEELAMANI. **203 I C. 615=1942 M.W.N. 582=55 L.W. 568=A.I.R. 1942 Mad. 705.**

CR. P. CODE (1898), S. 496.

——Ss. 488 and 386—Enforcement of order—Order attaching immovable property—Legality. *See* 1941 Dig., Col. 484. LABH SINGH *v.* PUNJAB KAUR. **43 Cr.L.J. 61.**

——S. 488—Major child—Right to maintenance when unable to maintain himself or herself. *See* 1941 Dig., Col. 486. KANNIAH NAIDU *v.* RAJAMMAL. **14 R.M. 360.**

——Ss. 488 (3) and 490—Enforcement of order—Proper procedure—Proper term of imprisonment—Costs recovery—Procedure. *See* 1941 Dig., Col. 487. MAUNG TUN ZAN *v.* MA MYAING. **43 Cr.L.J. 30.**

——S. 488 (4)—Applicability—Helpless wife ill-treated by husband—Submission to amount agreed upon by panchayat—If living separately by mutual consent—Right to order. *See* 1941 Dig., Col. 487 TEK CHAND *v.* KALAVANTIBAI. **197 I.C. 849=14 R.S. 130=43 Cr.L.J. 290.**

——S. 488 (5)—*Cancellation—Effect—Order for maintenance in favour of wife—Cancellation on ground of wife living in adultery—Retrospective effect.*

There is no justification for the view that an order for maintenance is to be treated as a good and executable order until it is cancelled or set aside. Where an order for maintenance in favour of a wife is cancelled under S. 488 (5), Cr. P. Code, on the ground that the wife was living in adultery, such cancellation has the effect of extinguishing the wife's right not only in regard to future maintenance but also as regards the arrears of maintenance accrued due in the past. A magistrate cancelling the order cannot make an order for payment to the wife of the arrears of maintenance up to the date of cancellation. (*Broomfield and Wassoodew, JJ.*) SANGAVVA GULAPPA *v.* GULAPPA KARIYEPPA. **202 I.C 328=15 R.B. 161=43 Cr. L.J. 826=44 Bom.L. R. 614=A.I.R. 1942 Bom. 258.**

——S. 488 (6)—Scope—Non-compliance—Effect on order for maintenance. *See* 1941 Dig., Col. 487. RUP. CHAND ISSARDAS *v.* EMPEROR. **199 I.C. 367=14 R. S. 186=43 Cr.L.J. 551=A.I.R. 1942 Sind 32.**

——S. 488 (8)—*Person employed in one place paying casual visit to another place and staying there during visit—If "resides" at latter place.*

Where a person employed in Bangalore in the Mysore State pays a casual visit to Trichinopoly in British India in order to see his relatives there and intends to go to Bangalore again, it cannot be said that he "resides" at Trichinopoly during his stay there for purposes of S. 488 (8), Cr. P. Code. His residence for purposes of S. 488 (8) is Bangalore and not Trichinopoly. Hence a Magistrate at Trichinopoly has no jurisdiction to entertain a petition by his wife for maintenance under S. 488, Cr.P. Code. Meaning of "Reside" explained. (*Horwill, J.*) BALAKRISHNA NAIDU *v.* SAKUNTALA BAI. **55 L.W. 306=1942 M.W.N. 369=A.I.R. 1942 Mad. 666=(1942) 2 M.L.J. 134.**

——S. 495 (4)—*Applicability—Security proceedings*

S. 495 (4), Cr. P. Code, does not in terms apply to proceedings under Chap VIII. It may be that by analogy it is not desirable that a police officer should conduct a case under Chap VIII if he has taken part in the investigation, and if he should apply for permission under sub-S. (1) to do so, such permission may very properly be refused. But there is no provision of law which prevents a Magistrate from granting such permission. (*Davis, C.J. and Weston, J.*) EMPEROR *v.* MANICK. **203 I.C. 90=15 R S. 72=44 Cr.L.J. 44.**

——S 496—*Applicability and scope—Power to grant bail to person convicted of an offence or against whom order under S. 118 has been passed.*

CR. P. CODE (1898), S. 496.

S. 496, Cr. P. Code, can have no application once a person has been convicted of a substantive offence or has been ordered under S. 118, Cr. P. Code, to furnish security. It can apply during the pendency of criminal proceedings whether in regard to an offence or under Ch. VIII of the Cr. P. Code. It only covers the case of accused persons and not persons who have been convicted of an offence. (*Lobo and Weston, JJ.*) EMPEROR *v.* KASULBUX. **I.L.R. (1942) Kar. 278 = A.I.R. 1942 Sind 132.**

——**S. 496**—*Charge-sheet for bailable offences—Bail granted with condition—Validity.*

The accused who were charge-sheeted by the police under Ss. 147,148,447, 324 and 323, Indian Penal Code, applied for bail and the Magistrate granted bail under S. 496, Cr. P. Code, subject to a condition that "they will not enter on the disputed land till the disposal of the case."

Held, that as the offences with which the accused were charged were bailable offences with regard to which the Magistrate had no discretion in the matter of granting bail, the extraneous condition imposed by the Magistrate in granting bail was not authorised by law, and should therefore be deleted. (*Horwill, J.*) APPALA KONDA, *In re.* **204 I.C. 88 = 55 L.W. 693 (2) = 1942 M.W.N. 749 (2) = A.I.R. 1942 Mad. 740 = (1942) 2 M.L.J. 553.**

——**S. 497**—Bail bond— Cancellation — Accused setting up alibi—If sufficient ground. *See* 1941 Dig., Col 488 KUNJA BIHARI *v.* EMPEROR. **A.I.R. 1942 Pat. 52 (1).**

——**S 498**—*Scope—Powers to grant bail—If restricted by S. 123 (2)—Person against whom order has been made under S. 118—Application for bail when case comes before Sessions Judge under S. 123—Powers of Sessions Judge to grant bail.*

The provisions of S. 498, Cr. P. Code, regarding admission to bail are very wide, and S. 123 (2), Cr. P. Code, contains nothing which can be interpreted as controlling the very wide provisions of S. 498. A Sessions Judge acting under S. 123, Cr. P. Code, has therefore power to grant bail to a person against whom an order under S. 118, Cr. P. Code, has been made in a proceeding laid before him. The fact that the grant of bail to such a person would in some cases result in rendering the order under S. 118 nugatory by reason of the fact that the order would lapse by efflux of time by the time the order is dealt with by the Sessions Judge under S. 123 (2) when it is placed before him, is no ground for holding that bail cannot be granted under S. 498. A Sessions Judge acting under S. 123 (2), Cr. P. Code has jurisdiction to direct that the imprisonment should run from the date of his order and not from the date of the Magistrate's order which comes before him under S. 123 (2). (*Lobo and Weston JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 278 = A.I.R. 1942 Sind 132.**

——**S. 512**—Record of statement—Sufficiency of evidence as to absconding—If can be questioned by accused. *See* 1941 Dig., Col. 490. KARAM SINGH JAWAHAR SINGH *v.* EMPEROR. **43 Cr.L.J. 8 = 14 R. L. 200.**

——**S. 514**—Bond under S. 109—Forfeiture for breach—Time for starting proceedings. *See* 1941 Dig. Col. 490. UMAR BAKHSH *v.* EMPEROR. **14 R. Pesh. 44 = 43 Cr.L.J. 109.**

——**S. 514**—Forfeiture of bail bond—Reduction of amount—Circumstances. *See* 1941 Dig., Col. 490. IMAM BEG *v.* EMPEROR. **197 I.C. 225 = 1941 A.Cr.C. 305 = 43 Cr.L.J. 135 = 14 R.O. 305 = A.I.R. 1942 Oudh 112.**

CR. P. CODE (1898), S. 522.

——**S. 514 (7)**—*Applicability—Security given under S. 117.*

S. 514 (7), Cr. P. Code, permits production of a certified copy of a judgment in certain security proceedings, but these do not include proceedings in which security was given during an enquiry under S. 117, Cr. P. Code. In the latter case, therefore, a copy of the earlier judgment will not be sufficient evidence by itself in proof of forfeiture against a surety. (*Beckett, J.*) SAJJAN SINGH *v.* EMPEROR. **199 I.C. 93 = 14 R.L. 382 = 43 Cr.L.J. 467 = 43 P.L.R. 711 = A.I.R. 1942 Lah. 78.**

——**S. 516-A**—Applicability—Jurisdiction of Magistrate—Complaint of criminal breach of trust sent to police for investigation—Property in hands of accused—*Ex parte* order for handing over possession to complainant—Legality. *See* 1941 Dig., Col. 491. RAMCHETSING ARJUNSING *v.* DEOJI KALYANJI. **198 I.C. 426 = 14 R.B. 320 = 43 Cr.L.J. 362 = A.I.R. 1942 Bom. 42.**

——**S. 517**—*Scope of—Right to the return of property—Test—Possession or ownership—Property recovered from* bona fide *pledgee—Pledgor acquitted on charge of theft.*

S. 517 Cr. P. Code, authorises the Court to return the articles concerned whether or not an offence is committed in respect thereof to the person claiming to be entitled to possession. The expression "person claiming to be entitled to possession" is important. It does not mean the owner. Ownership involves a question of title, whereas possession does not. Hence where the articles were recovered from a *bona fide* pledgee, his possession being under a contract must be regarded as legal possession and if the contract is valid it must be assumed that he would be the person entitled to possession thereof as against the other party to the contract. (*Niyogi, J.*) BUDHULAL HARNARAYAN *v.* SUKHMAN. **I.L.R. (1942) Nag. 769 = 200 I.C. 347 = 43 Cr.L.J. 698 = 15 R.N. 12 = 1942 N.L.J. 240 = A.I.R. 1942 Nag. 82.**

——**S. 520**—"Court of appeal or revision"—Meaning of. *See* 1941 Dig., Col. 492. FATIMA *v.* SAIN BAKSH **198 I.C. 493 = 14 R.S. 147 = 43 Cr.L.J. 386 = A.I.R. 1942 Sind 1.**

——**S. 522**—*Issue of notice, if condition precedent to passing order under.*

It cannot be said that it is absolutely necessary to issue notice before passing an order under S. 522, Cr. P. Code, and if no substantial injustice has been done, an order without issue of the notice may not be interfered with in revision. (*Allsop, J.*) CHHABIA *v.* RAM CHARAN. **1942 A.L.J. 587 = 1942 A.W.R. (H.C.) 339 = 1942 A.L.W. 551 = 1942 A. Cr. C. 189 = A.I.R. 1943 All. 7.**

——**S. 522**—*Revision—Order for possession—Power of High Court to make when no revision pending against conviction.*

Where an application for an order for possession is made to the trying magistrate under S. 522 (1), Cr. P. Code, not at the hearing but more than one month after the conviction, and is dismissed on the ground of want of jurisdiction in that it was not made within one month from the date of conviction, the order is clearly right because at the expiration of a month the magistrate is *functus officio*. The High Court, however, in revision against the order of the magistrate dismissing the application under S. 522 (1) can make an order for possession under S. 522 (3), although there is no revision application before the High Court against the conviction itself. (*Beaumont, C.J. and Wadia, J.*) SAVLARAM SADOBA *v.* DNYANESHWAR VISHNU. **I.L.R. (1942) Bom. 249 = 200 I.C. 724 = 14 R.B. 39 = 43 Cr.L.J. 708 = 44 Bom.L.R. 246 = A.I.R. 1942 Bom. 148.**

CR. P. CODE (1898), S. 523.

——**Ss. 523 and 517**—*Applicability—Theft—Magistrate finding that article was stolen by accused from complainant and sold to C—Procedure.*

The Magistrate in a case under S. 379, Penal Code, came to the conclusion that the article was stolen by the accused from the complainant and sold to *C*. He therefore ordered it to be returned to the complainant. Thereupon the purchaser *C* preferred an application to the Magistrate claiming the article, and the Magistrate passed an order to the effect that the complainant was entitled to possession of the article and the remedy of *C* was by civil suit against the seller (accused) to recover money paid by him.

Held, that S. 517 was inapplicable to the case as there was neither an inquiry nor a trial in any Criminal Court and the order of the Magistrate could not have been made under that section. The only section applicable to the case was S. 523. (*Lobo, J.*) SULLEMAN HAJI ELLIAS *v.* EMPEROR. **I.L.R. (1942) Kar. 72=202 I.C. 220=15 R.S. 37=43 Cr.L.J. 804=A.I.R. 1942 Sind 89.**

——**S. 523**—*Procedure—Duty of Magistrate—Charge of theft—Accused denying charge and pleading that property was foisted on them—Acquittal—Order for return of property to accused—Legality.*

Under S. 523, Cr. P. Code, the Magistrate is bound to order the property to be given to the person entitled to possession; it is his duty under the section to make an inquiry as to the person entitled to possession and to order possession to be given to him. If he is unable after inquiry to satisfy himself as to the person entitled to possession, he should under S. 523 (2), issue a proclamation before passing final orders. Where the accused, charged with theft plead that they have committed no theft, and that the property alleged to be stolen was foisted on them and the Magistrate accepts this defence and acquits the accused doubting whether any theft has been committed, he should not order the property to be returned to the accused. Such an order is clearly wrong and illegal. (*Horwill, J.*) CHINNAVADU, *In re*. **204 I.C. 37=55 L.W. 713=1942 M.W.N. 727=A.I.R. 1942 Mad. 726 (1)=(1942) 2 M.L.J. 575.**

——**S. 523**—*Procedure—Independent inquiry—If essential before making order.*

It is not obligatory on a Magistrate called upon to take action under S. 523 (2) to make any inquiry before passing his order. Ordinarily he proceeds on such materials as are available before him and he has to decide the question not who was in possession at the time the property was seized by the police, but who was entitled to possession. The order under S. 523 can be passed on the materials before the Magistrate without any independent enquiry regarding the ownership of the property. S. 523 provides for an inquiry only in the case where the person entitled to possession is unknown. When the Magistrate had plenty of material before him on which to arrive at a conclusion as to who was the person entitled to the possession of the article and has decided the case on that material, the High Court will not interfere with his decision in revision. (*Lobo, J.*) SULLEMAN HAJI ELLIAS *v.* EMPEROR. **I.L.R. (1942) Kar. 72=202 I.C. 220=15 R.S. 37=43 Cr.L.J. 804=A.I.R. 1942 Sind 89.**

——**S. 523**—Property seized during investigation of a crime—To whom to be restored—Seizure from pawnee—No offence against pawner proved—Order for return to complainant against pawner—If justified. *See* 1941 Dig., Col. 493. BABU RAM *v.* EMPEROR. **17 Luck 430=197 I.C. 404=1942 A. Cr.C. 10=14 R.O. 323=43 Cr. L.J. 164=A.I.R. 1942 Oudh 128.**

CR. P. CODE (1898), S. 526.

——**S. 523**—Scope—Property seized under S. 51—Disposal of—Duty of Magistrate. *See* 1941 Dig., Col. 493. SHROFF BODANNA *v.* EMPEROR. **198 I.C. 671=43 Cr.L.J. 536=14 R.M. 590=A.I.R. 1942 Mad. 319 (1).**

——**S. 526**—*Grounds for transfer—Apprehension of accused—Magistrate filing written statement without even reading it.*

The fact that the Magistrate filed without even reading a written statement in which the accused made serious complaints against him as well as disclosed *prima facie* a good defence, may reasonably occasion apprehension in the mind of the accused. (*Young, C. J.*) FAQIR CHAND *v.* KARAM CHAND. **200 I.C. 446=15 R. L 1=43 Cr. L. J. 632=44 P.L.R. 104=A.I.R. 1942 Lah. 122.**

——**S. 526**—Ground for transfer—Apprehension of conviction. *See* 1941 Dig., Col. 493. CHUNI LAL *v.* EMPEROR. **43 Cr.L.J. 71.**

——**S 526**—Scope—Application for transfer—Considerations for High Court—Cumulative effect of incidents or observations to be considered. *See* 1941 Dig., Col. 494. MUNAR PANDEY *v.* EMPEROR. **43 Cr.L.J. 48=A.I.R. 1942 Pat. 77.**

——**S. 526**—Transfer—Grounds—Cross complaints on same facts—Dismissal of one—Application for transfer of other—If to be allowed. *See* 1941 Dig., Col. 494. SADASIVA GOUNDAR, *In re*. **198 I.C. 16 (2)=14 R.M. 432=43 Cr.L.J. 340=A.I.R. 1942 Mad. 69.**

——**S. 526**—Transfer — Grounds — Magistrate examining accused before close of prosecution case and admitting inadmissible evidence—If entitles accused to claim transfer. *See* 1941 Dig., Col. 495. MUNAR PANDEY *v.* EMPEROR. **43 Cr.L.J. 48=A.I.R. 1942 Pat. 77.**

——**S. 526**—Transfer—Grounds—Magistrate subordinate to District Magistrate who sanctioned prosecution—If ground for transfer of case to Sessions Court. *See* 1941 Dig., Col. 495. EMPEROR *v.* SORABJI RUSTOMJI. **197 I.C. 733=14 R.B. 259=43 Cr.L.J. 262.**

——**S. 526**—Transfer—Grounds—Remarks by Magistrate during examination of prosecution witnesses adverse to accused—Magistrate insisting on stamped petition for each objection on behalf of accused to statements of witnesses—Effect—Reasonable apprehension. *See* 1941 Dig., Col. 495. MUNAR PANDEY *v.* EMPEROR. **43 Cr L.J. 48=A.I.R. 1942 Pat. 77.**

——**S. 526**—*Transfer—Grounds—Trial Magistrate also revenue officer subordinate to Mamlatdar on whose inquiry and report case is instituted.*

Where an application is made for transfer of a criminal case on the ground that the trial Magistrate who as a revenue officer is subordinate to a Mamlatdar on whose enquiry and report the case has been instituted, the High Court as a rule will transfer the case. The High Court will not hesitate to transfer a case from a Magistrate who may be called upon in the course of the trial to differ from the views expressed by his revenue superior and who will be very reluctant to make any hostile criticism on an officer on whose favour he is dependent as a revenue officer. (*Beaumont, C.J. and Wassoodew J.*) EMPEROR *v.* ADAMBHAI ABDULLABHAI. **203 I.C. 257=44 Cr.L.J. 71=44 Bom.L.R. 763=A.I.R. 1942 Bom. 316.**

——**S. 526 (8)**—*Adjournment under—Sending of application to District Magistrate and consequent stay, if amounts to.*

Where on an application for stay under S. 526 (8) the Magistrate sends the application to the District Magistrate and the proceedings are thereby stayed it does not

CR. P. CODE (1898), S. 526.

amount to an adjournment under that sub-section. (*Agarwal, J.*) BHAGWAT *v.* EMPEROR. **203 I.C. 524=1942 O.W.N. 448=1942 A.W.R. (C.C.) 290=1942 A.Cr.C. 148=1942 O.A. 337=A.I.R. 1942 Oudh 429.**

——**S. 526 (8)**—*Nature of provisions of—Effect of infringement.*

The provisions of S. 526 (8) of the Cr. P. Code are mandatory and hence if they are infringed the whole trial becomes illegal. (*Agarwal, J.*) BHAGWAT *v.* EMPEROR. **203 I.C. 524=1942 O.W.N. 448=1942 A.W.R. (C.C.) 290=1942 A.Cr.C. 148=1942 O.A. 337=A.I.R. 1942 Oudh 429.**

——**S. 526 (8) Proviso**—*'Subsequent intimation'—Meaning—Rejection of prior application to the trying Magistrate to transfer—Subsequent application for stay intimating intention to apply for transfer—Rejection if justifiable.*

The 'subsequent intimation' refererd to in the proviso to S. 526 (8), Cr.P. Code, could only mean that referred to in the sub-section itself, that is an intimation to the Court that the applicant intends to make an application under the section. Hence where an application was made to the trying Magistrate himself to transfer the case as he was likely to be cited as a witness and that was rejected, and a subsequent application was made for stay intimating an intention to apply to the Chief Court for transfer, it was held that its rejection under S. 526 (8), proviso was not justified. (*Agarwal, J.*) BHAGWAT *v.* EMPEROR. **203 I.C. 524=1942 O.W.N. 448=1942 A.W.R. (C.C.) 290=1942 A.Cr.C. 148=1942 O.A. 337=A.I.R. 1942 Oudh 429.**

——**S. 528 (2)**—*District Magistrate—Powers of transfer—Sub-Magistrate having no jurisdiction to try case before him—Procedure—Jurisdiction to decide whether case is triable by Magistrate—Transfer by District Magistrate or High Court—Legality.*

Neither the District Magistrate nor the High Court ought to transfer a case where the subordinate Magistrate has no jurisdiction; the proper tribunal to decide whether the case is one within his jurisdiction and whether or not he should continue the trial is the subordinate Magistrate himself and not the District Magistrate or the High Court. It is open to him to try an accused for an offence less than that revealed in the complaint although it would ordinarily be improper for him to do so. If he has no jurisdiction he should return the complaint for presentation to proper Court. (*Horwill, J.*) CHELLAPPA CHETTIAR, *In re.* **203 I.C. 620=1942 M.W.N. 593=55 L.W. 549=A.I.R. 1942 Mad. 715=(1942) 2 M.L.J. 308.**

——**S. 530 (p)**—Scope of—Trial of offence less serious than one committed—Effect—Interference by High Court. *See* 1941 Dig, Col. 496. PERIANNA MUDALI, *In re.* **198 I.C. 428=14 R.M. 454=43 Cr.L.J. 361=A.I.R. 1942 Mad. 31=(1941) 2 M.L.J. 420.**

——**S. 531**—*Applicability—Jurisdiction exercisable only by foreign Court—Wrongful exercise by Court in British India—If curable.*

S. 531, Cr. P. Code, applies only to inquiries in British India and cures lack of jurisdiction in respect of such inquiries But it does not condone the wrongful exercise of jurisdiction by a British Indian Court when only a foreign Court has jurisdiction in the matter. (*Horwill, J.*) BALAKRISHNA NAIDU *v.* SAKUNTALA BAI. **55 L.W. 306=1942 M.W.N. 369=A.I.R. 1942 Mad. 666=(1942) 2 M.L.J. 134.**

——**S. 537**—*Connected cases—Recording of defence evidence in one—Curability.*

CR. P. CODE (1898), S. 556.

Where it was at the request of the accused themselves that the defence evidence in the case was recorded in only one of the connected cases and was read in all of them, no miscarriage of justice could have occurred and S. 537, Cr. P. Code, is a clear bar to the quashing of proceedings on such a ground. (*Davies.*) JHANTA LAL *v.* EMPEROR. **1941 A.M.L.J. 96.**

——**S. 537**—Scope—Non-compliance with S. 342, Cr. P. Code—Effect of. *See* CR. P. CODE, S. 342. **A.I.R. 1942 Sind 102.**

——**S. 539-A**—Applicability—Accused person. *See* 1941 Dig., Col. 497. EMPEROR *v.* MAHTAB SINGH. **I.L.R. (1941) All. 635.**

——**S. 540**—Discretion and powers of Court under. *See* 1941 Dig., Col. 497. NARAYANAN NAMBIAR, *In re.* **I.L.R. (1942) Mad. 494=43 Cr. L. J. 557=14 R.M. 591=199 I.C. 406=A.I.R. 1942 Mad. 223=(1941) 2 M.L.J. 787.**

——**S. 540**—Powers of Court under. *See* 1941 Dig., Col. 498. SARFARAZ ALI *v.* EMPEROR. **17 Luck. 20.**

——**S. 540**—*Powers under discretionary.*

The powers under S. 540, Cr. P. Code, are discretionary and Court cannot be forced to exercise them at the bidding of the parties. (*Agarwal, J.*) NOOR MOHAMMAD *v.* IMTIAZ AHMAD. **197 I.C. 839=43 Cr.L.J. 280=14 R.O. 363=1942 A. Cr. C. 1=1941 O.A. 1008=1941 O.W.N. 1290=1941 A.W.R. (C. C.) 397=A.I.R. 1942 Oudh 130.**

——.**S. 540**—Scope and applicability of. *See* 1940 Dig., Col. 531, HANSRAJ *v.* EMPEROR. **I.L.R (1942) Nag. 333.**

——**S. 540**—*Scope—Appellate magistrate—Power to examine trial magistrate to ascertain what transpired at trial or to enquire what procedure was followed.*

S. 540, Cr. P. Code, gives very wide powers to all Courts at any stage in any proceeding to examine witnesses if such evidence appears necessary for a just decision of the case. An appellate magistrate is therefore entitled to ascertain what transpired in the trial Court by calling for a report or otherwise. There is nothing wrong in an appellate magistrate summoning the trial magistrate as a witness in the appeal and enquiring of him what procedure had been adopted in the trial Court. (*Horwill. J.*) PATTABHIRAMAYYA, *In re.* **203 I.C. 461=44 Cr. L. J. 5=1942 M. W. N. 581=55 L. W. 517=A.I.R. 1942 Mad 668=(1942) 2 M.L.J. 278.**

—— **S. 542**—*Applicability—Statements recorded by police in the course of investigations.*

Weston, J.—S. 548, Cr. P. Code, has no application to police statements recorded in the course of an investigation, and does not operate to exclude them. (*Lobo and Weston, JJ.*) EMPEROR *v.* RASULBUX. **I.L.R. (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**S. 545**—Absence of notice of appeal against conviction to complainant awarded compensation—No ground for interference in revision with order on such appeal. *See* CR. P. CODE, S. 422. **(1942) 1 M.L.J. 108.**

—— **Ss. 548 and 554**—Discretion of Court to allow inspection of record—Proper exercise of—Right of parties to inspect record to decide whether certified copy is necessary—Bombay High Court Criminal Circular No. 160 A. *See* 1941 Dig., Col. 498. PARASHURAM DETARAM *v.* HUGH GOLDING COCKE. **I.L.R. (1942) Bom 71=198 I.C. 114=14 R.B. 283=43 Cr. L.J. 306=A.I.R. 1942 Bom. 26.**

——**S. 556**—*Applicability—Order for prosecution by District Munsif—Appeal against order dismissed by District Judge—Trial before same District Judge as Sessions Judge—If barred.*

CR. P. CODE (1898), S. 561-A.

The accused who was the defendant in a suit for rent was called upon by the District Munsif who tried the suit under S. 476, Cr. P. Code, to show cause why he should not be prosecuted for forgery in respect of a receipt filed by him in the suit, and after inquiring into the matter ordered a complaint to be filed against the accused. The accused preferred an appeal under S. 476-B, Cr.P. Code, to the District Judge who dismissed the appeal, holding that the District Munsif was justified in filing the complaint. The accused was put up for trial before the Sessions Judge who happened to be the same District Judge who dismissed the accused's appeal under S. 476 B, Cr. P. Code. The accused in his appeal from his conviction after trial pleaded that the Sessions Judge was precluded from trying the case by reason of S. 556, Cr. P. Code.

Held, that only if the district judge had himself filed the complaint, or had ordered the district munsif to lay a complaint under S. 476-B in an appeal from an order of the District Munsif declining to lay a complaint, the District Judge would have been directly hit by S. 556, Cr. P. Code, but in the present case, he could not be said to be have been a party to the proceedings or to be personally interested in the result, so as to preclude him from trying the case as Sessions Judge. (*Horwill, J.*) KUNHAMAD *v.* EMPEROR. **(1942) M.W.N. 484=55 L.W. 536=A.I.R. 1942 Mad. 753.**

——**S. 561-A**—*Improper passages in Magistrate's judgment—Expungement by High Court.*

The High Court will on the recommendation of a Sessions Judge, expunge from the judgment of a Magistrate passages which are either quite improper or are based on extra judicial information which does not form a part of the evidence on the record. (*Din Mohammad, J.*) EMPEROR *v.* BRIJ LAL. **202 I.C. 292=43 Cr. L.J. 808=15 R.L. 117=44 P.L.R 409=A.I.R. 1942 Lah 232.**

——**Ss. 561-A and 537**—Power to expunge remarks from judgments—Scope and exercise of—Exercise by one not authorised—Curability. *See* 1941 Dig, Col. 499. A. H. GANDHI *v.* THE KING. **198 I.C. 455=14 R.R. 210=43 Cr.L.J. 373.**

——**S. 561 A**—*Quashing proceedings—Prosecution case disclosing no offence.*

If the prosecution case discloses no offence at all against the accused, the proceedings can be quashed on a petition by him under S. 561-A, Cr. P. Code. (*Bhide, J.*) HEYWOOD *v.* EMPEROR. **200 I.C. 629=15 R. L. 10=43 Cr.L.J. 703=44 P.L.R. 112=A.I.R. 1942 Lah. 134.**

——**S. 561-A**—*Return of books illegally seized by police—Power of High Court to order.*

The High Court is competent to direct the return of the books illegally seized by the police. The language of S. 561 A,, Cr. P. Code, is wide enough to cover the exercise of this authority. (*Din Mahomed and Blacker, JJ.*) DURGA DAS *v.* EMPEROR. **44 P.L.R. 549.**

——**S. 561-A**—Scope and applicability — Matter under Press (Emergency Powers) Act—Inherent powers, if can be invoked. *See* 1941 Dig., Col. 499. V. G. DESHPANDE *v.* EMPEROR. **I.L.R. (1942) Nag. 107.**

——**S. 562**—*Applicability—Accused who had already undergone two periods in Borstal school—If can be dealt with under section.*

S. 562, Cr. P. Code, can be applied only to first offenders; and an accused who had already spent two periods in a Borstal school cannot be dealt with under the section. EMPEROR *v.* SHEIKH MAHABOOB. **201 I.C. 524=15 R.M. 433=1942 M.W.N. 377 (2)=55 L.W. 355=43 Cr.L.J. 772=A.I.R. 1942 Mad. 532 (1).**

CR. P. CODE (1898), S. 562.

——**S. 562**—Applicability and scope—Offence committed deliberately by experienced police officers—Proper sentence—Release under S. 562—Propriety of. *See* 1941 Dig., Col. 500. TITUS, *In re.* **43 Cr.L.J. 3.**

——**S. 562**—*Applicability—Conviction under S. 304, I. P. Code—Order under S. 562 Cr. P. Code—Propriety.*

S 562, Cr. P. Code, is ordinarily intended for persons led astray for the first time by force of circumstances or by bad company or evil influence. It is very inappropriate and is rarely applied to an offence punishable under S. 304, I. P. Code, especially where the accused shows no regret at all for the act committed. The deceased, a girl of about 16 or 17 years of age, had been talking to a cousin of hers in the village on several occasions and on that account people had been gossiping about her. The third accused, her sister's husband, reported this to her mother the first accused, about this. The first accused, and the second accused, the sister of the deceased, dragged the deceased towards an empty house intending to shut her up there for the night. When the deceased resisted, the first accused took up a heavy piece of wood and struck the deceased a blow on the head which caused the deceased to fall to the ground at once. She appeared to be dead and on the advice of the third accused who just then came in, the deceased was hung up to a beam of the house to make it appear that she had committed suicide. Within a short time the girl was cremated, it being given out that she had committed suicide. It was impossible to know precisely the proximate cause of death as there was no *post mortem*. The first accused was convicted under S. 304 (2), I. P. Code, but instead of sentencing her to imprisonment, the Sessions Judge treated her as a first offender and bound her over under S. 562, Cr. P. Code.

Held, in revision, that the first accused was guilty at least of an offence punishable under S. 304, I. P. Code, and though the application of S. 562, Cr. P. Code, was not illegal in the case of an offence punishable under S. 304 (2), I.P. Code, the order in this case was very inappropriate and should not be allowed to stand.

Held, further, that though the first accused deserved heavier sentence, in view of her being an old woman a sentence of five years' rigorous imprisonment would be sufficient. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* MADATHI. **201 I.C. 444=15 R.M. 341=55 L.W. 71 =1942 M.W.N 169=43 Cr.L.J. 671=A.I.R. 1942 Mad 415 (2)=(1942) 1 M.L.J. 224.**

——**S. 562**—*Applicability—Principles to be borne in mind—First offender—Desirability of avoiding imprisonment of.*

It is desirable to avoid sending a first offender to prison for an offence which is not of a serious character, and thereby running the risk of turning him into a regular criminal. In applying the provisions of S. 562, Cr. P. Code, it is better to err (if one must) on the side of liberality. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* MAHOMED HANIF. **201 I.C. 651=15 R.B. 108=43 Cr.L.J. 754=44 Bom L.R. 456=A.I.R. 1942 Bom. 215.**

——**S. 562**—*Offence under S. 411, I. P. Code—Accused, if can be let off with warning.*

An accused who is convicted under S. 411, I. P. Code, cannot be let off with a warning under S. 562, Cr. P. Code, as that offence is punishable with more than two years' rigorous imprisonment. (*Bhide, J.*) EMPEROR *v.* NATHA SINGH. **44 P.L.R. 67.**

——**S. 562 (1), proviso**—*Applicability—Duty of magistrate to whom reference is made—Power to set aside conviction.*

CRIMINAL TRIAL.

S. 562, Cr. P. Code applies only to convicted persons under the proviso to S. 562 (1); the magistrate to whom the reference is made has to proceed in the manner provided in S. 380. He has no power to set aside the conviction and acquit the accused. (*Horwill, J.*). VENKITASWAMI NAICKEN *v.* EMPEROR. **203 I.C 500=55 L.W. 757 (2)=(1942) M.W.N. 491=A.I.R. 1942 Mad. 657 (1)=(1942) 2 M.L J. 277.**

CRIMINAL TRIAL—Absence of provision on a particular matter—Procedure to be followed. *See* 1940 Dig., Col. 532. HANSRAJ *v.* EMPEROR. **I.L.R. (1942) Nag. 333.**

———Accused— Silence of—Effect—Presumption, if any, arises. *See* 1941 Dig., Col. 501. GHURA *v.* EMPEROR. **I.L.R (1941) All. 912=198 I.C. 452=14 R.A. 292=43 Cr.L.J. 380=1941 A.Cr.C. 300=A.I.R. 1942 All. 47.**

———*Acquittal—Failure to examine witnesses—Legality.*

It is illegal for a Magistrate to acquit the accused without hearing the complainant's evidence. The Code of Criminal Procedure makes no provision for the acquittal of accused persons without examining witnesses. (*Horwill, J.*) SUBBIER *v.* LAKSHMANA IYER. **201 I.C. 701=15 R.M. 426=55 L W 232=1942 M.W.N. 296=1942 Comp C. 166=43 Cr.L.J. 770=A.I.R. 1942 Mad. 452 (1)=(1942) 1 M.L.J. 520.**

———Amicus curiae—*Appointment of—Rape case—Duty of Court to appoint legal practitioner.*

It would be well in Sessions Cases in cases of rape, at least in some of them, if the Sessions Judges appointed a member of the Bar as *amicus curiae*. (*Mockett, J.*) KARICHIAPPA GOUNDAN, *In re*. **199 I.C. 742=14 R M. 667=43 Cr.L.J. 576=A.I.R. 1942 Mad. 285.**

———Amicus curiae—*Preparation of case.*

In cases where pauper briefs at Government expense are allowed to be given, arrangements should be made well in advance to enable counsel to prepare the cases. (*Rachhpal Singh, C.J. and Masud Hasan, J.*) MASSU *v.* STATE. **44 P.L.R. J. & K 11.**

———*Appeal or revision case in which compensation is awarded under S 545, Cr. P. Code—Notice to party awarded compensation—Necessity—Rule—Practice.*

Where a person, whether the complainant or some one else, has been awarded compensation under S. 545, Cr. P. Code, he ought to be served with notice of an appeal or revision application which may result in the order of compensation being set aside. If he appears it will be in the discretion of the Court to hear his advocate or to decline to do so. But if he is served with notice, he can, at any rate, see that his view is placed before the Court by the advocate appearing for the Government. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* CHUNILAL BHAGWANJI. **I.L.R. (1942) Bom. 530=201 I.C. 710=15 R.B. 106=43 Cr.L.J. 765=44 Bom.L.R. 438=A.I.R. 1942 Bom. 205 (1).**

———Benefit of doubt—Right of accused—Mere suspicion against evidence—Effect. *See* 1941 Dig., Col. 501. NAGAMMA, *In re*. **200 I.C. 95=15 R.M. 7=43 Cr.L.J. 596.**

———Burden of proof—Duty of prosecution—Charge under S. 411, I. P. Code—Accused found in possession of property recently stolen—Presumption—Effect of—Onus of proof—If shifted on to accused. *See* EVIDENCE ACT, S. 114, ILL. (A). **23 Pat.L T. 18.**

———Burden of proof—Guilt of accused. *See* 1941 Dig., Col. 502. PARBHOO *v.* EMPEROR. **I.L.R. (1941) All. 843=197 I.C. 525=14 R.A. 209=43 Cr.L.J. 177 (F.B.).**

CRIMINAL TRIAL.

———*Burden of proof—Onus on prosecution and on defence—Degree of certainty required—Fundamental distinction.*

There is a subtle but fundamental distinction between the degree of certainty required in cases where the burden of proving a fact is on the prosecution and those where the burden of proof is on the accused. When the burden of the issue is on the prosecution, the case must be proved beyond a reasonable doubt. Where, however, the burden of an issue is on the accused, he is not required to prove it beyond a reasonable doubt or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a *prima facie* case, for then the burden of proving such issue is shifted to the prosecution which has still to discharge its original and major *onus* that never shifts (*i.e.*) that of establishing on the whole case, guilt beyond a reasonable doubt. If upon a review of all the evidence the Court is left in doubt whether the circumstances bringing the case of the accused within a general exception exist or not, the accused is entitled to acquittal. The test is not whether the accused has proved beyond all reasonable doubt that he comes within the exception but whether a reasonable doubt is thrown on the guilt of the accused. (*Young, C.J and Mahomed Munir, J.*) HASSAN DIN *v.* EMPEROR. **44 P.L R. 554.**

———Burden of proof—Right of private defence—Deceased beating accused with stick and preparing to strike again—Accused taking out knife and stabbing deceased—Presumption of exercise of private defence—Offence—If murder. *See* PENAL CODE, S. 302. **(1942) 1 M.L.J. 200.**

———*Charge—Defect in—If ground for retrial.*

The misrepresentations and the manner in which the cheating was carried out by the accused were not set out with any precision in the charge against the accused under S. 420, Penal Code. Nor was the accused questioned with regard to the misrepresentations upon which he was convicted.

Held, that although a retrial need not be ordered merely on account of a defect in the charge, the proceedings involved a more serious irregularity and, therefore, a retrial should start from before the framing of the charge and not from before the examination of the accused under S. 342, Criminal Pro. Code. (*Davis, C.J.*) BHAGWANDAS *v.* EMPEROR. **I.L.R. (1942) Kar 112=202 I.C. 206=15 R. S. 33=43 Cr.L.J. 799=A.I.R 1942 Sind 102.**

———*Complaint for offence triable under warrant procedure—Complainant absent on day fixed for return of notice—Dismissal of complaint—Fresh complaint—Sustainability.*

The petitioner filed a complaint before the Sub-Magistrate charging the accused with certain offences for which the accused could be tried only under the warrant procedure. Notice was ordered to the accused and the case was posted to a certain date for the appearance of the accused. On that day the petitioner was absent and the Magistrate exercised his jurisdiction under S. 259, Cr. P. Code, and discharged the accused. The petitioner thereupon filed another complaint but the Magistrate refused to accept the same, one of the reasons given being that it would be tantamount to a review application, which the Magistrate had no jurisdiction to grant.

Held, in revision, that the Magistrate was bound to entertain the second complaint as the accused had only been discharged and the previous complaint had not been disposed of on the merits. (*Horwill, J.*) ACHANNA KAMTHI, *In re*. **55 L.W. 690=1942 M.W.N. 758 (1)=(1942) 2 M.L. J. 554.**

CRIMINAL TRIAL.

——*Complaint—Part of offence omitted—Omitted part rendering complaint of Civil Court necessary—Jurisdiction of Magistrate—Offence under S.* 206, *Penal Code—Procedure.*

The complainant stated that he had filed a suit in the Civil Court against the first accused with respect to his land, that he had filed an application in the suit for attachment of the standing crops on the land and for distraint of the first accused's cattle and that the petitioner, joining with the first accused, had removed the harvested crops and the cattle to his own field and claimed them as his with the object of preventing the receiver appointed by the Civil Court from taking possession of the property. The petitioner contended that the offence said to be committed was one punishable under S. 206, I. P. Code, which required a complaint by the Civil Court.

Held, that the Magistrate had no jurisdiction to entertain the case in the absence of a complaint from the Civil Court. When the offence complained of has relation to a Civil Court and is intended to render fruitless the proceedings of the Court it is against public policy that a Magistrate should take cognizance of the case which the Legislature clearly intended should be taken cognizance of only on the motion of the Civil Court concerned. It is not open to the Magistrate in such a case to entertain the complaint which for purposes of giving jurisdiction ignores part of the offence. (*Horwill, J.*) PALANISWAMI GOUNDER *v.* BAGAVATHI GOUNDER. **203 I.C. 670=55 L.W. 518=1942 M.W.N 492=A.I.R. 1942 Mad. 675 (1)=(1942) 2 M.L.J. 246.**

——Confession—Value—Only one arrested out of seventeen implicated by confession—Persons mentioned in first information report, not included—Inference. *See* 1941 Dig., Col. 503. GHURA *v.* EMPEROR. **I.L.R. (1941) All. 912=198 I.C. 452=14 R.A 292=43 Cr. L.J. 380=1941 A.Cr.C. 300=A.I.R. 1942 All. 47.**

——*Conviction—Basing of, on accused's statement alone—Propriety and legality—Statement how to be considered—Duty of Court.*

A conviction based solely upon the statement made by an accused person should not be allowed to stand unless there are very strong circumstances and each case must depend upon its own circumstances. Where there is no sufficient evidence for conviction or from vagueness of the prosecution evidence the Court is not prepared to act on it, it should not be open to the Court to supplement the prosecution evidence by selecting out of the statement of the accused person, passages, which might corroborate the prosecution evidence and to reject those passages which go to exonerate the accused person. No general rule can be laid down regarding the use which is to be made of the statement of an accused person in Court. Due consideration must of course be given to every part of the statement but the Court must exercise its judgment and common sense in accepting or rejecting any portion of the statement as true or untrue. (*Thomas, C. J.*) PHILLIPS *v.* EMPEROR. **17 Luck. 646=201 I.C. 381=15 R.O. 92=1942 A.Cr.C. 87=43 Cr.L.J. 657=1942 A.W.R. (C.C.) 106=1942 O.A. 85=1942 O.W.N. 144=A.I.R. 1942 Oudh 321.**

——*Conviction—Basis of.*

The fact that the case is an unfortunate one is no reason why the accused should be convicted where the evidence does not warrant it. (*Harries, C.J. and Manohar Lall, J.*) BASANGI KUI *v.* EMPEROR. **199 I.C. 317=14 R.P. 588=8 B.R. 539=23 Pat.L.T. 131=43 Cr.L.J. 549=A.I.R. 1942 Pat. 321.**

CRIMINAL TRIAL.

——*Conviction — Previous conviction—When to be acted upon—Proof or admission by accused—Necessity.*

A Magistrate can act on previous convictions only if they have been proved or if the accused has admitted them. Mere assertion by the prosecution is not sufficient. (*Horwill, J.*) GOVINDAN, *In re.* **203 I.C. 433=55 L.W. 530=1942 M.W.N. 590=A.I.R. 1942 Mad. 669=(1942) 2 M.L.J 280.**

——*Conviction—Suspicion—Sufficiency—Charge of murder—Aconite poisoning—Interval between taking of food containing poison and appearance of symptoms—Effect—Doubt—Conviction—If justified.*

Although there is room for suspicion against an accused person charged with murder, it would not be safe to convict the accused in the absence of reliable evidence. In cases of aconite poisoning, the symptoms of numbness of the tongue and so forth in the mouth of the victim come on very quickly, within three to five minutes. Where therefore the evidence is to the effect that there was a longer interval between the taking of the food alleged to contain aconite and the appearance of these symptoms, there are elements of reasonable doubt in the case. The accused cannot therefore be safely convicted of murder. (*Burn and Mockett, JJ.*) EMPEROR *v.* NAGAMMA. **1942 M.W.N. 173.**

——*Court room—Public place.*

A Court room is a public place and unless the proceedings are held in *camera* or the Court for some other valid reason issues a prohibition before hand, any person can enter it without any permit and remain there so long as he does not misbehave. (*Din Mahomed, J.*) HAKUMAT RAI *v.* EMPEROR. **44 P.L.R. 511=A.I.R. 1943 Lah. 14.**

——*Cross cases—Use of evidence in the one in the other—Trial, if and when vitiated.*

In cross cases unless the accused has been prejudiced by reason of the evidence in the one case being acted upon in the other, the trial would not be set aside. (*Agarwal, J.*) DEBI DAYAL *v.* EMPEROR. **201 I.C. 791=15 R.O. 110=1942 O.A. 332=1942 O.W.N. 440=1942 A.W.R. (C.C.) 286=1942 A.Cr.C. 143=43 Cr L.J. 781=A.I.R. 1942 Oudh 444.**

——Duty of Courts—Defence of prisoners at Crown's expense—Selection of lawyers. *See* 1941 Dig., Col. 505. DIKSON MALI *v.* EMPEROR. **23 Pat.L.T. 387=43 Cr.L.J. 36=A.I.R. 1942 Pat. 90.**

——*Duty of Court—Dropping of proceedings on ground of party subscribing to war fund—Legality.*

Where a proceeding is discontinued not for lack of merit but because a party eventually agreed to make a donation to some fund, the order dropping the proceeding is illegal and must be set aside. (*Agarwala, J.*) JADUNANDAN LAL *v.* RAMPEYARE SAO. **200 I.C. 301=8 B.R. 659=1 R.P. 663=43 Cr.L.J. 633=23 Pat L.T. 40=A.I.R. 1942 Pat. 337 (1).**

——*Duty of Magistrate—Extra-judicial information—If can be utilised.*

A Magistrate while sitting as a judge should not base his decision on matters which come to his knowledge extra-judicially. A statement to him in the absence of the parties and not subjected to the test of cross examination cannot be depended upon for the simple reason that its truth cannot be guaranteed. (*Din Mohammad, J.*) EMPEROR *v.* BRIJ LAL. **202 I.C. 292=15 R.L. 117=43 Cr.L.J. 808=44 P.L.R. 409=A.I.R. 1942 Lah 232.**

——*Duty of prosecution—If bound to examine all possible witnesses.*

It is not the imperative duty of the prosecutor to put in the witness-box all the possible witnesses of a crime, failing which an inference adverse to the prosecution

must necessarily be drawn. It is a matter dependent on the particular circumstances of each case. A prosecution is not bound to call witnesses irrespective of considerations of number and of reliability, though witnesses essential to the unfolding of the narrative on which the prosecution is based must of course be called. It is not for the prosecutor to discharge the functions both of prosecution and of defence. It is not the duty of the prosecution to go out of its way to preserve to the accused the right of reply by putting into the witness box persons who are not material witnesses for the prosecution but would, in substance if not in form, be witnesses for the defence. (*Varma and Rowland, JJ.*) RAMDEO SINGH *v.* EMPEROR. **21 Pat. 258=202 I C. 331=15 R.P. 112=8 B.R. 879=43 Cr.L.J. 817=A. I.R. 1942 Pat. 481.**

———Duty of prosecution—Murder trial—Order in which witnesses should be examined. *See* 1941 Dig., Col. 506. SHWE PRU *v.* THE KING. **197 I.C. 350=43 Cr L.J. 157=14 R.R. 118.**

———Duty of prosecution—Production of all available evidence—Hostile witness. *See* 1941 Dig., Col. 506. SARFARAZ ALI *v.* EMPEROR. **17 Luck. 20.**

———Duty of prosecution—Production of eye-witnesses. *See* 1941 Dig., Col. 506. EMPEROR *v.* GAYA DIN. **17 Luck. 150=A.I.R. 1942 Oudh 45.**

———Duty of prosecution—Statement made by accused in his favour. *See* 1941 Dig., Col. 506. HASIL *v.* EMPEROR. **198 I.C. 441=14 R.L. 339=43 Cr.L J. 370=A.I.R. 1942 Lah. 37.**

———*Duty of prosecution—Witness—Duty to call—Witness who will not speak the truth—Procedure to be adopted—Tendering for cross-examination—Propriety.*

It is the duty of the prosecution in a criminal case to be always perfectly fair. It is obviously not the function of the Crown to procure the conviction of an innocent person But the Crown is not bound to call before the Court a witness who, it believes, is not going to speak the truth. If the Crown informs the accused of the name of the witness and produces him in Court, it can then leave it to the accused to call him or not as he thinks fit. If the witness is called, the Crown can cross-examine him. It is not proper to tender him for cross-examination. (*Beaumont, C.J., Wadia and Sen, JJ.*) EMPEROR *v.* KASAMALLI. **I L R. (1942) Bom. 384=199 I.C 202=14 R.B 357=43 Cr.L.J. 529=44 Bom.L. R. 27=A.I.R. 1942 Bom. 71 (F. B.).**

———*Evidence—Appreciation—Local witnesses—Late recording of their evidence by police—Test to assess credibility.*

Evidence of people living in the locality recorded by the Police a week after the occurrence in the course of their investigation in which the police did not leave the place of occurrence for a single moment after they had reached there, must, because of that circumstance alone, be looked upon with great suspicion. A test to assess the credibility of evidence is whether the evidence is inherently probable and whether the conduct of the prosecution witnesses is such as would invest them with any measure of veracity. A witness who has something in his knowledge vitally concerning the matter of enquiry cannot be believed if he does not mention it at the time when he is expected to do so. (*Kachhpal Singh, C. J. and Masud Hasan, J.*) MASSU *v.* STATE. **41 P.L.R. J. & K. 11.**

———*Evidence—Appreciation—Recovery of stolen property—Evidence as to attacked—Matters for consideration.*

When the evidence of the recovery of stolen property is attacked, the Court has to examine the evidence in the light of the following alternative hypothesis:—(1) The complainant might have been persuaded by the police to state in the first information report that property which in fact was not stolen had been stolen and to hand over such property to the police to be used in fabricating recoveries from the accused persons. This assumes a conspiracy between the informant and the police from the very start. (2) The police might have obtained property similar to the stolen property from the complainant or some one else and used it for the purpose of fabricating the recoveries. (3) The police might have suppressed some of the stolen property recovered from an accused person and utilized in inventing a recovery from another accused person. (4) The property might have been recovered from a third party and used by the police in one of the impugned recoveries. (*Mahomed Munir, J.*) SHERA *v.* EMPEROR. **203 I. C. 62=44 P.L.R. 545=44 Cr.L.J. 62=A.I.R. 1943 Lah. 5.**

———Evidence—Chemical evidence—Value of—Aconitine poisoning—Chemical Examiner's report—Contents. *See* 1941 Dig., Col. 507. NAGAMMA, *In re.* **200 I.C. 95=15 R.M. 7=43 Cr.L.J. 596.**

———*Evidence—Child witness—Absence of preliminary inquiry or questions to witness about his intelligence and capacity—Omission to record judge's opinion as to capacity of witness—Effect of—Accused—If prejudiced.*

The object of preliminary inquiry and of putting questions to the child witness is only to prevent waste of time of the Court, if, as a result of such inquiry, it is found that the child is neither intelligent nor able to give evidence which may be acceptable. The absence of such an inquiry will not in any way prejudice the accused in a criminal trial, if the same result is obtained in the course of the examination of the witness in the trial itself, especially in a trial with the aid of a jury, who may form their own estimate from the demeanour of the child witness. The holding of a preliminary inquiry is only a rule of prudence and is not a legal obligation upon the judge. (*Manohar Lal and Meredith, JJ.*) KARU SINGH *v.* EMPEROR. **20 Pat. 893=199 I.C. 200=14 R.P. 567=8 B.R. 528=23 Pat.L T. 310=1942 P.W. N. 15=43 Cr.L.J. 479=A.I.R. 1942 Pat. 159.**

———*Evidence—Child witness—Preliminary inquiry as to capacity of child to give intelligible testimony—Court, if bound to hold.*

There is no legal obligation upon a Court examining a child witness to have a preliminary questioning of the witness to test the capacity and intelligence of the child. It is a rule of caution only and intended only to save the time of the Court and not to legalise the evidence. The evidence of the child witness will disclose whether he is capable of giving intelligible testimony or not. If the Court satisfies itself in this way rather than by preliminary inquiry, there is nothing illegal in such procedure and that is no ground for holding that the trial is vitiated. (*Manohar Lall and Meredith, JJ.*) LAKHAN SINGH *v.* EMPEROR. **20 Pat. 898=199 I. C. 838=14 R.P. 629=1942 P.W.N. 23=23 Pat L.T 332=43 Cr.L.J. 570=8 B.R. 589=A.I.R. 1942 Pat 183.**

———*Evidence—Circumstantial evidence—If can be relied on—Prosecution witnesses interested and unreliable—Plea of self-defence.*

Where all the prosecution witnesses are interested and are proved by their contradictions and exaggerations not altogether reliable, the Court has to rely on circumstantial evidence for deciding who were the aggressors and whether the plea of self defence is sustainable. (*Sale, J.*) BAKHU *v.* EMPEROR. **198 I.C. 832=14 R.L. 370=43 Cr.L.J. 443=43 P.L.R. 729=A.I.R. 1942 Lah. 40.**

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———*Evidence—Circumstantial evidence—Inference of guilt—When justified.*

In cases where the evidence against the accused is wholly circumstantial, the rule is that in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. (*Young, C. J. and Mahomed Munir, J.*) HASSAN DIN *v.* EMPEROR. **44 P.L.R. 554.**

———*Evidence—Circumstantial evidence—Value of.*

Circumstantial evidence must in every case be taken with great caution and assessed strictly if a conviction is to be based upon it. It should be incompatible with any hypothesis except the guilt of the accused. (*Rachhpal Singh, C.J. and Masud Hasan, J.*) MASSU *v.* STATE. **44 P.L.R. J. & K. 11.**

———Evidence—Credibility of witness—Rules as to. 1941 Dig., Col. 508. QAMRUL HASAN *v.* EMPEROR. **14 R.O. 280=43 Cr.L.J. 115=A.I.R. 1942 Oudh 60.**

———Evidence—Credibility of witnesses—Speaking to dying declaration doubtful if made at all—Their whole evidence if to be discarded. *See* 1941 Dig., Col 508. SHEO PRASAD *v.* EMPEROR. **17 Luck. 376=1941 A.Cr.C. 306=197 I.C. 701=43 Cr.L.J. 243=14 R.O. 353=A.I.R. 1942 Oudh 193.**

———*Evidence—Evidence of witness rejected as dangerous to be acted upon—If can be used to corroborate another witness.*

Tainted or dangerous evidence cannot be relied upon for any purpose, not even for corroboration. If a Court disbelieves a witness, it must reject that evidence for all purposes, and cannot use it to corroborate a witness which the Court believes. (*Harries, C. J. and Manohar Lall, J.*) BESANGI KUI *v.* EMPEROR. **199 I. C. 317=14 R.P. 588=8 B.R. 539=43 Cr.L.J. 549=23 Pat L.T. 131=A.I.R. 1942 Pat. 321.**

———Evidence—Inconsistent statements of witnesses—How to be dealt with. *See* 1941 Dig., Col. 509. SHEO PRASAD *v.* EMPEROR. **17 Luck. 376=1941 A.Cr.C. 306=197 I.C. 701=43 Cr.L.J. 243=14 R.O. 353=A.I.R. 1942 Oudh 193.**

———*Evidence—*Panch *witness in sessions trial—Statement of what he would depose—If to be furnished to defence—Practice.*

It is of course a statutory practice in criminal trials before the Sessions Court that whenever the prosecution want to call additional witnesses they should supply to the defence statements of what they are going to depose; but as far as *panch* witnesses are concerned, it is not necessary for the prosecution to supply their statements to the defence provided copies of *panchnamas* have already been furnished. (*Chagla J.*) EMPEROR *v.* MUKHTIYARKHAN TAJAMULKHAN. **201 I.C. 641=15 R.B. 102=44 Bom.L.R. 432=A.I.R. 1942 Bom. 207.**

———Evidence—Two witnesses giving same evidence—One disbelieved—Believing other and basing conviction on his evidence—Legality. *See* 1941 Dig., Col 510 SADEPPA GIREPPA *v.* EMPEROR. **I.L.R. (1942) Bom 115=198 I.C. 245=14 R.B. 292=43 Cr.L.J. 328=A.I.R. 1942 Bom. 37.**

———*Evidence—Value of—Evidence of deceased's relations in murder case.*

Where in a murder case the deceased and his party are found to have been on inimical terms with the party of the accused it is a rule of prudence that the evidence of the relations of the deceased should be taken with caution. (*Almond, J. C. and Mir Ahmad, J.*) DOST MOHAMMAD *v.* EMPEROR. **199 I.C. 78=14 R. Pesh. 1=43 Cr.L.J. 498=A.I.R. 1942 Pesh. 29 (2).**

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———Evidence—Witness—Duty of prosecution—Witness treated as hostile in committal Court—Proper course for Public Prosecutor and Court. *See* 1941 Dig. Col. 511. GURUSWAMI GOUNDAR, *In re.* **I.L.R. 1942) Mad. 77=43 Cr. L. J 100=(1941) 2 M.L.J. 209.**

———Evidence—Witness examined and evidence taken—Power to expunge same from record. *See* 1941 Dig., Col 511. SOUNDARAJA AYYANGAR, *In re.* **14 R.M. 372=43 Cr.L.J. 163=A.I.R. 1942 Mad. 38.**

———*Evidence—Witnesses identifying accused at test parade not called to give evidence but tendered for cross-examination—Accused not cross-examining them—Fact of identification by them and statements made by them to officer conducting identification parade—Use of—Legality.*

Where persons who had identified some of the accused at a test identification parade are not called to give any evidence but are merely tendered for cross-examination, which is however, declined, it is illegal for the Court to rely on those persons and on the fact of identification by them for convicting the accused. Unless and until they give evidence in Court, their identification at the parade and the statements made by them at the time to the officer conducting the identification cannot be used at all. (*Meredith and Shearer, JJ.*) PESH MAHOMED *v.* EMPEROR. **201 I. C. 486=15 R.P. 62=23 Pat.L.T. 185=8 B.R. 795=43 Cr.L.J. 742=A.I.R. 1942 Pat. 319.**

———Evidence—Witness—Right of accused—Accused applying at early stage for calling clerk of canal department—Clerk sent unable to prove handwriting on papers—Application by accused for another clerk to be sent—If too late. *See* 1941 Dig., Col. 511. CHANDER MAHTON *v.* EMPEROR. **43 Cr.L.J. 101.**

———*Evidence—*Zimnis—*Use of.*

The Court should not allow itself to be influenced against an accused person by reference to the *Zimnis*. Their use must be confined to eliciting circumstances favourable to him. (*Tek Chand and Sale, JJ.*) GHULAM MAHOMED *v.* EMPEROR. **203 I C. 488=44 Cr. L. J. 77=44 P.L.R. 448=A.I.R. 1942 Lah 271.**

———*First information report—Right of accused to copy—Charge of rape—Examination of complainant—Accused's counsel requesting for copy of first information—Duty of Court to grant.*

In a case of rape, the accused should in fairness be supplied with a copy of the first information report when the complainant gives her evidence, if the accused or his counsel makes a request for the same. (*Beaumont, C. J., Wadia and Wassoodew, JJ.*) EMPEROR *v.* MAHADEO TATYA. **200 I.C. 261=15 R. B. 1=43 Cr.L.J. 621=44 Bom.L.R. 216=A.I.R. 1942 Bom. 121 (F.B.).**

———*Identification—Officer conducting test identification—Putting mark on suspects—Propriety of.*

The practice of putting a mark or stamp on a suspect by the officer conducting a test identification parade ought to be deprecated and should not be resorted to. (*Meredith and Shearer, JJ.*) PESH MAHOMED *v.* EMPEROR. **201 I. C. 486=15 R.P. 62=23 Pat L.T. 185=8 B.R. 795=43 Cr.L.J. 742=A.I.R. 1942 Pat. 319.**

———*Identification parade—Witness seeing accused before parade—Identification and evidence of—Value of.*

The fact that the witnesses saw the accused persons before the test identification parade makes their identification worthless. Such evidence cannot be relied upon even for corroboration. (*Harries, C.J. and Manohar Lall, J.*) BESANGI KUI *v.* EMPEROR. **199 I. C. 317**

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=14 R.P. 588=8 B.R, 539=43 Cr.L.J. 549=23 Pat. L.T 131=A.I.R. 1942 Pat. 321.

———*Identification proceedings—Duty of Magistrate conducting—Recording of objections—Avoiding of delay.*

It is the duty of Magistrates conducting identification proceedings to make a note of every objection which is made by an accused during the proceedings so that the Court which has to judge the value of the identification evidence may take into consideration the objections and in the light of those objections, may appreciate the evidence of identification. The sooner the identification proceedings are conducted, the better it is. It is not desirable to delay identification proceedings because a delay may affect the ability of a witness to identify an accused. (*Ganga Nath and Yorke, JJ.*) EMPEROR *v.* DEBI CHARAN. 202 I C 586=1942 A W.R. (H.C) 293=1942 A.L W. 505=1942 A.Cr C. 161=43 Cr.L. J. 867=1942 A.L.J. 376=A.I.R. 1942 All. 339.

———*Identification—Value of evidence as to.*

Though evidence of identification is a weak sort of evidence it cannot be said that it should not be accepted unless it is corroborated by other evidence because it is not by itself an unsafe basis for conviction. (*Agarwal, J.*) EMPEROR *v.* JAI RAM. 203 I.C. 248=1942 A. Cr.C. 190=44 Cr.L J. 12=1942 O.W N. 606=1942 A.W.R (C.C.) 337=1942 O.A. 494=A.I.R. 1943 Oudh 16.

———*Local inspection—Power of Magistrate to inspect locality and to use results thereof.*

A Magistrate does not act beyond his powers when he inspects a locality for the purpose of understanding the evidence in the case before him and using the result of such examination as it is well established that local inspection is really meant for the purpose of understanding the evidence in the case. (*Varma, J.*) LALO MAHTO *v.* EMPEROR. 199 I.C. 218=14 R.P. 577=1942 P.W.N. 13=8 B R 534=43 Cr.L.J. 537=22 Pat.L.T. 976=A.I.R. 1942 Pat. 150.

———Murder trial—Open murder in the morning in crowded village—Failure of accused to produce evidence as to manner of death of deceased and as to their own innocence—If matters for consideration. *See* 1941 Dig. Col. 513. SHEO PRASAD *v.* EMPEROR. 17 Luck 376 =197 I.C. 701=43 Cr.L.J. 243=14 R.O. 353=1941 A.Cr.C. 306=A.I.R. 1942 Oudh 193.

———Plea of guilty under misapprehension—Conviction—Sustainability. *See* 1941 Dig, Col. 513. PATTABIRAMA IYER, *In re.* 43 Cr L.J 58.

———*Plea of private defence—Failure of accused to state in his report to police—If bars him from raising it in the trial.*

The omission of the accused to state the plea of self-defence in the report made by him to the police cannot bar him from putting forth such a plea at the trial. Whether such a plea is true or not depends upon the evidence produced in the case. (*Ghulam Hasan, J.*) NISAR HUSAIN *v.* EMPEROR. 198 I.C. 819=14 R.O. 465=1942 A Cr C. 14=1942 A.W.R. (C.C.) 1=43 Cr L J. 436=1941 O.W.N. 1331=1941 O.A. 1043=A.I.R. 1942 Oudh 147.

———Procedure—Complaint disclosing offence under Copyright Act—Dismissal on ground of dispute being of civil nature—Legality. *See* 1941 Dig., Col. 514 V. S. SHARMA *v.* DHARMA RAO. A.I.R. 1942 Mad. 124.

———Procedure—Request made by Government to Magistrate—Sending instructions through his superior officers—Practice condemned. *See* 1941 Dig, Col. 514. EMPEROR *v.* IBRAHIM. 199 I.C. 269=14 R C. 554 =43 Cr.L.J. 539=A.I.R. 1942 Cal 219.

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———Public Prosecutor—Duty of—Duty to put before Court all that can be said in support of charge. *See* 1941 Dig., Col. 514. KARUPPAYYA THEVAR, *In re.* 199 I C. 133=14 R M. 565=43 Cr L J. 521=A.I.R. 1942 Mad. 227=(1941) 2 M.L.J. 999.

———*Punishment—Principle underlying—Commission of offence by more than one—Each if can be punished to the maximum extent prescribed.*

The general principle in criminal cases is that every offence for which a punishment is provided is a several offence and every person who participates in that offence is punishable to the extent of the maximum penalty provided by the law, irrespective of the fact whether any person joins with him in committing the offence is or is not punished separately. (*Mulla, J.*) SAT NARAIN *v.* EMPEROR. 204 I C. 129=1942 A. Cr.C. 191=1942 A.W.R. (H.C.) 310=1942 A.L W. 557=1942 A.L J. 568=A.I.R. 1942 All. 440.

———Sentence—Fine in addition to a long term of substantive imprisonment—Undesirability. *See* 1941 Dig., Col. 515. EMPEROR *v.* MEHDI ALI. I.L.R. (1941) All. 608.

———*Sentence—Imprisonment till rising of Court—Legality and propriety of.*

Even in cases where the alternative of a fine is not permissible by law, it is objectionable to sentence persons to imprisonment till the rising of the Court, because it is not a form of imprisonment recognised by law, and it is used to circumvent the provisions of law that require a sentence of imprisonment in jail for a particular term. Where the law permits of a sentence of fine as an alternative, there is no need for a sentence of imprisonment at all if it is thought that the offence does not merit it. (*Horwill, J.*) RAMALINGAYYA, *In re* 204 I C. 65 =55 L W. 587=1942 M.W.N. 592=A.I.R. 1942 Mad. 723=(1942) 2 M.L.J 357.

———*Sentence—Murder—Normal sentence—Duty of Court—Madras Children Act, S. 22—Scope and effect of—Accused of or above 16 years—Proper sentence for murder—Cr. P. Code, S. 367.*

There is no doubt that the normal sentence on a conviction for murder, is death and under S. 367, Cr. P. Code, if the Court imposes any other sentence it has to give reasons for not passing a sentence of death. S. 22 of the Madras Children Act provides that no "child" or "young person" (that is, a person under 14 or one who is 14 but under 16 years of age) shall be sentenced to death. There is no provision of law that a sentence of death shall not be passed on a person of or above 16, but not more than 18 years of age. A sentence of death cannot be commuted in the absence of mitigating circumstances purely on the ground of the young age of the accused. To do so would be to extend the Children Act beyond the age contemplated by the Legislature. The prerogative of mercy lies with the Provincial Government and it is for the Legislature to amend the Children Act if it thinks fit so as to fix the age below which a sentence of death shall hot be passed at a higher level. (*Mockett and Happell, JJ.*) RAMUDU, *In re.* 1942 M.W.N 584=55 L.W. 552=A.I R. 1943 Mad. 69=(1942) 2 M.L.J. 312.

———Sentence—Police officer found guilty of extortion—Deterrent sentence. *See* 1941 Dig., Col. 516. JAGDISH NARAIN *v.* EMPEROR. 197 I.C 277=1941 A. Cr.C. 315=43 Cr.L J. 139=14 R.O. 298=A.I.R. 1942 O udh 163.

———*Sentence—Principles to be taken into count by Criminal Court—Discretion of trial Court—First offender and old offender—Considerations.*

The determination of the sentence to be passed on an accused person who is convicted of an offence by a

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Criminal Court is, within certain limits, within the discretion of the trial Court, and it is in many cases one of the most delicate matters with which Criminal Courts have to deal. While it is desirable to avoid sending a first offender to prison, where a man has shown from his past actions that he intends to adopt a criminal career, the Court should bear in mind, first, that it is necessary to pass a sentence upon the accused which will make him realize that a life of crime becomes increasingly hard and does not pay; secondly, that the sentence should serve as a warning to others who may be thinking of adopting a criminal career; and thirdly that the public must be protected against people who show they are going to ignore the rules framed for the protection of society. In the case of old offenders the sentence cannot be determined by any rule of thumb. In each case the circumstances have to be considered. The number of past convictions, the interval of time which has elapsed between one conviction and another and especially since the last conviction, and of course, the nature of the offences previously proved are all matters to be looked at. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* MAHOMED HANIF. **201 I C. 651=15 R.B. 108=43 Cr.L.J. 754=44 Bom.L.R. 456=A.I.R. 1942 Bom. 215.**

———*Stay of—Pendency of civil suit—If sufficient ground—Considerations for Court—Public interest to be considered.*

In dealing with an application for stay of criminal proceedings pending a civil suit between the parties, the Court should consider the interest of the public which is opposed to multiplicity of proceedings. The Court should not regard the matter as a sort of competition between the Civil and Criminal Courts. The Court has to consider where the public interest lies and not merely where the supposed interest of the particular complainant lies. (*Beaumont, C.J. and Wassoodew, J.*) THAKORLAL VADILAL *v.* AMBALAL BHIKHABHAI. **203 I.C. 517=44 Bom.L.R. 761=A.I.R. 1942 Bom. 330.**

———Stay of pending civil suit—Dispute as to right of fishery involved in both—If ground for stay. *See* 1941 Dig., Col. 517. CHHANOO PRASAD SINGH *v.* SAKHI CHAND SAHU. **A.I.R. 1942 Pat. 45.**

———*Summary trial—Judgment—Conviction—Reasons for conviction—Necessity for statement of*

A Magistrate is not bound in a summary trial to record what the prosecution witness actually said; but it is necessary in convicting the accused to give a brief statement of the reasons. A brief statement of the reasons would necessitate at least a short summary of what the prosecution witnesses had said so as to indicate that the evidence had made out the case with which the accused had been charged and also an indication that the Magistrate believed that evidence. If there was defence evidence, it would further be necessary to say why the prosecution evidence was preferred to that of the defence. The Magistrate must also make clear what the accused's case was. (*Horwill, J.*) GOVINDAN, *In re.* **203 I. C. 433=55 L.W. 530=1942 M.W.N. 590=A.I.R. 1942 Mad. 669=(1942) 2 M.L.J. 280.**

———Taking cognizance—Meaning. *See* 1941 Dig., Col. 544. HARNARAYAN *v.* GOVINDRAM. **I.L.R. (1942) Nag. 193.**

———Transfer—Application for—Report called for by High Court and sent by Magistrate—Right of applicant for transfer to copy of. *See* MYS. CRIMINAL RULES OF PRACTICE, VOL., CHAP. XXXVI, R. 2. **46 Mys. H C.R. 402.**

———Transfer—Notice—Transfer at the instance of some of the accused without notice to the others—Legality. *See* 1941 Dig., Col. 517. KUMARASWAMY KALINGA RAYAR, *In re.* **197 I C. 799=14 R.M. 393=43 Cr.L.J. 278=A.I.R. 1942 Mad. 221 (1).**

CRIMINAL TRIBES ACT (1924), S. 28.

———*Witnesses—Examination—Duty of Magistrate—Case adjourned due to non-service of summons—Accused bringing other witnesses on adjourned date—Magistrate, whether can refuse to examine them.*

If the case is otherwise complete, the magistrate may refuse to adjourn the case if his orders directing the accused to produce his witness at the next hearing have not been carried out. But where the case is being adjourned in the ordinary course of things, for instance, where some of the summoned witnesses have not been served or for some other reason, it is not open to the magistrate to refuse to examine those witnesses whom the accused chooses to bring with himself and who are actually present in Court. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) LACHMANDAS *v.* ROOPA. **1942 M.L.R. 27 (Cr.).**

———Witness—Tendering of for cross-examination—Propriety. *See* EVIDENCE ACT, S. 133. **44 Bom L. R. 27 (F.B.).**

CRIMINAL TRIBES ACT (VI OF 1924), S. 10 (2) *—Construction and effect of—Member of criminal tribe leaving one Province for another—Conviction under S. 22 (2) (a) for failure to give daily* hazuri*—Legality—Conditions.*

The effect of S. 10 (2) of the Criminal Tribes Act is that where a member of a criminal tribe goes from one district of one Province to another district of another Province, the provisions of the Act and rules apply to him in the new district of the new Province as if he had been registered in pursuance of a direction, made under S. 4 of the Local Government of the new Province, and the notifications issued affecting him, issued by the Government of the Province he has left, are deemed to have been issued under S. 3 and S. 10 (1) of the Act by the Local Government of the new Province to which he has gone. Before such a person can be convicted of the offence of failure to give daily *hazuri*, it must be proved that the notification issued by the Local Government of his old Province under S. 10 (1) required him to give daily *hazuri*. If that is not proved, he cannot be convicted of the offence under S. 22 (2) (*a*) of the Act even if he pleads guilty. His plea of guilty should not be accepted in such a case, and the plea will not render the conviction legal. (*Davies, C.J. and Weston, J.*) EMPEROR *v.* BEHOODI RATANJO. **I.L.R. (1941) Kar. 551=199 I.C. 126=14 R.S. 171=43 Cr.L.J. 476=A.I.R. 1942 Sind 51.**

———S. 22—*'Convictions'—If would include convictions for offences under Penal Code.*

The previous convictions referred to in S. 22 of the Criminal Tribes Act are convictions for breach of rules made under the Act and hence prior convictions for offences under the Penal Code cannot affect the question of punishment under that Act. (*Bennett, J.*) DEO BAKHSH SINGH *v.* KING-EMPEROR. **203 I.C. 499=1942 A.W.R. (C.C.) 353 (2)=1942 A.Cr.C. 206=1942 O A. 565=1942 O.W.N. 682.**

———S. 23 (1)—"Special reason to the contrary"—What amounts to. *See* 1941 Dig., Col. 517. NAGADU, *In re.* **197 I.C. 579=14 R.M. 375=43 Cr.L.J. 212=A.I.R. 1942 Mad. 33.**

———S. 23 (1) (b)—"Special reasons to the contrary"—Interval of several years between coming out of prison and next offence *See* 1941 Dig., Col. 517. VENKATASUBBADU, *In re.* **198 I.C. 26=14 R M. 415=43 Cr. LJ. 300=A.I.R. 1942 Mad. 81 (2).**

CROWN GRANTS ACT (XV OF 1895)—*Construction*—*Reservation in the grant*—*Right of pre-emption*—*Limitation*.

Where a Government grant contained that "all persons now in the possession of any lands of the said Province shall be entitled to purchase the same at the rate of one dollar per acre, with a limitation that no person should be entitled to purchase more than one hundred acres of land, and that no person should be entitled to purchase any land which had been granted or belonged to any individual," it was held that the grant created a reservation of pre-emption for the benefit of all persons who, at the time of the grant, were in the bona fide occupation of land, and that such persons had the right to purchase the land and that such right could not be defeated by the fact that the land had been granted or belonged to any individual. [I. L. R. 1 Bom. 158.

PRACTICE.

Where a creditor who had obtained a decree against his debtor, and had attached certain property, applied for the sale of the property, and the debtor objected that the property was not liable to be sold in execution of the decree, and that the attachment should be removed, it was held that the Court executing the decree had jurisdiction to entertain the objection, and to decide whether the property was liable to be sold in execution of the decree. [I. L. R. 1 Bom. 158.

CUSTOM.

It is an established Custom among the Mahomedan families of old standing in the Satpura Plateau Districts in Central Province that female heirs are excluded from inheritance in the presence of male heirs of the same degree. (*Grille, C.J. and Puranik, J.*) MOHAMMED AZAM KHAN *v.* MIRZA SIDDIQUE ALI BEG. **1942 N.L.J. 589.**

———*Jain Kalars—Marriage—Dissolution by abandonment—Custom not opposed to public policy.*

The custom among the Jain Kalars that abandonment dissolves the marriage tie is not opposed to public policy nor is it immoral. The abandoned wife can re-marry during the lifetime of the husband who abandoned her. (*Bose, J.*) BALIRAM JAGOBAJI *v.* KHAUSALYABAI. **1942 N.L.J. 510.**

———Jains (U.P.)—Widow—Rights in her husband's property and ancestral property. *See* HINDU LAW—JAINS. **1942 A.L.W. 329.**

———*Non-transferability of sites in agricultural village—Question of continuity of custom—If a question of law—Onus.*

Where a plaintiff sues for ejectment and possession of a house site on its transfer contrary to an alleged custom of non-transferability, it is his bounden duty to prove not only that there was a custom of non-transferability of the sites in the village but it is further obligatory on him to show that the custom was continuous. Whether the custom was continuous or whether its continuity was broken and the custom was not enforced by the plaintiff for a long period of time is a question which has to be decided from the proved facts of each case. This is no doubt a question of law. Where during a long course of years it was found that the occupiers of village sites in a particular area were transferring their rights from time to time involving a change of possession, and no action was taken on behalf of the *talugdar* to prevent disturbance of, and interference with, the alleged custom of non-transferability, it was held, that the essential element of continuity was not established and that hence there was no custom of non-transferability of house sites in the village. (*Ghulam Hasan and Madeley, JJ.*) SADHANT *v.* BARKHANDE MAHESH PRATAP NARAIN SINGH. **200 I.C. 622=15 R.O. 30=1942 O.A. 276=1942 R.D. 552=1942 O.W.N. 368=1942 A.W.R. (C.C.) 255=A.I.R. 1942 Oudh 401.**

———Parsis in mofussil—Law applicable—Powers of guardian to mortgage estate of ward—Justice, equity and good conscience—Rule of English Law. *See* 1941 Dig., Col. 519. KUBERDAS DEVCHAND *v.* JERKISH NAOROJI. **198 I.C. 609=14 R.B. 326=A.I.R. 1942 Bom. 54.**

———*Proof—Customary rights in the nature of trespass.*

Where it is sought to establish a local custom by which the residents or any section of them of a particular district, city, village or place are entitled to commit on land not belonging to or occupied by them, acts which, if there was no such custom, would be acts of trespass, the Court should not decide that such custom exists, unless the Court is satisfied of its reasonableness and its certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted or by stealth or by force, and that it had been openly enjoyed for such a length of time as suggests that originally, by agreement or otherwise, the usage had become a customary law of the place in respect of the persons and things which is concerned. (*Sukhdeonarain, J.*) NATHMAL *v.* ILLAIBUX. **1942 M.L.R. 58 (Civ.).**

CUSTOM.

———*Proof—Evidentiary value of connected* wajib-ul-arz *of different village—Question of escheat of grove on abandonment.*

There was a close connection between the *wajib-ul-arz* of village *C* and that of village *B* and the *wajib-ul-arz* of the latter was the first to be prepared in that *ilaqa*. If the custom in village *C* was the same as in village *B* the *wajib-ul-arz* of the former instead of setting forth the custom in full merely referred to the provisions of the *wajib-ul-arz* of village *B*. While the *wajib-ul-arz* of village *C*, referred to the custom recorded in the *wajib-ul-arz* of village *B* with regard to scattered trees and tenant's rights therein, it stated that there were no tenant's groves. But it had recorded two cases of escheat of such groves on the ground of abandonment. On a question whether there was custom of escheat of groves to landlord on abandonment existed in village *C* it was *held*, that the two *wajib-ul-arz* must be read together and that in view of the custom as to scattered trees and the general identity of custom in the two villages; and the fact that there were two instances of escheat on the ground of abandonment recorded in the *wajib-ul-arz* of village *C*, the custom of escheat of groves on abandonment by tenants was proved by documentary evidence to exist in the village *C*. (*Bennett and Madeley, JJ.*) SRI THAKURJI *v.* GAYA KUER. **17 Luck. 567=200 I.C. 561=15 R.O. 41=1942 R.D. 30=1941 O.W.N. 1412=1942 A.W.R. (C.C.) 19=1942 O.A. 7=A.I.R. 1942 Oudh 213.**

———*Proof—Instances.*

The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence but by the enumeration of instances in which the alleged custom has been acted upon, and by the proof afforded by judicial or revenue records or private accounts and receipts that the custom has been enforced. No value can therefore be attached to the broad general statements made by the witness who assert the alleged custom but do not enumerate instances in support of their assertion. (*Sukhdeonarain, J.*) NATHMAL *v.* ILLAIBUX. **1942 M.L.R. 58 (Civ.).**

———*Proof—Instances of recognition of custom of—Necessity for and value of—General evidence—Value of—Judicial decisions.*

When a custom has been repeatedly brought to the notice of the Courts and has been recognised by them regularly in a series of cases, it attains the force of law, and it is no longer necessary to assert and prove it by calling evidence in each case. If the evidence is all one way, or if there is a strong preponderance of evidence in favour of a particular custom, the Courts cannot ignore it, although the witnesses do not cite specific cases in support of their statements. But general evidence which is conflicting has obviously very little value. (*Broomfield and Sen, JJ.*) SUGANCHAND BHIKAMCHAND *v.* MANGIBAI GULABCHAND. **I.L.R. (1942) Bom. 467=201 I.C. 759=15 R.B. 111=44 Bom.L.R. 358=A.I.R. 1942 Bom. 185.**

———*Proof—Instances—Uncontested cases—Value of.*

Uncontested cases are very good proof of any alleged custom, for the greater the strength of the custom, the less probability is there of anybody attempting to controvert it. The fact that the operation of a custom has not been resisted cannot at all be used as an argument that such a custom did not exist. (*Mockett and Kunhi Raman, JJ.*) MAHOMED HOOSAIN FAROKI *v.* SYED ABDUL HUQ. **202 I.C. 323=15 R.M. 482=55 L.W. 303=A.I.R. 1942 Mad. 485=(1942) 1 M.L.J. 564.**

———Proof—Judicial decisions—Certified copies—If necessary. *See* 1941 Dig., Col. 520. RAMI *v.* GIAN

CUSTOM.

SINGH. 198 I.C. 708=14 R.L. 350=A.I.R. 1942 Lah. 31.

———*Proof—Judicial decisions—Value of—Decisions recognising custom among Jains of one place—Relevancy as evidence of custom among Jains of another place.*

Judicial decisions recognising the existence of a disputed custom amongst the Jains of one place are very relevant as evidence of the existence of the same custom amongst the Jains of another place, unless it is shown that the customs are different. (*Broomfield and Sen, JJ.*) SUGANCHAND BHIKAMCHAND *v.* MANGIBAI GULABCHAND. I.L.R. (1942) Bom. 467=201 I.C. 759=15 R.B. 111=44 Bom.L.R. 358=A.I.R. 1942 Bom. 185.

———*Proof—Necessity—Custom not general but prevailing in most villages.*

Where the custom pleaded is not general but is found to exist in most of the villages, its existence has to be proved independently for each village. (*Bennett and Madeley, JJ.*) SRI THAKURJI *v.* GAYA KUER. 17 Luck. 567=200 I.C 561=15 R.O. 41=1942 R.D. 30=1942 A.W.R. (C.C.) 19=1941 O.W N. 1412=1942 O.A. 7=A.I.R. 1942 Oudh 213.

———Proof of—*Wajib-ul arz*—Value of entries in—Instances of judicial recognition. *See* 1941 Dig., Col. 520, KULSOOM *v.* CHUTTAN. 17 Luck. 494=198 I.C. 509=14 R.O. 409=A.I.R. 1942 Oudh 115.

———*Proof*—Wajib-ul-arz—*Requisites.*

A *wajib-ul-arz* in order to prove a custom must mention it clearly. (*Agarwal, J.*) SULTAN HUSAIN *v.* ABDUL RAZAQ. 202 I.C. 734= =15 R.O. 141=1942 O.W.N. 592=1942 A.W.R. (C.C.) 328 (1)=1942 O. A. 446=A.I.R. 1942 Oudh 496.

———*Proof — Pre-emption — Instances of cases decided on compromise or admission—Value of.*

Where the question of custom of pre-emption was not mooted in certain cases and there was no serious contest between the parties but the cases were decided on compromise or admission, such cases cannot be treated as sufficient proof of the existence of the custom of pre-emption. (*Almond, J.C. and Mir Ahmad, J.*) PRITHMI DASS *v.* HARI RAM. 197 I.C. 705=14 R. Pesh. 86=A.I.R. 1942 Pesh. 25.

———Reasonableness—Right to eject from house site on payment of compensation. *See* 1941 Dig., Col. 521. KULSOOM *v.* CHUTTAN. 17 Luck 494=198 I.C. 509=14 R.O. 409=A.I.R. 1942 Oudh 115.

——— Religious endowment — Shebait — Custom of transfer of palas of worship—Validity. *See* HINDU LAW—RELIGIOUS ENDOWMENT.

———Remarriage of widows. *See* HINDU LAW—WIDOWS—REMARRIAGE.

———Validity—Essentials. *See* 1941 Dig., Col. 521. JOGESH CHANDRA GHOSE *v.* SREE DHAKESWARI MATA. 198 I.C. 837=14 R.C. 509=A.I.R. 1942 Cal. 26.

———*Validity—Reasonableness.*

Reasonableness is one of the most essential elements of a valid custom. A custom recognising the use of the roof of the defendant's shop on all ceremonial occasions by a fluctuating body of persons was held to be both indefinite and unreasonable. (*Sukhdeonarain, J.*) NATHMAL *v.* ILLAIBUX. 1942 M.L.R. 58 (Civ.).

———(Chota Nagpur) — Aboriginal tribe—Karmi Ohdars—Law applicable—Custom or Hindu Law. *See* 1941 Dig., Col. 518. HARAKHNATH OHDAR *v.* GANPAT RAI. 198 I.C. 680=14 R.P. 488=8 B.R. 449.

———(N.-W.F.P.)—*Alienation—Power of non-proprietors.*

CUSTOM (Punjab).

There is a general custom in the N.-W.F Province that non proprietors cannot alienate their rights of residence without the permission of the proprietors of the sites. (*Almond, J.C. and Mir Ahmad, J.*) ABDUL GHAFUR KHAN *v.* JETA MAL. 202 I.C. 627=15 R. Pesh. 45=A.I.R. 1942 Pesh. 74.

———(N.-W.F.P.)—*Alienation—Power of non-proprietors—Onus—Bazar Ahmadkhan village.*

The general custom that a person who has built superstructure on land belonging to a proprietor in a village cannot alienate his residential rights without the permission of the proprietor applies to the Bazar Ahmadkhan village in the N.-W.F.P. The onus therefore lies heavily on a tenant or on the transferee from a tenant to prove that the custom does not exist in favour of a proprietor in a particular village. Acquiescence by the proprietor in some sales made by the tenant does not necessarily destroy his right to question subsequent alienations. (*Mir Ahmad, J.*) SHER DIL KHAN *v.* BAHADUR ALI KHAN. 203 I.C. 137=15 R. Pesh. 55 =A.I.R. 1942 Pesh. 76.

———(N.-W.F.P.)—*Pre-emption—Akora.*

The custom of pre-emption does not exist in Akora. (*Almond, J.C. and Mir Ahmad, J.*) PRITHMI DASS *v.* HARI RAM. 199 I.C. 705=14 R. Pesh. 86=A.I.R. 1942 Pesh. 25.

———(N. W.F.P.)— *Pre-emption — Mohalla Bakshi Ram Sahai of Karimpura sub division of Peshawar City.*

The custom of pre-emption exists in Mohalla Bakshi Ram Sahai situated in Karimpura which is a sub-division of Peshawar City. The custom therefore must be taken to exist in the whole of the Karimpura sub-division and therefore in Mohalla Baildaran of that sub-division. (*Almond, J.C. and Mir Ahmad, J.*) GUL MAHOMED *v.* IQBAL JAN. 204 I.C. 202=A.I.R. 1942 Pesh. 94.

———(N. W. F. P)—*Proof—Statement in customary law—If enough.*

A statement of custom in the customary law is in itself enough to prove a custom. (*Mir Ahmad, J.*) ROSHAN LAL *v.* ARJAN DEV. 203 I.C. 300=15 R Pesh. 59 =A.I.R. 1942 Pesh. 68.

———(Peshawar)—*Adoption—Validity—Adoption of daughter's son.*

By custom of Peshawar District, a Hindu can adopt the son of a woman whom he cannot marry. The adoption of daughter's son therefore is valid. (*Mir Ahmad, J.*) ROSHAN LAL *v.* ARJAN DEV. 203 I.C. 300=15 R. Pesh. 59=A.I.R. 1942 Pesh. 68.

———(Peshawar)—*Alienation of residential right—Power of widow of non proprietor—Village Serai Saleh, Tehail Haripur, District Hazara.*

The non-proprietors in Serai Saleh are by custom entitled to transfer their residential right without the permission of the ground landlords. A widow of each such non proprietor gets the bundle of rights which he possessed at the time of his death nothing more nor less. Consequently, *qua* the landlords the widow has the full right of transferring her residential rights to any one she likes without any interference by them. The proprietary body has no right to treat the widow of a non-proprietor as a limited owner and to question her alienation on the grounds on which her reversioners could do so, when her husband had full power of transfer, when alive. (*Almond, J.C. and Mir Ahmad, J.*) CHUNI LAL *v.* FAZAL KHAN. 202 I.C. 640=15 R. Pesh. 47 =A.I.R. 1942 Pesh. 79.

———(Punjab)— Alienation — Powers of—Widow among Sayyads. *See* 1941 Dig., Col. 522. KHADAN

CUSTOM (Punjab).

HUSSAIN *v.* MAHOMED HUSSAN. **I.L.R. (1941) Lah. 872.**

——(**Punjab**)—*Alienation—Setting aside—Conversion of sale into mortgage—Criteria.*

In order to determine whether a sale should be set aside or converted into a mortgage, the true question which falls to be answered is whether the sale itself was one which was justified by legal necessity and not the mere proportion that the amount found to be for necessity bears to the total consideration for which the sale was effected. (*Mahomed Munir, J.*) SAMUND SINGH *v.* RAKHA RAM. **44 P.L.R. 518=A.I.R. 1943 Lah. 22.**

——(**Punjab**)—*Alienation—Widow—Alienation for husband's debts—Necessity—Income of estate—If relevant consideration.*

The power of alienation of a widow governed by custom is less than that of a widow under the Hindu Law, and the income of the estate left by her husband is a relevant consideration for determining whether an alienation made by her of that estate for debts incurred by her husband is or is not for necessity. (*Dalip Singh and Sale, JJ.*) GHULAM QADIR *v.* ALAF DIN. **201 I.C. 511=15 R.L. 67=44 P.L.R. 274=A.I.R. 1942 Lah. 200.**

——(**Punjab**) — Alienation—Widow — Notice of necessity to husband's agnates—If obligatory—Riwaji yam of Mianwali District. *See* 1941 Dig., Col. 522. MAHOMED IKHTIYAR *v.* KHANA. **I.L.R. (1942) Lah. 275.**

——(**Punjab**)—Alienation—Widow—Powers of. *See* 1940 Dig. Col. 548. TARA SINGH *v.* SURAJ KAUR. **44 P.L.R 192.**

——(**Punjab**)—*Applicability—Brahmans—Presumption—Brahmans of Batura village in Tahsil of Phillaur.*

In the case of high caste Hindus—and the Brahmans occupy the topmost place in the Hindu social hierarchy —where nothing else is known, the presumption is that they are governed by their own personal law and not by custom. This presumption is, however, rebuttable and may be rebutted by proof to the contrary. Where the Brahmans of a certain village were its original founders and they still form a compact section of the village community, depend for their livelihood almost exclusively on agriculture and do not carry on any trade, business or priestly functions or take to service, and further they follow the same customs as are followed by the agricultural tribes of the province, these facts are sufficient to dislodge the initial presumption in favour of the application of personal law to them and to shift the onus of proving that they are not governed by custom on the party which relies on personal law. Where the Brahmans are governed by the general agricultural custom of the province, the burden of proving that in matters of alienation they are not governed by the general custom rests on the party who asserts it. The Brahmans of village Batura in the Tahsil of Phillaur in Jullundur district do not follow their personal law in matters of alienation but the general agricultural custom of the province according to which ancestral property cannot be alienated except for necessity or with the consent of the descendants of the alienor. (*Mahomed Munir, J.*) SAMUND SINGH *v.* RAKHA RAM. **44 P. L.R 518=A.I.R. 1943 Lah 22.**

——(**Punjab**)—Applicability—Mahomedan Qureshi family residing in Gujarat town. *See* 1940 Dig., Col. 550. SHARIFA BEGAM *v.* COURT OF WARDS. **I.L.R. (1941) Lah. 843.**

——(**Punjab**)—Applicability—Sarsut Brahmins of mauza, Jandola, tahsil Thanesar, District Karnal. *See*

DAMAGES.

1941 Dig., Col. 523. BIR BHAN *v.* JAGANNATH. **44 P.L.R. 123.**

——(**Punjab**)—*Riwaj-i-am*—Entries in—Presumption—Rebuttal—Complier's remarks—If sufficient. *See* 1941 Dig., Col. 524. KHADAM HUSSAIN *v.* MAHOMED HUSSAIN. **I.L.R. (1941) Lah. 872.**

——(**Punjab**)—Succession — Cognates. *See* 1940 Dig., Col. 551. TARA SINGH *v.* SURAJ KAUR. **44 P. L.R. 192.**

——(**Punjab**)—*Succession—Collaterals— Right of representation—Barbers of Karnal District.*

The strict Mitakshara rule of representation in matters of succession is not followed among highcaste Hindu tribes of the districts of the Rohtak, Karnal and Gurgaon, where a nephew succeeds along with the uncle to the property of the deceased collateral. The right of representation in collateral succession prevails among the barbers of Karnal District where a grand nephew can succeed along with his grand uncle to the property of a deceased collateral. (*Tek Chand, J.*) MANGTA *v.* MANGAT. **198 I.C. 599=14 R.L. 347=A.I.R. 1942 Lah. 27.**

——(**Punjab**)—*Succession—Daughters—Biloches of Bughlani sub-section of Nutkani tribe of Sanghar tahsil, Dera Ghazi Khan District.*

In Biloches of the Bughlani sub-section of the Nutkani tribe, of Sanghar tahsil, Dera Gazi Khan district, daughters succeed along with brothers to their father's property in accordance with Mahomedan law and not by custom. (*Tek Chand and Beckett, JJ.*) ALLAH DIWAYA *v.* BAKHT WADDI. **I.L.R. (1942) Lah. 268 =202 I.C 133=15 R.L. 107=44 P.L.R. 460=A.I.R. 1942 Lah. 207.**

——(**Punjab**)—*Succession—Daughters v. collaterals —Bajwa Jats of Sialkot District.*

Among Bajwa Jats of Sialkot district, daughters succeed to the non ancestral property of a sonless proprietor in preference to his collaterals of tenth degree. (*Tek Chand and Din Mohammad, JJ.*) KARAM DAD *v.* MOHAMMAD BIBI. **I.L.R. (1942) Lah. 59=198 I. C 340=14 R.L. 324=43 P.L.R. 737=A.I.R. 1942 Lah. 1 (F.B.).**

——(**Punjab**)—Succession—Daughters *versus* collaterals—Bajwa Jats of Sialkot District. *See* 1941 Dig., Col. 524. RAMI *v.* GIAN SINGH. **198 I.C. 708=14 R.L. 350=A I.R. 1942 Lah. 31.**

——(**Punjab**)—*Succession—Daughter v. Collaterals —Hundal Jats of Amritsar.*

Among Hundal Jats of the Amritsar district, a daughter has a right to succeed to the self-acquired property of her father in preference to his collaterals. (*Dalip Singh and Din Mahomed, JJ.*) JAWALI *v.* LAL SINGH. **201 I.C. 675=15 R.L. 74=44 P.L.R. 150=A.I.R. 1942 Lah. 164 (2).**

CUTCHI MEMONS ACT (X OF 1938), S. 3—*Applicability—Wills made before Act—If saved.*

The Cutchi Memons Act of 1938 applies not only to wills made after the passing of the Act but also to wills made before it was passed. A will speaks only from the death of the testator and a will made in 1933 by a Cutchi Memon who died in 1941, is not saved. The right which is intended to be saved by S. 3 of the Act is a right acquired before the passing of the Act. After the passing of the Act, the will of every Cutchi Memon has to be construed and looked at from the point of view of Mahomedan law. (*Chagla, J.*) BAYABAI *v.* BAYABAI. **203 I.C. 581=44 Bom L.R. 792=A.I.R. 1942 Bom. 328 (2).**

DAMAGES. *See* (1) CONTRACT ACT CHAPTER VI.
(2) TORT—DAMAGES.

DAMAGES.

——Measure of—Sale deed—Covenant for quiet enjoyment—Breach—Measure of damages—Sale price or market value of properties *See* LIMITATION ACT, ART. 116. (1942) 2 M.L.J. 617.

DEBTOR AND CREDITOR—*Appropriation of payment—Mortgage bond—Stipulation that no payment to be accepted unless made under registered receipt or endorsed on back of bond—Right of creditor—Mortgagee appropriating towards debt payment in receipt unregistered though not endorsed on bond—Effect of—Waiver of stipulation—Duty to give credit to such payment.*

Where there is a stipulation in a mortgage bond that no payment shall be accepted unless it is made by a registered receipt or unless it is endorsed on the back of the bond, it is of course open to the mortgagee to refuse to appropriate towards the mortgage debt any payment made by the debtor not under a registered receipt and not endorsed on the bond ; such a stipulation can, however, be waived, and must be held to be waived when the mortgagee appropriates a payment as a part satisfaction of the mortgage debt. A receipt so appropriating the payment must be accepted and the mortgagee must give credit to the same. (*Manohar Lall, J.*) GOPALJEE JHA *v.* UPENDRA NARAIN JHA. 202 I.C. 495=15 R.P. 122=9 B.R. 8=23 Pat.L.T. 384 =A.I.R. 1942 Pat. 408.

——Merger—Creditor succeeding to estate of debtor —Effect—Claim by other creditors—Right of retainer of heir—Principle—Applicability to Hindu Law—Widow obtaining decree against brother—Death of latter and widow becoming heir—Right to claim rateable distribution as against another creditor. *See* 1941 Dig., Col. 526. THANGATHAMMAL *v.* VEERAMA REDDIAR. I.L.R. (1942) Mad. 360=199 I.C. 105 =14 R.M. 515=A.I.R. 1942 Mad. 260=(1941) 2 M. L.J. 1024.

DECREE. *See* PRACTICE—DECREE.

DECREES AND ORDERS VALIDATING ACT (V OF 1936), S. 2—Scope of—Decrees and orders in execution of High Court of Bombay—Questioning in Allahabad. *See* 1941 Dig., Col. 526. MURLIDHAR *v.* GORAKHRAM SADHORAM. I.L.R. (1941) All. 663= 199 I.C. 847=14 R.A. 251.

DEED—*Binding nature—Duty of Courts as to construction of.*

Where adults put their names to documents they are bound by those documents unless they are able to give convincing proof that truth is otherwise, and it would make, in the long run, for justice if that burden is generally appreciated and generally applied. Courts in India often appear to go out of their way to guess what must have been the truth behind a mass of formal documents. But it is one thing to be, in law, able to go behind the document when there is convincing evidence admissible under the Evidence Act and another thing to arrive at the conclusion, that a document does not mean what it says by a series of brilliant guesses founded on nothing in particular excepting the ingenuity of counsel and the Judge's mind. (*Stone, C.J. and Bose, J.*) SUNDERLAL *v.* SITARAM SANTARAM. 1942 N.L.J. 130.

——*Consideration—Burden of proof—Admission of consideration by executant of mortgage—Plea of absence or failure of consideration—Onus.*

Once consideration for a mortgage deed is found to have been admitted by the executant, the onus of proving its failure would have to be, generally speaking, discharged by him or by those who claim through him. (*Abdur Rahman, J.*) SREERAMULU *v.* THANDAVA KRISHNAYYA. 55 L.W. 594=A.I.R 1943 Mad. 77 =(1942) 2 M.L.J. 452.

DEED.

——Consideration — Recitals—Plea of want of consideration and incorrectness of recitals—Burden of proof. *See* 1941 Dig., Col. 529. SUBBAYYAN CHETTIAR *v.* PONNUCHAMI CHETTIAR. 200 I.C. 70=14 R.M. 692=(1941) 1 M.L.J. 807.

——*Construction—Contract—Considerations—Antecedent, surrounding and contemporaneous circumstances —Reference to, if permissible.*

When the words used in a contract are plain, no extraneous considerations are permissible ; neither antecedent correspondence, nor surrounding circumstances nor subsequent conduct. When a formal contract has been entered into, that must be construed *according to its own terms* and not be explained or interpreted by the antecedent communings which led up to it. The latter could only show what parties *meant to do* but cannot show what they *did*. Though when the terms of an agreement are ambiguous the surrounding and contemporaneous circumstances (not subsequent conduct) can be looked to, the rule has to be applied with the greatest care even in the rare cases to which it is applicable. Where one of parties thought there was a completed contract while the other insisted that there was not and the *contemporaneous circumstances* were that both the parties dealt in the commodities in question and that both were negotiating, one for the purchase and the other for the sale, of the goods in question and the circumstances fitted equally well with the existence or non-existence of a completed contract, it was held that it was not a case in which *all the parties concerned* had for years acted along a given set of lines which could only fit one case and not the other and that hence that it was not legitimate to try and correlate the meaning of the words used to existing facts, that is to say, to facts existing at the time of the dispute. (*Bose, J.*) MARKANDELAL *v.* SITAMBHARNATH. 203 I.C. 341=1942 N.L.J. 481.

——*Construction—Lease or sale.*

Where an under-proprietor transfers to another transferable and heritable rights for a premium reserving for himself a certain rent and *malikana* dues and continues to be recorded as under proprietor, the status of the transferee cannot be that of an under-proprietor as the simultaneous existence of two under-proprietary rights in the land is inconceivable and the transfer can only be a lease and not a sale; an under proprietor can only transfer such rights by a sale in which he reserves no interest for himself. He cannot transfer them and at the same time reserve some interest for himself. A distinction must be drawn between deeds of this nature executed by superior proprietors and similar deeds executed by under-proprietors. The position of the parties is in the one case consistent with a sale, in the other it is not. (*Bennet, J.*) SRI NATH *v.* RAM NARAIN. 204 I.C. 85=1942 A.W.R. (C.C.) 324 (1)=1942 O.A. 432=1942 O.W.N. 504.

——Construction—Lease or sale. *See* 1941 Dig., Col. 528. BHONDU SINGH *v.* MAHADEO SINGH. 17 Luck. 401=197 I.C. 665=14 R.O. 332=A.I.R. 1942 Oudh 151.

——Construction—Mortgage or charge—Use of words 'mortgage' and 'redemption'. *See* 1941 Dig., Col. 528. SAMPURAN SINGH *v.* AHMAD DIN. 198 I.C. 100= 14 R.L. 300.

——Construction — Mortgage or pledge—Indorsement of promissory notes by payee to creditor as security for amount due—If pledge or mortgage. *See* COMPANIES ACT, S. 109 (1) (*e*). 55 L.W. 709.

——*Construction—Mortgage or sale.*

DEED.

A deed recited "The entire fields mentioned above.. have been sold conditionally to you for the above mentioned amount and have been also put into your possession. You should enjoy in every way the abovementioned fields from this day up till 5 years keeping the same in your possession up till..for 5 years. Your amount shall not carry any interest and my fields will not carry any rent, etc., up till the period of the abovementioned 5 years as agreed. You should pay the land revenue of the above mentioned fields and sow the same and reap the crop or get it reaped by letting out on patta. On the aforesaid agreed time, I shall pay you ...and shall obtain a receipt and shall redeem my fields. In default of payment of your amount..on the abovementioned agreed time it is to be understood that this conditional sale is an absolute sale." It was *held* that it amounted to a mortgage and not a sale subject to the condition of reconveyance. (*Stone, C.J. and Niyogi, J.*) VITHOBA *v.* NARAYAN. **I.L.R. (1942) Nag. 592 = 202 I.C. 595=15 R.N. 91=1942 N.L.J. 445=A.I.R. 1942 Nag. 115.**

———*Construction—Mortgage or sale.*

There was a specific condition incorporated in the document to the effect that on mortgagor's failure to pay the mortgage money on a certain occasion the mortgagor would deliver possession of the house and would execute a further stamped document. It held that the transaction was only a mortgage by conditional sale and not an absolute transfer of ownership. (*Ranjitmal, J.*) KESRIMAL *v.* PERTAPMAL. **1942 M.L.R. 66 (Civ.)**

———Construction—Mortgage or sale—Option to repurchase within ten years—Sale to become absolute in default of payment. *See* 1941 Dig., Col 529. SHAMBHU SINGH *v.* JAGDISH BAKHSH SINGH. **17 Luck. 198.**

———Construction—Partition—Sons given shares and wife given some lands for maintenance—Nature of interests taken—Devolution. *See* 1941 Dig., Col. 529. KAMESHWAR DATT RAM *v.* KESHO DAT RAM. **17 Luck. 238=A.I.R. 1942 Oudh 48.**

———Construction — Principle — Construction as a whole to ascertain intention. *See* 1940 Dig., Col. 563. GANPATDAS *v.* HARIVALLABH. **I.L.R. (1942) Nag. 126.**

———*Construction— Principles—Existence of ambiguity essential to justify looking beyond the document—Stage when and where to stop.*

When it is a matter of a construction of a document the first and the best thing to do is to look at the document and it is only when you find some ambiguity that it is possible to look beyond the document at anything whatsoever. As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it according to the maxim *falso demonstratio non nocet* (*Stone, C.J and Bose, J.*) VITHAL *v.* CHINTAMAN. **1942 N.L.J. 91.**

———Construction—"Purusha Santhathi"—If includes illegitimate sons. *See* HINDU LAW—IMPARTIBLE ESTATE—MITAKSHARA—SUDRA FAMILY—ILLEGITIMATE SONS OF COPARCENER. **(1942) 1 M.L.J. 132 (P.C.).**

———*Construction—Receipt or promissory note.*

An entry in an account book showing the balance due after settling accounts with the thumb impression of the defendant on an one anna stamp and containing particulars as to mode of repayment but not containing any entry any where either as to the name of the owner of the account book or any indication as to whom the amount payable therein is due, was *held*, to be firstly a receipt properly stamped and further an undertaking enforceable in law concerning the manner in which the amount borrowed was to be repaid and that it was not a promissory note. (*Davies.*) GANGA SAHAI *v.* FATYA. **1941 A M.L.J. 71.**

———*Construction—Rules governing—Object.*

It is a well-recognised rule of construction of deeds that the object of all interpretations is to discover the intention of the parties and that intention must be gathered from the written instrument itself. The Court has to ascertain what the parties meant by the words they have used and to give effect to the intention which is expressed by the words used by the parties themselves. Hence in the first instance endeavour must be made to deduce the intention from the actual words used in the instrument and it is only when the words are ambiguous and do not yield clear meaning that the extraneous evidence of surrounding circumstances may be looked into. The sense and the meaning of the parties in any particular part of an instument may be collected *ex antecedentibus et consequentibus*. Every part of it may be brought into action in order to collect from the whole one uniform and consistent sense. (*Stone, C.J. and Niyogi, J.*) VITHOBA *v.* NARAYAN. **I.L.R. (1942) Nag. 592=202 I.C. 595=15 R.N. 91=1942 N.L.J. 445=A.I.R. 1942 Nag. 115.**

———Construction—Sale of khewat land including "jumla Haquq mutalqa"—Sale, if includes appurtenant shamilat. *See* 1941 Dig., Col 530. MENGHA RAM *v.* MAKHNA. **198 I.C. 199=14 R.L. 309.**

———Construction—Settlement deed by Hindu in favour of his wife for maintenance—Unchastity of wife after death of settlor—If entails forfeiture of estate. *See* 1941 Dig., Col. 530. SUBBAYYAN CHETTIAR *v.* PONNUCHAMI CHETTIAR. **200 I.C. 70=14 R.M. 692 =(1941) 1 M.L.J. 807.**

———*Construction—Surrounding circumstance—Admissibility of evidence as to.*

Evidence of surrounding circumstances is admissible to assist in the construction of a document about the legal effect of which the parties are at issue. Where the real dispute between the parties was whether a transaction was a sale or mortgage such evidence is admissible. (*Niyogi, J.*) LALCHAND *v.* RAM SINGH. **1942 N.L.J. 136.**

———Construction—When a question of fact and when one of law. *See* 1941 Dig., Col. 531. BHAWANI SANKAR JAISI *v.* GANGA PRASAD. **198 I.C. 516=14 R.R. 204.**

———*Construction —Will— Testatrix stipulating to receive part of bequeathed money during lifetime—Effect.*

C made a bequest of Rs. 1,101 in favour of *G* with the stipulation that as long as she (*C*) was living she (*G*) will draw a certain amount per annum and after her death *G* will receive the whole amount.

Held, that the document amounted to a will and *C* was entitled to revoke it at any time before her death. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) HEERACHAND *v.* CHANDANI. **1942 M.L.R. 31 (Civ.).**

———Discharge—Mortgage bond—Stipulation that payment not to be accepted unless made under registered receipt or unless endorsed on back of bond—Payment made otherwise and accepted by creditor in part satisfaction of debt—Effect of—If waiver of stipulation —Payment—If operates as discharge—Duty of creditor to give credit to same. *See* DEBTOR AND CREDITOR. **23 Pat.L.T. 384.**

———*Execution—Agreement to sell—Not signed by one of vendors—If can be enforced against others.*

DEED.

The question whether an agreement to sell which is not signed by one of the vendors is operative or not depends upon the intention of the parties. If the intention of the parties in the document was that nobody would agree to sell his share unless all the others also agreed to sell their shares, it cannot be held that where one of them had failed to sign the document, the document was a complete document, on the other hand, if the sales were not interdependent in the sense that each vendor might well have sold his share of the property without reference to the sale by others, and what really should have been a number of separate sale deeds were rolled into one because of convenience, then the fact that in the agreement to sell one of the vendors had not joined would not affect the question of specific performance as between the vendee and the vendors who had signed the agreement to sell. The question of intention has to be settled by a reference to the terms of the document and to the circumstances of the case. (*Dalip Singh and Din Mahomed, JJ.*) UMAR BAKHSH *v.* MUL RAJ. **99 I.C. 720=14 R.L. 426=44 P.L.R. 54=A.I.R. 1942 Lah. 86.**

———*Material alteration—Effect.*

Where the date in a sarkhat sued on is altered from *Sawan Badi* 7 to *Sawan Sudi* 7, the alteration is material, the deed is no longer the same deed and the suit based on it could not succeed. The fact that the period of limitation is not affected is not relevant since the liability of the executant is altered by the alteration. (*Bajpai and Dar, JJ.*) HARDWAR SINGH *v.* HARI PRASHAD RAI. **1942 A.W.R. (H. C.) 352=1942 A. L.J. 632=1942 A.L.W. 648=A.I.R. 1943 All. 24.**

———Validity—Plea of invalidity as being opposed to public policy—Burden of proof. *See* 1941 Dig., Col. 532. SUBBAYYAN CHETTIAR *v.* PONNUCHAMI CHETTIAR, **200 I.C. 70=14 R.M. 692=(1941) 1 M L.J. 807.**

———*Validity—Right to challenge—Third party—If can raise question of benami.*

A stranger to a deed is competent to challenge it as fictitious and as in reality a benami affair. (*Mukherjea and Blank, JJ.*) SARADINDU MUKHERJEE *v.* KUNJA KAMINI ROY. **202 I.C. 663=15 R.C. 379=46 C.W N. 798=A.I.R. 1942 Cal. 514.**

DEFENCE OF INDIA ACT (1939)—*If* ultra vires *—Government of India Act, Ss.* 102 *and* 316.

Even though S. 316 of the Government of India Act, 1935, which provides that during the transitional period, the powers conferred by the provisions of the Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature does not in terms refer to S. 102 of the Act, the legislative powers conferred by S. 102 are properly exercisable by the existing Indian Legislature. The Defence of India Act, 1939, and the rules made under it are not, therefore, *ultra vires* the present Indian Legislature. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) NIHARENDU DUTTA MAJUMDAR *v.* EMPEROR. **I.L.R. (1942) Kar. (F.C.) 56=200 I.C. 289=14 R F.C. 82=55 L.W. 344=8 B.R. 708=43 Cr. L.J. 504=23 P.L.T. 443=1942 P.W.N. 164=1942 M.W.N. 417=46 C.W.N. (F.R.) 9=5 Fed. L.J. 47=A.I R. 1942 F.C. 22.**

———*Scope—Speech in connection with trade or industrial dispute—Proceedings under Act—Propriety and desirability—Duty of Magistrate in cases of charge under Act.*

The Defence of India Act is not intended to be used where the public safety and the defence of British India are not imperilled. Where a speech is made in connection with a trade or industrial dispute which in normal times would not render the speaker liable to punishment,

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and the speech does not adversely affect the war effort or seriously embarrass the Government, it is ordinarily unfair to invoke the provisions of the Act. Where, however, a speaker is charged under the Act, the Magistrate is bound to convict if the provisions of the Act are infringed, though in determining the appropriate sentence, he can consider whether the speech causes any embarrassment to the Government in the prosecution of its war effort. (*Horwill, J.*) GURU. SWAMI, *In re.* **200 I.C. 590=15 R.M. 146=55 L.W. 257=1942 M.W.N. 302=43 Cr.L.J. 704=A.I.R. 1942 Mad. 427=(1942) 1 M L.J. 457.**

———**S. 1 (4) and Government of India Act, S. 102 (4)** —*If necessarily conflicting.*

The provisions of S.1 (4) of the Defence of India Act and of S. 102 (4) of the Government of India Act arf not necessarily conflicting. (*Bartley and Lodge, JJ.*) BIMAL PROTIVA DEBI *v.* EMPEROR. **202 I.C. 150=15 R. C. 309=43 Cr.L.J. 793=1942 F.L.J. (H.C.) 180=75 C.L.J. 90=A.I.R. 1942 Cal. 464.**

———**S. 2 and Rules, 34 (vi) (g) and 38 (1) (a)**—Defence of India Act if *ultra vires* the Central Legislature—R. 34 if within the competence of Central Government—Refusal to accept currency note—If an offence. *See* 1941 Dig., Col. 532. EMPEROR *v.* MEER SINGH. **I.L.R. (1941) All. 617.**

———**S. 2**—*R.* 84—*Notification under—License to import steel—Grant of—Discretion of steel controller—Interference by Court.*

Under the notification issued by the Central Government in pursuance of R. 84 of the Defence of India Rules, an applicant for license to import steel shipped in fulfilment of firm orders placed before 1st January, 1941 is not entitled to the license as of right, although the application is made before 1st April, 1941. It is within the discretion of the steel controller to grant the license or to refuse it, and with that discretion the Court will not interfere. (*Panckridge, J.*) S. N. MUKHERJI *v.* RUSSELL. **I.L.R. (1941) 2 Cal. 387=198 I.C. 324=14 R.C. 455=A.I.R. 1942 Cal. 51.**

DEFENCE OF INDIA RULES (1939)—*Mere possession of seditious literature—Sentence—Accused not owner of literature—If ground for reduced punishment.*

Possession *simpliciter* of seditious literature or manuscripts is liable to draw a heavy sentence under the Defence of India Rules. Where the manuscript found in the possession of the accused is found to be of a particular type, and indicates that it is intended to be disseminated, the fact that the accused did not own the literature is no ground for reducing the sentence. (*Horwill, J.*) APPALASWAMY, *In re.* **203 I.C. 284=1943 M.W N. 72 (1)=55 L.W. 569 (1)=A.I.R. 1942 Mad. 664 (2)=(1942) 2 M.L.J. 354.**

———**R. 6 (5)**—Sentence—Rule as to—Gravity of offence—Relevancy—Imprisonment for first offenders—Propriety. *See* 1941 Dig., Col. 532. JOSEPH ABDULLAH *v.* EMPEROR. **197 I.C. 594=43 Cr.L.J. 219=14 R. B. 234.**

———**R. 19 (1) (a) and (5)**—*Applicability—"send"—Article sent by post and intercepted by censor if "sent"—Secret "Code"—Meaning of.*

The accused was convicted of an offence under rule 19 (1) (*a*) and (5) of the Defence of India Rules for sending by post to a destination outside British India, (the United States of America) a secret "Code" for being used as a means of secretly conveying information. The letter was intercepted by the censor.

Held that it was correct to say that an article was sent if it started on its way to its destination, and the

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fact that it did not arrive at its destination could not alter the fact that it was sent,

Held further, that a Code did not cease to be a secret Code because a number of other persons were using it, if it was not generally known or used by persons engaged in the business for which the Code in question was employed. (*Horwill, J.*) RAMALINGAYYA, *In re*. 204 I.C 65=55 L W. 587=1942 M. W. N. 592=A.I.R. 1942 Mad 723=(1942) 2 M.L.J. 357.

——R. 26 (1) (e) and (h)—*Scope of powers conferred by—Order to report periodically at kotwali—If within the powers—Failure to so report if an offence.*

Where a person arrested and committed to Jail custody under sub-R. (1) and (2) of R. 129 of the Defence of India Rules was released on some conditions one of which was that he 'shall report his presence in person at police station kotwali once a week' and he failed to so report.

Held R. 26 did not empower the Government to call upon the suspected person to report his presence periodically, and it would not be possible to interpret sub-R. (*e*) of R. 26 (1) so as to cover such a direction. The restriction was not covered by sub R (*h*) also which did not confer any independent power. If an order did not come within the scope of sub-Rr. (*a*) to (*g*), it could not be supported by sub R. (*h*) alone (*Ismail and Mulla, JJ.*) EMPEROR *v.* IQBAL KRISHNA KAPOOR. 202 I.C. 56=15 R.A 140=43 Cr.L J. 790=1942 A. W.R. (H C.) 126=1942 A.L.W. 315=1942 A.Cr C. 106=1942 A.L.J. 287=A I R. 1942 All. 253 (2).

——R. 34—'Prejudicial Act'—Shouting of anti-war slogans. *See* 1941 Dig., Col. 533. HIGH COURT BAR ASSOCIATION, LAHORE *v.* EMPEROR. I.L.R. (1941) Lah. 796.

——R 34 (6)—Prejudicial act—Speech by accused—If to be taken as a whole—Portion of speech—If can be "prejudicial act." *See* 1941 Dig., Col. 533, KALYANARAMA AYYAR, *In re*. 199 I.C 368=14 R. M. 587=43 Cr.L.J. 538=A.I.R. 1942 Mad. 199.

——R. 34 (vi) (e), (f) and (g)—*Applicability—Speech in respect of trade or industrial dispute—Offence—Several convictions in respect of same speech—Legality.*

Though it is ordinarily unfair to apply the Defence of India Act to a speech made for the purpose of promoting the welfare of the workers in a trade or industrial dispute, where a speech by a person tends to endanger the public safety and hinder the defence of British India and is likely to influence, adversely to the war effort, his listeners and his fellow-workers, the Act can properly be applied. An objectionable remark in a speech cannot constitute several prejudicial acts merely because it is a prejudicial act in several ways. Nor can an objectionble remark be deemed a prejudicial act unless taken with the rest of the speech, which forms the back ground against which the remark must be viewed. A person cannot therefore be convicted three times for the same speech on the ground that it offended against the provisions of R. 34 (vi) (*e*), (*f*) and (*g*) of the rules under the Act. (*Horwill, J.*) VARADARAJULU CHETTY, *In re*. 55 L.W. 316=1942 M.W.N. 303=A.I.R. 1942 Mad. 494=(1942) 1 M.L.J. 458.

——R. 34 (6) (e)—Criticism of Government—Vulgar abuse—Duty of Courts to take broad view. *See* PENAL CODE, S. 124-A. 200 I.C. 289=46 C.W.N. (F.R.) 9=5 Fed.L.J. 47.

——R. 34 (6) (e) and Penal Code, S. 124-A—*Points of distinction.*

R. 34 (6) (*e*) of the Defence of India Rules though analogous to S. 124-A, I. P. Code, is wider in scope and includes not only acts which are "intended" but also acts

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which are "likely to" bring into hatred or contempt or excite disaffection and the explanations attached to S. 124-A are also omitted. The sub-clause also covers acts bringing into hatred and contempt not only the Government established by law in British India but also the Governments established by law in any other parts of His Majesty's Dominions. (*Bhide, J.*) EMPEROR *v.* KHURSHID AHMAD MINTO. 44 P.L.R. 167.

——R. 34 (6) (e)—*'Prejudicial act'—Law of sedition as defined in I. P. Code—If applicable.*

Sedition is none the less sedition because it is described by a less offensive name and the law relating to the offence of sedition as defined in the Penal Code is equally applicable to the prejudicial act defined in the Defence of India Rules. The omission in the Rules of the three "Explanations" appended to S. 124 A, I. P Code, does not affect the matter. These are added to remove any doubt as to the true meaning of the Legislature; they do not add to or subtract from the section itself; and the words used in the rules ought to be interpreted as if they had been explained in the same way. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) NIHARENDU DUTTA MAJUMDAR *v.* EMPEROR. I.L.R. (1942) Kar. (F.C.) 56=200 I.C. 289=14 R.F C. 32=55 L.W. 344=8 B R. 703=43 Cr.LJ. 504=23 P.L.T. 443=1942 P.W.N. 164=1942 M.W. N. 417=46 C.W.N. (F.R.) 9=5 Fed.L.J. 47=A.I.R. 1942 F.C. 22.

——R. 34 (6) (f) and (g)—*Intention, if a necessary ingredient of a prejudicial act.*

Intention is not a necessary ingredient of a prejudicial act as contemplated by R. 34 (6), (*f*) and (*g*) of the Defence of India Rules. It is enough that the prejudicial act (in this case the slaughter of a cow on Bakrid day) is likely to promote feelings of enmity and hatred between different classes of His Majesty's subjects or is likely to cause fear or alarm to the public or to any section of the public. (*Mulla, J.*) BUNDOO *v.* EMPEROR. 1942 A.L.J. 530=1942 A.W.R. (H.C.) 302=1942 A. L. W. 577=1942 A. Cr. C. 195=A. I. R. 1943 All 15.

——Rr. 34 (6) (K and P), 38 (5) and 121—Communication to Magistrate of intention to shout anti-war slogan—If an offence. *See* 1941 Dig., Col. 533. NURUL HASAN *v.* EMPEROR. I.L.R (1942) All. 141=199 I.C. 181=14 R.A. 366=1941 A.Cr.C. 325=43 Cr.L.J, 527=A.I.R. 1942 All. 121

——Rr. 35 (4) and 38 (5)—*Applicability—Bringing about strike of mill-workers for remedying grievance—Offence—Knowledge that strike would impede war effort—If sufficient.*

A person who brings about a strike by mill-workers engaged in a war industry with the object of impeding the war effort would be guilty of an offence under R. 35 (4) read with R. 38 (5) of the Defence of India Rules. But where the notice for calling the strike is to remedy the real or supposed grievances of the workers resulting from an arbitrary exercise of the employer's power of dismissal without a fair inquiry or reasonable warning there is a lawful excuse for the strike and the person calling the strike would not be guilty, even though he knows that as a result of the strike essential war work would be impeded. (*Horwill, J.*) APPALASWAMY, *In re*. 204 I.C. 47=55 L.W. 593=1942 M W.N. 583=A.I.R. 1942 Mad. 735=(1942) 2 M.L.J. 718.

——R. 38 (a)—*Offence punishable under—Facts to be proved by the prosecution.*

In order to make a case punishable under R. 38 (*a*) of the Defence of India Rules the prosecution is bound to prove that the act committed which is the basis of

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the charge was committed without lawful authority or excuse. (*Mulla, J.*) BUNDOO *v.* EMPEROR. **1942 A.L.J. 530=1942 A.W.R. (H.C.) 302=1942 A.L.W. 577=1942 A.Cr.C 195=A.I.R. 1943 All. 15.**

——**R. 58 (2)**—*Applicability and scope*—"*Exercise of a military character*"—*Meaning of.*

It is difficult to say what "exercise, movement, evolution or drill" is not of a military character. A thing is said to be of a military nature when it resembles something done by or appertaining to or belonging to soldiers. Where the object of certain exercises made by a body of persons, about 150 in number, 75 of whom are armed with lathis about four to six feet long, is found to be to enable a large body of men to respond immediately to a word of command so that it would be possible for one man in charge of a large body of persons to make them execute his will without the need for any elaborate explanations or directions, it must be held that the exercises are of a military nature, and the organisers as well as the instructor of such exercises are guilty of the offence under R. 58 (1) of the Defence of India Rules, 1939. (*Horwill, J.*) PARAMARTH, *In re.* **200 I.C. 232=15 R.M. 43=43 Cr.L.J. 618=55 L.W. 214=1942 M.W.N. 222=A.I.R. 1942 Mad. 439=(1942) 1 M.L.J. 380.**

——**R. 90-B (3) (a)**—Offence—Money found on person on search in excess of limit prescribed—Person not ordered or asked to declare details of money—Conviction—Sustainability. *See* 1941 Dig., Col. 534. GULAMALLI HUSAIN *v.* EMPEROR. **197 I.C. 585=14 R.B. 236=43 Cr.L.J. 213.**

——**R. 90-B (4) and (6)**—Search—Money found in excess of limit allowed—Order as to disposal—Jurisdiction of Court—Cr. P. Code, S. 517—If subject to R. 90-B (6). *See* 1941 Dig., Col. 534. GULAMALLI HUSAIN *v.* EMPEROR. **197 I.C. 585=14 R.B. 236=43 Cr.L.J. 213.**

——**R. 121**—*Applicability — Accused organising meetings at which intending* satyagrahis *made anti-war speeches—Offence.*

Where the charge against the petitioner was that he organised meetings at which intending *satyagrahis* made anti-war speeches, introduced them to the audience, made appreciative references to their speeches at the close of the meetings, and thereby abetted the *satyagrahis* in infringing the Defence of India Act and Rules, it was contended that as the principal offender had determined to commit an offence the petitioner committed no offence in merely announcing to the public that the principal offender intended to commit an offence.

Held, that the offence committed by the principal could not be committed in the absence of the public, and by bringing the principal who intended to commit an offence into contact with the public, the petitioner himself committed the offence of abetment within the meaning of R. 121. (*Horwill, J.*) GANAPATISUBRAMANIA AIYAR, *In re.* **202 I.C. 302=15 R.M. 487=1942 M.W.N. 289 (2)=43 Cr.L.J. 807=A.I.R. 1942 Mad. 417=(1942) 1 M.L.J. 445.**

——**R. 121**—*Joinder of charges—Rule.*

R. 121 of the Defence of India Rules makes punishable the abetment of a particular offence and a person cannot be punished for abetting in general. He has to be charged with the abetment of a particular offence, and the ordinary rules of joinder must apply to offences punishable under R. 121 read with the other provisions of the Rules. (*Horwill, J.*) GANAPATISUBRAMANIA AIYAR, *In re.* **202 I.C. 302=15 R.M. 487=1942 M.W.N. 289 (2)=43 Cr.L.J. 807=A.I.R. 1942 Mad. 417=(1942) 1 M.L.J. 445.**

DEK. AGRIC. REL. ACT (1879), S. 11.

——**R. 121**—'Preparatory Act'—What amounts to—Intimation to Magistrate of intention to shout anti-war slogans—If offence. *See* 1941 Dig., Col. 535. HIGH COURT BAR ASSOCIATION, LAHORE *v.* EMPEROR. **I.L.R. (1941) Lah. 796.**

——R. 130-A (*b*)—Scope—If *ultra vires*—Offences under the Act—Bail—Right of accused to be released on bail—Cr. P. Code—Applicability. *See* 1941 Dig., Col. 535. BHUVARAHA IYENGAR *v.* EMPEROR. **I.L.R. (1942) Mad. 414=199 I.C. 128=14 R. M. 559=43 Cr.L.J. 477=1942 M.W.N. 35=55 L.W. 77=A.I.R. 1942 Mad. 221 (2)=(1941) 2 M.L.J. 1014.**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*Plea of status in execution—When to be raised—Plea on day of sale—If open.*

A plea of status as agriculturist may be raised by the judgment-debtor either on an order of attachment itself or subsequently on an order for sale, when the judgment debtor is served with notice under O. 21, r. 66, C. P. Code. He cannot be permitted to raise such plea after an order for sale has been made on the day of sale or after the sale. (*Davis, C.J. and Weston, J.*) CHELLARAM *v.* VISHINDAS. **I.L.R. (1942) Kar. 351=A.I.R. 1942 Sind 164.**

——*Waiver of plea of status in suit—If bar to plea in execution.*

The fact that a defendant waives his right to plead his status of agriculturist in the suit itself would not prevent his raising the same plea in proceedings in execution of the decree passed in such suit. (*Davis, C.J. and Weston, J.*) CHELLARAM *v.* VISHINDAS. **I.L.R. (1942) Kar 351=A.I.R. 1942 Sind 164.**

——**S. 4 (w)**—Suit under—Applicability of S. 20, Limitation Act. *See* LIMITATION ACT, S. 20. **44 Bom.L.R. 138.**

——**S. 10**—*Applicability—Suit by agriculturist in Subordinate Judge's Court—Claim for declaration that sale-deed is really a mortgage and for taking accounts on that basis—Decree—Appeal—Maintainability.*

In applying S. 10 of the Dekkhan Agriculturists' Relief Act the Courts must be satisfied that in substance the suit falls within Chap. II of the Act, and the fact that relief of a subsidiary nature which falls within Chap. II is sought would not make the suit one falling under the Chapter within the meaning of S. 10. If it be necessary for a plaintiff to obtain some substantive relief before he can get the account which brings the suit within the Chapter, S. 10 will not apply. A suit by an agriculturist in a Subordinate Judge's Court claiming a declaration that the suit sale-deed is in the nature of a mortgage and that accounts should be taken on that basis, comes under S. 3 (*a*) in Chap. II of the Act, and hence no appeal lies from the decree in such suit in view of S. 10. (*Beaumont, C.J. and Wadia, J.*) CHUNILAL KEWALRAM *v.* RAMCHANDRA YESAJI. **I.L.R. (1942) Bom. 337=200 I.C. 849=15 R.B. 38=44 Bom.L.R. 278=A.I.R. 1942 Bom. 178 (1).**

——**S. 11**—*Applicability—Suit against legal representative of original party to transaction—Plea of agriculturist—If open to legal representative.*

S. 11 of the Dekkhan Agriculturists' Relief Act is not confined in its operation to a suit between the actual parties to the transaction. It is open to a defendant who is sued as a legal representative to take up the defence of an agriculturist under S. 11. A legal representative of a party with whom the plaintiff had transactions on which the suit is based is as much entitled to take up the defence that he is an agriculturist within the meaning of the Act as the party himself would have had. (*Chagla, J.*) MEGHJI HIRJI & CO. *v.* MANGILAL

DEK. AGRIC. REL. ACT (1879), S. 13.

GORDHANDAS. 203 I.C. 459=44 Bom.L.R. 752=A. I.R. 1942 Bom. 321.

——S. 13 (c)—Scope of—If keeps alive S. 257-A, C. P. Code (1882). *See* C. P. CODE (1882), S. 257-A. 44 Bom.L.R. 409.

——S. 71—*Applicability—Decree not passed in proceeding under Act—Defendant claiming to have become agriculturist after decree—Right to set up uncertified payment or adjustment.*

S. 71 of the Dekkhan Agriculturists' Relief Act enables an adjustment of a decree to be proved in a manner in which it could not be proved apart from that section, but that can only be done in a proceeding under the Act. S. 71 applies only to a decree passed in a proceeding under the Act. It is not open to a defendant to rely on an uncertified adjustment of a decree not passed in a proceeding under the Act, by showing that he has become an agriculturist since the date of the decree. If the defendant was not an agriculturist at the time of the decree, S. 71 will not apply, and he cannot therefore get over the bar imposed by O. 21, R. 2 (3), C. P. Code. (*Beaumont, C.J.*) BASAPPA MALESAPPA *v.* SAMBAPPA SHIVLINGAPPA. 199 I.C. 389=14 R.B. 354=44 Bom.L.R. 25=A.I.R. 1942 Bom. 80.

DISSOLUTION OF MUSLIM MARRIAGES ACT (1939), S. 2 (vii)—*Scope and effect of—Right of to repudiate marriage.*

S. 2 (vii) cannot be construed as allowing a woman who has been given in marriage by her father before he attained the age of puberty to repudiate the marriage n the same way as if she had been given in marriage by her uncle. All that S. 2 (vii) provides is that if a woman who has been given in marriage by her father before she has attained the age of 15 years repudiates he marriage before she attains the age of 18 years, she s entitled to obtain a decree for dissolution of the mar riage. It does not say that until she has obtained such a decree, she has the right of repudiation, that she has the right of dissolving her first marriage by repudiation. Until she has obtained a decree that the marriage has been dissolved, the marriage must be regarded as subsisting. Where the woman concerned has not obtained a decree for the dissolution of marriage, she is not under the Mahomedan law as it stands, since she was given in marriage by her father, entitled to repudiate the marriage as if she had been given in marriage by her uncle. (*Davis, C.J. and Weston, J.*) USMAN *v.* BUDHU. I.L.R. (1942) Kar. 3=201 I.C. 163=15 R.S. 10=43 Cr.L.J. 647=A.I.R. 1942 Sind 92.

DIVORCE.

See (1) HINDU LAND—DIVORCE—CUSTUM.

(2) INDIAN AND COLONIAL DIVORCE JURISDICTION ACT.

DIVORCE ACT (VI OF 1869), Ss. 3, 22 and 23 and Government of India Act (1915), S. 109 (1)—*Notification unaer Government of India Act, S.* 109 (1) *—Meaning of the words portions, of G. state occupied by G. I. P. Ry.—Jurisdiction in respect of petition under S.* 22, *Divorce Act—Respondent living within the compound of a mill in G. state 'served' by the G. I. P. Ry.—Forum.*

The words the portions of the G. state occupied by the 'G. I. P. Ry.' in the notification issued under the Government of India Act, S. 109 (1), can only refer to those portions of the soil of the G. state and of any buildings attached thereto which are in the possession or occupation of the G. I. P. Ry. for whatever purpose and upon whatever form of tenure. The word 'occcupy' must be given its ordinary grammatical meaning. That cannot include a building in the compound of a mill in G. state which is merely 'served' by the G. I. P. Ry. in the sense that it has a siding running into and through the mill premises. Hence a petition for judicial separation under S. 22, Divorce Act against a person living in such a place cannot be filed in the High Court of Allahabad. (*Braund, J.*) MC. GOWEN *v.* MC. GOWEN. I.L.R. (1942) All. 98=199 I.C. 853=14 R.A. 405=(1942) F.L.J. (H.C.) 163=1941 A.L.J. 710=1941 A.L.W. 1104=1941 A.W.R. (H.C.) 387=A.I.R. 1942 All. 129.

DIVORCE ACT (1869), S. 11.

——S. 3 (1)—*'Reside'—Meaning.*

The marriage between *A*, a Mahomedan girl and *B*, who had his home in the Punjab but was residing for his studies at Calcutta was solemnised under the Special Marriage Act on 23rd May, 1939, at Calcutta. *A* was a resident of Calcutta but the parties never resided together nor was the marriage consummated nor did the parties set up any matrimonial home at Calcutta. On 25th August, 1939, *A* presented a petition in the Calcutta High Court, for the dissolution of her marriage with *B*. Although prior to marriage *B* had resided for a considerable time at Calcutta for studies, after the marriage he went away to his home in the Punjab as the College was closed for holidays and was seen at Calcutta in the months of September, October and November, 1939. There was no evidence as to the whereabouts of *B* on the date of the petition by *A*,

Held, that even if *B* was absent from Calcutta on 25th August, 1939, when the petition for dissolution of marriage was filed, his absence was merely temporary and he must be deemed to be still residing within the jurisdiction of the Calcutta High Court within the meaning of the Act. (*Panckridge, J.*) DOLLY BATHENA *v.* SHAIK FAZLE ELLAHI. 201 I.C. 470=15 R.C. 204=A.I.R. 1942 Cal. 42.

——S. 8—'High Court'—Meaning of—Application under section—To whom to be made. *See* 1941 Dig., Col. 537. MALATI DUTT *v.* SURENDRA NATH. 199 I.C. 621=14 R.C. 598=A.I.R. 1942 Cal. 32.

——S. 8—*Transfer of suit from one District Court to another—Jurisdiction of Judge on Original Side—Power of such Judge to issue writ of commission—Calcutta High Court O. S. Rules, Chap.* 35-*A*, *R.* 44—*C. P. Code, S.* 24.

R. 44 of Chap. 35-A of the Original Side Rules of the Calcutta High Court framed under S. 62 of the Divorce Act applies to all applications for transfer made under S. 8 of that Act, whether under the first or second part of that section. Consequently, a Judge sitting singly on the Original Side, duly empowered in this behalf by the Chief Justice, has jurisdiction to transfer a divorce suit from one District Court to another and an application need not be made to a Bench on the appellate side. S. 24, C. P. Code, has no application to the case. The same Judge has also jurisdiction to issue a writ of commission authorising the District Court before which the suit was pending to examine witnesses and his order would be governed by the rules relating to commissions contained in Chap. 22 of the Original Side Rules. (*Edgley, Sen and Akram, JJ.*) SURENDRANATH DUTT *v.* MALATI DUTT. 201 I.C. 446=15 R.C. 195=46 C. W.N. 790—A.I.R. 1942 Cal 546.

——S. 10—*Petition for divorce—Woman named as adulteress—Right to intervene.*

A woman named in the petition for divorce as an adulteress, has no right to intervene in the proceedings and need not, therefore, be served with notice of such proceedings. (*Edgley, J.*) J. H. RAE *v.* L. C. RAE. 46 C.W.N. 842.

——S. 11—*Application for divorce on the ground of adultery—Adding of co-respondent as party—If optional*

DIVORCE ACT (1869), S. 37.

—When can be dispensed with—Leave to dispense with presence of co-respondent—Procedure.

S. 11 of the Divorce Act makes it obligatory on a husband when he petitions for dissolution of marriage on the ground of adultery to make the alleged adulterer a co-respondent, unles he is excused from doing so on one of three grounds. The section excuses him from doing this when his wife is leading the life of a prostitute and also when the alleged adulterer is dead. The third case in which he can be excused is 'when the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it'. A suit without the co-respondent cannot proceed until leave to dispense with his presence has actually been obtained. It is not sufficient merely to apply for leave at the trial A formal application has to be made before the trial and it has to be supported by proper evidence that the conditions of S. 11 of the Act have been complied with. (*Braund, J.*) WILLIAM PERCY BOWMAN *v.* HARRIET DOROTHY BOWWAN. **I.L.R. (1942) All. 395=201 I. C. 670=15 R .A 70=1942 A.W R. (H C.) 130=1942 A.L.J. 355=1942 A.L W. 414=All.I.R. 1942 A. 223.**

———**S 37**—Alimony—Execution — Exemption under S. 60 (1) C. P. Code if available. *See* C. P. CODE, S. 60 (*i*) AND DIVORCE ACT, S. 37. **1942 N.L J. 450.**

———**Ss. 44 and 3 (5)**—*Person receiving maintenance ceasing to be 'minor'--Provision for—Discretion of Court under S. 44—Limits of —English law, if can be invoked.*

There is no power under the Divorce Act to make any provision for children who are no longer 'minors' under the Act. So when a 'minor' in receipt of maintenance ceases to be a 'minor', the order in favour of such a person also ceases to be operative. There is no discretion under S. 44 of the Divorce Act as regards maintenance for children who have ceased to be minors and the English law cannot be invoked to widen the discretion of courts in India. (*Collister, J.*) HILT *v* HILT. **1942 A.L.J. 588=1942 A.W.R. (H.C.) 335=1942 A.L.W. 537=All.I.R. 1943 A. 8.**

DURGAH KHAWAJA SAHIB ACT (XXIII OF 1936), S. 11 (e)—*Emoluments paid under—Nature of —Members of family, if can claim share as of right.*

The emoluments paid under S. 11 (*e*) of Act XXIII of 1936, to the hereditary cooks concerned for services rendered were fixed originally in firman relating thereto. It was fixed in perpetuity and was granted to cooks and menials themselves for performing the labour of cooking. There was no mention of any kind of grant to the families of such cooks. The offices were to be hereditary. In such a case it was held that there was no legal authority vested in any Court of law to compel the cooks to share their emoluments with all the members of the family. (*Davies.*) YAQUB ALI *v.* QUTAB ALI. **1942 A.M.L.J. 7.**

EASEMENT—*Acquisition of—Efflux of time—If sufficient.*

An easement is acquired by a suit being brought and 20 years prior user as an easement being proved. Thus it differs in some respects from other rights in that the mere efflux of time does not create an easement. It is the action brought which turns the easement into an indefeasible right. (*Dalip Singh and Din Mohomed, JJ.*) SAYA RAM DAS *v.* LAHORE ELECTRIC SUPPLY CO., LTD. **200 I.C. 438=14 R.L. 467=44 P.L.R. 116=A.I.R. 1942 Lah 124.**

———*Customary easement—Proof of, requisites—Village pathway.*

Proof of a customary easement is immensely more difficult than proof of an easement under S. 26 of the Limitation Act. The persons who rely on custom must prove that it was ancient, continuous, peaceable, certain and compulsory. Indiscriminate miscellaneous user of village land cannot establish the fact that such user had become a customary law of the place in respect of the persons and things which it concerned. The enjoyment is of too fugitive and patently permissive a kind to afford any support to it. Hence the taking of rubbish by some villagers over certain plots in their carts cannot make it a village pathway. (*Madeley, J.*) GANGA GHULAM *v.* SHEO MANGAL BAJPAI **204 I.C. 237=(1942) O.A. 588=1942 A.W.R. (C.C.) 356 (3)=1942 O W.N. 725.**

EASEMENTS ACT (1882), S. 13.

———*Light and air—Infringement—Right of action—Premises in occupation of tenant—Right of landlord to sue for damages for infringement.*

Obiter: Where a landlord is not himself in occupation of any premises affected by interference with easements of light and air, connected with those premises, he is not entitled to relief unless he proves that by reason of the interference with the easements of light and air enjoyed by those premises he has been damnified apart from the damage or inconvenience caused to the tenant in occupation. The Court is not concerned with inconvenience caused to a tenant of the plaintiff who is not a party to the suit. (*Lobo, J.*) HAJI ABDULLA HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **I.L.R. (1942) Kar 306=A.I.R. 1943 Sind 17.**

———*Light—Obstruction—Right to sue.*

The right to receive light across another's land is not a natural incident of property but can only be acquired as an easement either by grant or prescription. Unless and until such a right has been acquired in the manner of other easements, no amount or mode of obstruction is actionable. (*Akram and Pal, JJ.*) RASHID ALLIDINA *v.* JIWANDAS KHEMJI. **I.L.R. (1942) 1 Cal. 488=46 C.W.N. 136=A.I.R. 1943 Cal. 35.**

———Right of privacy—Custom as to—Kaira district in Gujarat—Injunction to restrain invasion. *See* CUSTOM—GUJARAT. **44 Bom.L.R. 401.**

———*Suit claiming right of—Maintainability if affected by plaintiff's failure to establish claim of ownership in prior suit.*

Where a person alleges that he had ownership over the disputed plot *malikana wa mokhalifana* but fails to establish his claim in the suit is not thereby prevented from claiming in a subsequent suit rights of easement over the same plot. (*Yorke, J.*) RAM PRASAD *v.* LALIT KISHORE. **1942 A W.R. (H C.) 263=1942 A.L.J. 483=1942 A.L.W. 623=A.I.R. 1942 All. 405.**

EASEMENTS ACT (V OF 1882)—Principles underlying—Applicability in Bengal. *See* 1941 Dig., Col. 538. BARODA PRASAD PAL *v.* ASUTOSH PAL. **199 I C. 689=14 R.C. 617.**

———**S. 7 (b)**—Right to discharge surface water on land at lower level—Nature of—Such right, if may be extinguished—Change in original disposition of lands—Effect of. *See* 1941 Dig., Col. 539. NATABAR SASMAL *v.* KRISHNACHANDRA. **A.I.R. 1942 Cal. 261.**

———**S. 13**—Easement of necessity—Right of way—Extent. *See* 1941 Dig., Col. 539. HASAN BAHADUR *v.* ABIDA. **1941 O.W.N. 1410.**

———**S. 13 (a)**—*Easement of necessity—Facts to be proved—Principle underlying the recognition of the right.*

A plaintiff who claims a right of passage through the field of another under S. 13 (*a*) of the Easements Act has to prove that he has no alternative means of access, however inconvenient, to his field. He cannot be said to have an alternative way unless he had the lawful right to use that way. The grant which arises by im-

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plication of law in the case of such easements is a grant of a right of way until such time as the grantee may acquire the power from some other source of reaching the quasi-dominant tenement without using the quasi-servient tenement. (*Niyogi, J.*) ANANTRAM *v.* KASHIYA LAXIA KUNBI. **1942 N.L.J. 441.**

——**S. 13 (b)**—*Applicability—Continuous easement—Right of way—Formed and metalled road—If passes on sale—English law—Applicability of.*

Under S. 13 (*b*) read with S. 5 of the Easements Act, a right of way, though apparent, if it is formed way, is a discontinuous easement, and therefore it does not fall under S. 13 (*b*); it cannot be regarded as an easement of qualified necessity, or a *quasi* easement. There is no warrant for holding that a formed way must be regarded as a continuous easement. Having regard to the provisions of the Indian Easements Act it is not open in India in cases where the Easements Act applies to follow the English decisions subsequent to the Act and to hold that a formed and metalled pathway would be an apparent and continuous easement for the purpose of determining the rights of parties under S. 13 (*b*) which also applies to a continuous easement. Even if it be a formed way, it does not pass an easement of qualified necessity under S. 13; it can only pass as an easement of absolute necessity. that is to say, where it is not possible to have any other way for passage. (*Divatia, J.*) MALKAJAPPA CHANVIRAPPA *v.* RACHAPPA PANCHAPPA. **203 I.C. 307=44 Bom.L.R. 673=A.I.R. 1942 Bom. 305.**

——**S. 15**—Lessor and Lessee—Acquisition of right by lessee as against lessor. *See* 1941 Dig., Col. 540. ABDULLAH HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **198 I.C 418=14 R.S. 141.**

——**S. 15**—*Period of 20 years—Computation—Suit by plaintiff before 12 years—Right contested and decided adversely to plaintiff—Effect—Period after filing of suit—If can be taken into account to make up period.*

In calculating the period of twenty years, as provided in S. 15 of the Easements Act, it is not sufficient to take into account a period of less than 20 years before a suit in which the plaintiff's right is contested, and the rest of the twenty years during the continuance of, and after, the suit. Where before the expiry of the period of twenty years the plaintiff files a suit which is contested by the defendant and decided against the plaintiff, his inchoate right comes to an end, and no period subsequent to the filing of that suit can be added to the period before the filing of that suit to make up the period of 20 years of peaceable enjoyment without interruption. (*Lobo, J.*) HAJI ABDULLA HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **I.L.R. (1942) Kar. 306=A.I.R. 1943 Sind 17.**

——**S. 15**—*Scope and nature of privilege given to Government by last para of section.*

The last paragraph of S. 15 of the Easements Act gives a personal privilege to the Government when the Government is a party in the suit just in the same way as Art. 149 of the Limitation Act confers a privilege on Government. The result is that once a plaintiff established that he had exercised his rights as an easement against the predecessor in interest of the defendant whether the predecessor in interest was the Government or not, his rights at the time when they are claimed in a suit against a private person becomes absolute since that private person could not claim the privilege which is the personal privilege of the Government. (*Yorke, J.*) RAM PRASAD *v.* LALIT KISHORE. **1942 A.L.J. 483=1942 A.W.R. (H.C.) 263=1942 A.L.W. 623=A.I.R. 1942 A 405.**

EASEMENTS ACT (1882), S. 60.

——**S. 15 (3)**—'Claiming title thereto"—Construction. *See* 1941 Dig., Col. 540. RAMAMURTHI *v.* NARASAMMA. **46 Mys.H.C R. 621.**

——**S. 33**—Burden of proof—Action for infringement—What plaintiff has to prove. *See* 1941 Dig., Col. 541. ABDULLAH HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **198 I.C. 418=14 R.S. 141.**

——**Ss. 32 and 33**—*Light and air—Access to windows—Right of dominant owner—Infringement—What constitutes.*

The owner of a dominant heritage has no absolute right to the access of light and air to windows and apertures. To constitute an infringement of an easement of light and air there must be a substantial privation of light and air enough to render the occupation of the house uncomfortable according to the ordinary notions of mankind and (in the case of business premises) to prevent the plaintiff from carrying on his business as beneficially as before. (*Lobo, J.*) ABDULLA HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **I.L.R. (1942) Kar. 225.**

——**S. 33**—Substantial damage—What amounts to—Test—Onus. *See* 1941 Dig., Col. 541. ABDULLAH HAROON *v.* MUNICIPAL CORPORATION OF KARACHI. **198 I.C. 418=14 R.S. 141.**

——**S. 46**—Owners of dominant tenement acquiring right of co-sharer in servient tenement—Easement is extinguished. *See* 1941 Dig., Col. 541. BARODA PRASAD PAL *v.* ASUTOSH PAL. **199 I. C. 689=14 R.C. 617.**

——**S. 52**—*Right of licensee—Right to sue for possession.*

In the case of a bare licence which is not coupled with the grant of any interest in property, the licensee will no doubt not be entitled to maintain an action for possession in his name. But this rule cannot be extended to a case where there is definitely an interest in property created by the arrangement which is sought to be described as a licence. (*Biswas, J.*) ARUN KUMAR BASU *v.* SUDHIR CHANDRA BASU. **75 C.L.J. 236.**

——**S. 60**—*Agreement to vacate even if construction is put up—If debars advantage being taken of S. 60.*

Where a person by a registered Kiryanama executed by himself alone agrees that the landlord would have the right to get the site vacated whenever he so chose, it would disentitle him from deriving advantage conferred by S. 60 of the Easements Act. (*Baipai, J.*) GANGA SAHAI *v.* BADRUL ISLAM. **202 I.C. 678=1942 A.L.J. 386=1942 A.W.R. (H.C.) 217= 1942 A.L.W. 373 =A.I.R. 1942 All. 330.**

——**S. 60 and C. P. Code, S. 100**—*Structure if of a permanent character—Test—Question, if one of fact.*

Whether a structure is of a permanent character has to be decided on two considerations: (1) the material used and (2) the purpose for which the building is erected. The material used may be granite stone, marble, cement, concrete, bricks, or clay, or mud. There can be no absolute standard as regards the material for judging whether the structure is permanent or temporary. The mere fact that a structure has mud walls would not be conclusive to prove its temporary character. Whether a structure is of a permanent character or not is not a pure inference of fact but is partly an inference of law. (*Niyogi, J.*) DWARKANATH *v.* GOWRISHANKAR. **203 I.C. 540=1942 N.L.J. 145**

——**S. 60 (b)**—*Scope and principle underlying—Prevention of revocation of licence—Conditions necessary.*

The principle of S. 60 (*b*), Easements Act is that the licensee acting upon the license should execute work of a permanent character soon after the grant of a licence or within a reasonable time. It is a principle dictated by justice, equity and good conscience and does not require

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that in order to prevent revocation of the licence the work of a permanent character must be a costly one. Nor does the section impose a duty upon the licensee who has already complied with the terms of the licence to maintain work of a permanent character up to any particular standard of repair. Where the licensee has carried out the terms of the license for building purposes and has incurred expenses in its execution the license becomes irrevocable under S. 60 (*b*), Easements Act, and the licensee can be evicted from the premises only when the purpose of the licence is abandoned within the meaning of Cl. (*f*) of S. 62, in other words the licensee has actually abandoned the house whatever the state of repair might be. (*Ghulam Hasan, J.*) HASHMAT JAHAN *v.* SHEO DULARY. **17 Luck. 472=198 I. C. 184=14 R.O. 380=1941 O.A. 1038=1941 A.W.R (Rev.) 1148=1941 O W.N. 1340=A.I.R. 1942 Oudh 180.**

——**S. 62** (*f*)—*Applicability—Absence of proof of grant of licence for specified purpose.*

Where it is not shown that the defendant was holding the house in question under any licence for a specified purpose, the plaintiff proprietor is not entitled to re-enter upon the land on the ground that he has converted the residential house into a public temple. (*Bennett and Agarwal, JJ.*) IQBAL HUSAIN *v.* SHANKAR DAYAL. **200 I C 744=15 R.O. 43=1942 R.D. 548=1942 O. W.N. 351=1942 A.W R. (C.C.) 234=1942 O.A. 255 =A.I R. 1942 Oudh 427.**

EAST INDIA COMPANY ACT (1773), S. 36—Power to legislate—If confined to Calcutta. *See* 1941 Dig., Col 542. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689.**

EJECTMENT—*Suit for—Onus,*

In an action for ejectment the plaintiff can recover only by the strength of his own title and not by the weakness of that of the defendant. (*Sir Madhavan Nair.*) HEM CHAND *v* PEARY LAL. **203 I. C. 1= 47 C.W N. 46(2)=9 B R. 70=1942 A L.J. 718=1943 A.L.W. 7=1943 O W N. 1=56 L.W. 8=45 P L R. 36=A.I R. 1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C.).**

ELECTION—*Bribery—Test—Payment to workers.*

A candidate may lawfully pay either an association of persons or an individual to work for him at an election, but he may only pay what is a reasonable sum for the particular work done. Where that payment is to a voter it may, however, amount to a bribe if the payment is out of all proportion to the work done or agreed to be done. Whether any particular payment by a candidate is or is not a bribe must always fall to be decided upon the particular facts of each case. Money paid to a club to pay off its debt and to repair its club premises with the object of inducing those of its members who are voters to record their votes in favour of a candidate is bribe. Whether that object was in fact achieved is immaterial. The motive of the briber, and not the effect on the bribed, is the test. (*Sharpe, J.*) PILLAI *v.* DANGALI. **99 I.C. 110=14 R.R 231=A.I.R 1942 Rang. 52.**

——Corruption—Effect on election—Test. *See* 1941 Dig., Col. 542. WILCOX *v.* PATEL. **199 I.C 274= 14 R.R. 252=A I R. 1942 Rang. 80.**

ELECTIONS OFFENCES AND INQUIRIES ACT (XXXIX OF 1920)—*Applicability—Elections for Legislative Assemblies under Constitution Act of* 1935.

By the Government of India (Adaptation of Indian Laws) Order, 1937, the Election Offences and Inquiries Act XXXIX of 1920 has been amended so as to come into line with the new Government of India Act, 1935. The words "or Lieutenant-Governor" have been omitted in

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S. 12 and an election has been defined as the election for the Legislative bodies contemplated by Government of India Act, 1935. The Election Offences and Inquiries Act therefore is still in force in the whole of British India and applies to the elections for the Legislative Assemblies under the Constitution Act of 1935. (*Almond, J.C. and Mir Ahmad, J.*) MAHOMED ZAMAN KHAN *v.* MAHOMED SARWAR KHAN. **201 I.C. 331 =15 R. Pesh. 19=(1942) F.L.J. (H.C.) 154=A.I.R. 1942 Pesh. 53.**

——**S. 12**—*Order for costs by Governor in connection with election—Execution in District Court—Appeal—C. P. Code, S. 47.*

An order for costs passed by the Governor under S. 12 in connection with an election is executable in the District Court as a decree for payment of money made by that Court itself in a suit. An appeal lies under S. 47 C. P. Code, to the Chief Court from an order of the District Judge refusing to execute the order as to costs. (*Almond, J.C. and Mir Ahmad, J.*) MAHOMED ZAMAN KHAN *v.* MAHOMED SARWAR KHAN. **201 I. C. 331=15 R. Pesh. 19=(1942) F.L.J. (H. C.) 154 =A.I.R. 1942 Pesh. 53.**

——**S. 12**—*Order for costs passed by Governor—Executability in District Court—Separate suit if lies.*

Under S. 12 an order as to costs passed by His Excellency the Governor in connection with an election petition is executable in the Court of the District Judge in the same way as if it were an order by that Judge for the payment of that amount in a suit. A separate suit for the recovery of costs does not lie. (*Almond, J. C. and Mir Ahmad, J.*) KAMDAR KHAN *v.* MIAN ZIAUDIN. **201 I.C. 452=15 R. Pesh. 22=(1942) F.L.J. (H C.) 157=A.I.R. 1942 Pesh. 54.**

ELECTRICITY ACT (IX OF 1910), S. 9 (2)—'Transfer'—Creation of charge, if amounts to. *See* 1941 Dig., Col. 542. U. P. GOVERNMENT *v.* MANMOHAN DAS. **I.L R. (1941) All. 691.**

——**S. 44-(b)**—*Applicability—"Connects up"—Meaning of—House-holder instructing contractor or workman to connect up—Liability of—Liability of contractor and workman.*

The words "connects up" in S. 44 (*b*) of the Electricity Act cannot be construed as extending only to the workman or man who actually does the physical work. The words embrace the whole process of connecting the wires in an installation with other wires for the purpose of communicating with the works of the license. There is no doubt that the words "connects up" include the house-holder who gives instructions to connect up, the contractor, if any, through whom those instructions are transmitted to the workman and the workman who actually does the work. (*Beaumont, C. J. and Wassoodew, J.*) EMPEROR *v* GORDHANDAS NATHALAL. **44 Bom.L.R. 800.**

ELECTRIC SUPPLY—Rules—"Commercial premises"—Meaning of—Coffee hotel. *See* 1941 Dig., Col. 544. PALGHAT ELECTRIC CORPORATION, LTD. *v.* VEERARAGHAVA IYER. **200 I.C. 346=15 R.M. 83= (1941) 1 M.L.J. 411.**

ESTOPPEL. *See* EVIDENCE ACT, CH. VIII (SS. 115 117) PRACTICE—ESTOPPEL.

EVIDENCE.

See also (1) CRIMINAL TRIAL—EVIDENCE
(2) EVIDENCE ACT.
(3) PRACTICE, EVIDENCE.

——*Admissibility—Judgment not* inter partes.

A Court is not entitled to refer to or rely upon a judgment given in proceedings to which neither the plaintiff nor the defendant was a party, as proving the facts

stated therein. (*Lord Russell.*) COCO COLA CO. OF CANADA, LTD. *v.* PEPSI-COLA CO. OF CANADA, LTD. **15 R.P.C. 23=202 I. C. 203=8 B. R. 889=A.I.R. 1942 P.C. 40 (P.C.).**

———*Admissions in deposition of defendant—Admissibility against co-defendants in later suit.*

The admission of one defendant contained in deposition in an earlier suit is not admissible in a subsequent suit against persons who were his co-defendants in the earlier suit. (*Harries, C. J. and Fazl Ali, J.*) MUSAMMAT BIBI KANIZ AYESHA *v.* MOJIBUL HASSAN KHAN. **20 Pat. 855=200 I. C. 546=15 R. P. 5=8 B.R. 716=A.I.R. 1942 Pat. 230.**

———*Appreciation—Credibility.*

Where there is no reason to disbelieve the witnesses on one side whereas the stories of the witnesses on the other side are inherently improbable, it is the duty of the Court to believe the first group as against the second group. (*Davies.*) LAKHMI CHAND *v.* LAL CHAND. **1941 A.M.L.J. 67.**

———*Award in Criminal Court in proceedings under S. 488, Cr. P. Code—Admissibility in civil suit to prove title.*

An award or compromise made in a Criminal Court assigning certain property for maintenance is not admissible in evidence in a later Civil suit to prove title. (*Agarwala and Shearer, JJ.*) KUSMI *v.* SADASIVA MAHTO. **21 Pat. 601=201 I. C. 196=15 R. P. 34=8 B.R. 770=23 P.L T. 354=A.I.R. 1942 Pat. 432.**

———Caste—Proof—Certificate or bond containing person's own statement—Value of. *See* 1940 Dig., Col. 576. SHARIFA BEGAM *v.* COURT OF WARDS. **I. L. R. (1941) Lah. 843.**

———Child witness—Reliability—Tests. *See* 1941 Dig., Col. 545. SHEO PRASAD *v.* EMPEROR. **17 Luck. 376=197 I.C. 701=43 Cr.L.J. 243=1941 A. Cr.C. 306=14 R.O. 353=A.I.R. 1942 Oudh 193.**

———*Credibility—Effect of a prior false statement of a party.*

Where a Court knows that a party before it had on a prior occasion made a false statement but nevertheless feels that his statement on the present occasion is true, it cannot come to a converse finding against its conviction simply because of the prior false statement. (*Sathe, J.M.*) DUBARI RAI *v.* RAMDEO RAI. **1942 O. A. (Supp.) 377=1942 A W.R. (Rev.) 351=1942 O. W. N. (B.R.) 578=1942 R.D. 706.**

———*Foreign law and custom—Judicial decision of highest tribunal of foreign state—Value of as evidence against subjects of that state in suit in British India.*

What the law or custom in a foreign state is is a question of fact to be proved by evidence, and there can be no better evidence as to the state of the customs prevailing in that foreign country than a judgment of the highest tribunal in that state. Though the judgment as a judgment cannot bind the parties to a suit in British India, it is sufficiently cogent evidence against the parties who are governed by the law of that state. (*Broomfield and Sen, JJ.*) SUGANCHAND BHIKAM CHAND *v.* MANGIBAI GULABCHAND. **I.L R. (1942) Bom. 467=201 I. C. 759=15 R.B. 111=44 Bom.L. R. 358=A.I.R. 1942 Bom. 185.**

———Village note—Value of, as evidence of custom: *See* C. P. CODE, S. 100. **20 Pat. 870.**

EVIDENCE ACT (I OF 1872)—*Interpretation—English decision—Application of—Need for caution.*

The Indian Evidence Act, 1872, is no doubt mainly based upon the English Law; but it is by no means an exact reproduction of it. The English Law of evidence also has never been codified, and judicial decisions may well have developed or expanded some of its princi-

ples since 1872. Caution is therefore necessary in the application of English authorities on the subject in an Indian Court. (*Gwyer, C. J., Varadachariar and Zafrulla Khan, JJ.*) NIHARENDU DUTTA MAJUMDAR *v.* EMPEROR. **I. L. R. (1942) Kar. (F.C.) 56=200 I.C. 289=14 R.F.C. 32=55 L.W. 344=8 B.R. 703=43 Cr.L.J. 504=23 P.L.T. 443=1942 Pat. W. N. 164=1942 M.W.N. 417=46 C.W.N. (F. R.) 9=5 Fed.L.J. 47=A.I.R. 1942 F.C. 22.**

———**S. 4**—*Subsistence of marriage—Presumption.*

Under S. 4 of the Evidence Act it is open to a Court upon proof of a marriage to hold as proved the subsistence of that marriage on later date, unless and until it is disproved. (*Nasim Ali and Pal, JJ.*) CHANDULAL AGARWALLA *v.* KHALILAR RAHAMAN. **I.L.R. (1942) 2 Cal. 299=46 C.W.N 729.**

———**S. 6**—Res gestae—*Conditions necessary.*

The declarations in order that they might be admissible as *res gestae* should be contemporaneous with the transaction in issue, that is, the interval should not be such as to give time or opportunity for fabrication and they should not amount to a mere narrative of a past occurrence. They are admitted when they appear to have been made under the immediate influence of some principal transaction relevant to the issue and are so connected with it as to characterise or explain it. The bare statement of a complainant made sometime after the occurrence is not admissible in evidence. (*Agarwal, J.*) NOOR MOHAMMAD *v.* IMTIAZ AHMAD. **197 I. C. 839=14 R. O. 363=1942 A. Cr. C. 1=43 Cr.L.J. 280=1941 O.W.N. 1290=1941 O.A. 1008=1941 A. W.R. (C. C.) 397=A.I.R. 1942 Oudh 130.**

———**Ss. 7 and 45**—*Scope—Footprints—Evidence of tracker—Relevancy.*

Evidence that there were footprints at or near a scene of offence or that the footprints came from a particular place or led to a particular place, is relevant evidence under S. 7 and statements as to these facts made by person skilled in identifying footprints are not excluded by S. 45 The words 'science' or 'art' in S. 45 are to be construed widely. The amendment relating to finger impressions is made to meet particular decisions which had been given by the Courts. The amendment does not operate to limit in any way the wide meanings which should be given to the expressions 'science' or 'art'. Whether a particular tracker called upon to assist, is or is not an expert in this art or science, is of course a matter to be decided by the Judge or Magistrate, before reliance can be placed upon his evidence. But if it is established to the satisfaction of the Court that the tracker is a person capable of distinguishing and identifying footprints, there is no reason why his evidence should not be given such consideration as it may deserve. (*Davis, C. J. and Weston, J.*) SIDIK SUMAR *v.* EMPEROR. **I. L. R. (1941) Kar. 525=198 I. C. 110=14 R. S. 136=43 Cr.L.J. 308=A. I. R. 1942 Sind 11.**

———**S. 13**—*Document by tenant describing nature of tenancy—Landlord not party to it—Admissibility—B. T. Act, S. 18-A.*

A document by a tenant to which the landlord is not a party wherein the tenant describes his interest as *niskar*, is not admissible in evidence under S. 13 of the Evidence Act. Even assuming that it is relevant under S. 13 (*b*) of the Evidence Act, S. 18-A of the B. T. Act excludes it from being used in evidence against the landlord. (*Pal, J.*) SRISHCHANDRA NANDY *v.* KALACHAND ROY **I.L.R. (1942) 1 Cal. 510=202 I. C. 570=15 R.C. 367=75 C.L.J. 20=46 C.W.N. 169 =A.I.R. 1942 Cal. 445.**

EVIDENCE ACT (1872), S. 13.

——S.13—*Judgment not* inter partes—*Admissibility*

A judgment in a previous criminal case in which the plaintiff asserted his possession of the land in dispute and possession was held to be with him is not admissible in evidence against the defendant who was not a party to the criminal proceeding to prove the plaintiff's possession at that time. But the fact that at that point of time the plaintiff asserted his title is admissible under S. 13 of the Evidence Act. (*Agarwala, J.*) PARAN MUNDA *v.* SANTOSH MAHTO. **199 I.C. 144=14 R. P. 543=8 R R. 501=A.I.R. 1942 Pat. 372.**

——**Ss. 13, 35 and 74**—*Printed copy of index register of lands granted on lease in city—Admissibility —If public document.*

Printed copies of an index register, containing the general index of lands given on lease in a particular city with certain particulars and maps of the survey numbers situated in the different wards of the city, are public documents and admissible in evidence under S. 74 of the Evidence Act, being records of the acts of public officers. They are also relevant under Ss. 13 and 35 of the Evidence Act and admissible. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I C 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

——**S. 14**—Scope and applicability of. *See* 1941 Dig., Col 548. A. H. GANDHI *v.* THE KING. **198 I.C. 455=14 R R. 210=43 Cr.L J. 373.**

——**S. 14**—*Scope—Mental capacity—Evidence as to —Relevancy in deciding liability on contract in foreign language.*

The mental capacity of a party cannot be said to be irrelevant when upon the contractual relations entered into by the party, his property is sought to be made liable and the contract is in English, a language of which the party is said to be ignorant; and, when he is shown to be lacking in mental capacity, it is incumbent upon the party attaching liability to establish that the party liable has signed the contract with an understanding mind. (*Davis, C.J. and Weston, J.*) HARIOMAL KALUMAL *v.* FIRM UTTAM CHAND. **198 I.C. 567=14 R.S. 144=A.I.R. 1942 Sind 17.**

——**S. 15**—Admissibility under—Conditions to be satisfied. *See* 1941 Dig., Col. 548. A. H. GANDHI *v.* THE KING. **198 I.C. 455=14 R.R. 210=43 Cr.L.J. 373.**

——**S. 15**—*Criminal acts other than those covered by indictment—When admissible.*

Evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment is not admissible unless upon the issue whether the acts charged against the accused were designed or accidental, or unless to rebut a defence otherwise open to him. Where the charge against the accused is that he administered *dhatura* to a certain person at a certain place with intent to rob him, evidence of other incidents may be admissible with a view to rebutting any defence that the administration of *dhatura* at that place was accidental. But before such evidence is admissible the presence of the accused at that place has to be established. The fact that he had *dhatura* in his possession months afterwards can in no way help the prosecution, because it cannot be possibly inferred from that fact that he was in possession of *dhatura* when he was at that place on the date of occurrence. (*Harries, C.J. and Manohar Lal, J.*) RAM SUMIRAN PANDE *v.* EMPEROR. **198 I.C. 662=8 B R. 441=14 R.P. 501=43 Cr.L.J. 413=A.I.R. 1942 Pat. 291.**

——**Ss. 17 and 115**—*Admission as to heirship—Value—Acquiescence in the possession of another as the heir of a deceased person—Effect—If can operate as estoppel against ejectment.*

The question whether or not a person is entitled to succeed as the heir of a deseased person is a question of law and there can be no legal admission about it. Where a landholder acquiesces in a person continuing to remain in possession of a holding under the impression that he was the heir of the deceased tenant, if it is later on found that he was not the heir, the acquiescence in his possession would only operate as a licence which can be revoked at will and the landholder would not be estopped from ejecting him. (*Sathe, J. M.*) SALIG RAM *v.* DEOKINANDAN. **1942 R.D 429=1942 A.W.R. (Rev.) 212=1942 O.A. (Supp.) 238=1942 O.W.N. (B.R.) 340.**

EVIDENCE ACT (1872), S. 24.

——**Ss. 17 and 31**—*Admission in plaint—Subsequent amendment of plaint—Effect—Use of such admission partially—Propriety.*

Where a plaint containing an admission is subsequently amended, the admission contained in the original plaint cannot be considered to be of any value. Admissions contained in a plaint cannot be utilised in part and rejected in part. (*Shirreff, S. M. and Sathe, J.M.*) CHOLHAN *v.* MAHOMED HUSAIN. **1942 O.W.N. (B. R.) 209=1942 A.W.R. (Rev.) 130=1942 R.D. 275 =1942 O.A. (Supp.) 150.**

——**Ss. 17 and 31**—*Admission regarding operation of law—Value.*

There cannot be an admission regarding the operation of law. If a person could not succeed to a holding under the law an admission that such a person succeeded to the holding cannot confer on him any tenancy rights. (*Sathe, J.M.*) RAM LACHCHAN LAL *v.* GANPAT RAI. **1942 O W N. (B.R.) 198=1942 R.D. 264=1942 A. W.R. (Rev.) 145=1942 O.A. (Supp.) 165.**

——**S. 21**—*Admission as agent of a party to a suit—If binds him personally.*

A person who was no party to a suit cannot be bound by any admissions arising out of the institution of the suit in which he acted merely as the general agent of one of the parties and in that capacity verified the plaint. (*Shirreff, S.M. and Sathe, J.M.*) SHANKARI SINGH *v.* GOBARDHAN SINGH. **1942 O.A. (Supp.) 105=1942 O.W.N. (B.R.) 145=1942 R.D. 211=1942 A.W R. (Rev.) 92=1942 A.L.J. (Supp.) 23.**

——**Ss. 21 to 27**—Scope and effect of—Admissions admissible in civil cases—If inadmissible in criminal cases—Enquiry by Magistrate into conduct of police officers—Statements by officers—Admissibility in criminal trial on charge of wrongful confinement and hurt for extorting confession. *See* 1941 Dig., Col. 550. TITUS, *In re.* **43 Cr.L.J. 3.**

——**S. 24**—*Applicability—Statement made on oath—If one made not voluntarily—Admissibility in evidence —"Threat"—Administering of oath.*

It cannot be stated as a proposition of law that no statement made on oath can be a voluntary statement that would be admissible under S. 24 of the Evidence Act. S. 24 says nothing about voluntary statements. A statement made on oath may be said in certain cases to be made as the result of the holding out of a threat; but that is a question of fact. The administering of an oath is not necessarily or always tantamount to a threat to the person under oath. (*Horwill, J.*) NARAYANA MURTI, *In re.* **203 I.C. 479=44 Cr.L.J. 72=55 L. W. 462=1942 M.W.N. 436=A.I R. 1942 Mad. 654 =(1942) 2 M L J 112.**

——**S. 24**—*Confession to be taken as a whole.*

It is an established rule of law that a confession, if accepted at all, should be accepted as a whole and not in part, and effect must therefore be given to that portion

of the confession which indicates that the maker acted to some extent under pressure. (*Tek Chand and Sale, JJ.*) GHULAM MAHOMED *v.* EMPEROR. **203 I.C. 488=44 Cr.L.J. 77=44 P.L.R. 448=A.I.R. 1942 Lah. 271.**

——S. 24—Confession—What is—Admission of presence in company of dacoits but no admission of commission of dacoity—If confession. *See* 1941 Dig., Col. 550. ADHIK LAL PATHAK *v.* EMPEROR. **200 I.C. 208=14 R.P. 655=8 B.R 647=23 P.L.T. 475—43 Cr.L.J. 615=A.I.R. 1942 Pat. 156.**

——S. 24—Construction—Proof of voluntary character of confession—If required. *See* 1941 Dig., Col. 550. BOYA CHINNA PAPANNA, *In re.* **198 I.C. 295=14 R.M. 444=43 Cr.L.J. 346=A.I.R. 1942 Mad. 49=(1941) 2 M.L.J. 1070.**

——S. 24—"Inducement"—Statement made in answer to question by police as to whether accused committed offence and asking him to produce weapons coupled with a promise that nothing would happen if they were produced—Admissibility. *See* 1941 Dig., Col. 551. LAKSHMUDU, *In re.* **199 I.C 87=14 R.M. 556=43 Cr.L.J. 463=A.I.R. 1942 Mad. 237.**

——S. 24—*Retracted confession—Evidentiary value against maker and co-accused.*

A retracted confession, if believed to be true, may form the basis of a conviction against the maker, but as a rule of caution, it is unsafe to base even his conviction on a retracted confession alone without some independent corroboration. As against the co-accused, a retracted confession may be taken into consideration subject, however, to the rule which is now firmly established that it cannot form the basis of a conviction without substantial and independent corroboration both as to the crime and the criminal. Further, a higher standard of corroboration in regard to a retracted confession must be demanded than in the case of the testimony of an approver because the testimony of an approver can be tested by cross-examination whereas the confession of an accused cannot be subjected to such a test. (*Tek Chand and Sale, JJ.*) GHULAM MAHOMED *v.* EMPEROR. **203 I.C. 488=44 Cr.L.J. 77=44 P.L.R. 448=A.I.R. 1942 Lah. 271**

——S. 24—Retracted confession—Value of—Need for corroboration. *See* 1941 Dig., Col. 551. DIKSON MALI *v.* EMPEROR. **43 Cr.L.J. 36=23 P.L.T 387=A.I.R. 1942 Pat. 90.**

——S. 25—Confession by accused—Admissibility in his favour. *See* 1941 Dig., Col. 551. HASIL *v.* EMPEROR. **198 I.C. 441=14 R.L. 339=43 Cr.L.J. 370=A.I.R. 1942 Lah. 37.**

——Ss. 25 and 27—*Confession by accused as to criminal breach of trust outside the one for which he was under arrest—Admissibility*

S. 25 to which S. 27 of the Evidence Act is a proviso applies equally to confessions with regard to offences not under investigation as with regard to offences under investigation. Where a person while under custody for a criminal breach of trust in respect of a cycle that he had taken on hire and then sold, confessed that he had similarly sold another cycle and as a result of that confession that cycle was discovered, the confession is admissible under S. 27 of the Evidence Act. (*Horwill, J.*) KAMAKSHI NAIDU, *In re.* **1942 M.W.N. 750=55 L.W. 677=(1942) 2 M.L.J. 549.**

——Ss. 25 and 27—*Joint trial of four accused—Conviction on basis of confession—Absence of proof as to which individual accused made confession leading to discovery—Conviction—Legality.*

On a joint trial of four accused, before an accused is convicted on the basis of confession made by them, there must be evidence on the record which leads one to conclude that it was the particular accused who made the crucial statement or that it was he who was responsible for the discovery of the relevant facts. EMPEROR *v.* SHEIKH MAHABOOB. **201 I.C. 524=15 R.M. 433=43 Cr.L.J. 772=1942 M.W.N. 377 (2)=55 L.W. 355=A.I.R. 1942 Mad. 532 (1).**

——S. 27—Applicability—Confessional statement made to police officer before coming into custody of officer. *See* 1941 Dig., Col. 552. GURUSWAMI GOUNDER, *In re.* **I.L.R. (1942) Mad. 77=43 Cr.L.J. 100=(1941) 2 M.L.J. 209.**

——S. 27—*Applicability—Proof of exact information received—Necessity for.*

Per *Pal, J.*—The exact information received from the accused must be established before S. 27 of the Evidence Act can be resorted to. (*Lodge and Pal, JJ.*) NARESH CHANDRA DAS *v.* EMPEROR. **I.L.R. (1942) 1 Cal 436=204 I.C 111=75 C.L.J. 507=46 C.W.N. 180=A.I.R. 1942 Cal. 593.**

——S. 27—*Confession falling under—If admissible in entirety.*

Under S. 27 of the Evidence Act only such portion of a confession as leads to the discovery of some fact material to the case can be admitted, and not the whole of the confessional statement. (*Horwill, J.*) MUTHANDI, *In re.* **201 I.C 461=15 R.M. 356=1942 M.W.N 443=43 Cr.L.J. 750=55 L.W. 263=A.I.R. 1942 Mad. 444=(1942) 1 M.L.J. 517.**

——S. 27—*Retracted confession—Value of—Conviction—If can be based on.*

The ground on which the information received from an accused person is admitted in evidence under S. 27 of the Evidence Act is that the fact discovered thereby is to some degree, which will vary with the circumstances of each case and the nature of the fact discovered, a guarantee of the truth of the information. Where on the basis of an alleged statement by an accused (charged with murder), an *aruval* which is not blood-stained and a cloth which is blood-stained to some extent are discovered in the house of the accused, but the accused in his statement at the trial denies that the *aruval* or the cloth are his, and states that he knows nothing about the offence, the accused cannot be convicted because in effect the case against him rests on a retracted confession which is not materially corroborated. (*King and Happell, JJ.*) CHELLIAH NADAR, *In re.* **202 I.C. 290=15 R.M. 485=43 Cr.L.J 810=1942 M.W.N. 291=A.I.R. 1942 Mad. 450=(1942) 1 M.L.J. 503.**

——S. 27—*Scope and applicability—"Fact thereby discovered"—Interpretation.*

Per *Pal, J.—Obiter*: The word "thereby" in 'fact thereby discovered" in S. 27 of the Evidence Act refers to that portion of the information only which may be held to be the proximate cause of the discovery. For this to be admissible against the accused under the S. (1) the information must be the one given by the accused—the statement conveying the information must be his own statement in his own language, and then (2) only so much of the information as is necessary and sufficient to cause the discovery will be admissible. Where the information given by the accused was to the effect "I had thrown the opium on the road side at Sukhanpukhuri" and the fact discovered was "a gunny bag containing opium at Sukhanpukhuri under water."

Held, that the portion of the statement which purported to ascribe the authorship of the "act of throwing" to the accused himself was not admissible in evidence under S. 27 of the Evidence Act, and that the admissible portion of the information must, therefore, be to the effect that "gunny bag was thrown into Sukhanpukhuri".

EVIDENCE ACT (1872), S. 27.

Per *Lodge, J.—Obiter*: The whole of that statement would be admissible under S. 27 of the Evidence Act. (*Lodge and Pal, JJ.*) NARESH CHANDRA DAS *v.* EMPEROR. **I.L.R. (1942) 1 Cal. 436=204 I.C. 111 =75 C.L.J. 507=46 C.W.N. 180=A.I.R. 1942 Cal. 598.**

——**S. 27**—*Scope—If affected by S.* 162, *Mysore Cr. P. Code.*

S. 27 of the Evidence Act is not affected by the provisions of S. 162 of the Mysore Cr. P. Code as amended in 1927. Nothing done in amending S. 162, Cr. P. Code, could affect the provisions of S. 27 of the Evidence Act unless it was done with the consent of the Governor-General of India in Council. The general words of S. 162, Cr. P. Code, cannot and do not affect the special provisions of S. 27 of the Evidence Act. (*Reilly C.J. and Singaravelu Mudaliar, J.*) NIRVANI GOWDA *v.* GOVERNMENT OF MYSORE. **20 Mys L.J. 367.**

——**S. 27**—Scope—If repealed by S. 162—Statement to police officer during investigation by person in police custody—Admissibility. *See* 1941 Dig., Col. 553. ADHIK LAL PATHAK *v.* EMPEROR. **200 I.C 208= 14 R.P. 655=8 B.R. 647=23 P.L.T. 475=43 Cr.L. J. 615=A.I.R. 1942 Pat. 156.**

——**S. 30**—*Confession of co-accused—Admissibility and use of.*

It is not the law that the confession of one accused must be corroborated by other evidence before it can be accepted against a co-accused; the correct position is that there must be a basis of substantial evidence to which the confessional statement may be added. If there is substantial evidence against the accused and there is some lingering doubt, the confession of a co-accused may be taken into account to set that doubt at rest. (*Horwill, J.*) MUTHANDI, *In re.* **201 I.C. 461=51 R.M. 356=1942 M.W.N. 443=43 Cr.L.J. 750=55 L.W. 263=A.I.R. 1942 Mad. 444=(1942) 1 M.L.J. 517.**

——**S. 30**—*Conviction based on statement of co accused—Legality—Proper procedure.*

A statement of co-accused is not evidence and a conviction cannot, therefore, be based on such statement. If the prosecution wishes to rely upon such statement, it should ask for a separate trial and examine the co-accused as a witness. (*Henderson, J.*) RUHINI KUMAD BHATTACHARYYA *v.* EMPEROR. **199 I.C. 384=14 R.C. 591=43 Cr.L.J. 556=A.I.R 1942 Cal. 426.**

——**S. 31**—*Admission in written statement—Binding value in later suit between different parties.*

Where the defendant in a suit for arrears of rent pleaded that he was not the tenant in chief but that another recorded as sub-tenant was really the tenant-in chief but the suit was nevertheless decreed against him whereupon he sued the recorded sub-tenant for arrears and the latter in his turn pleaded relying on the plaintiff's admission in the prior suit that he was the tenant-in chief it was *held* that the admission in the written statement in the former suit could not operate as an estoppel against the plaintiff in the present suit and that it had only the limited value of an admission which could be rebutted by other evidence. (*Shirreff S.M. and Sathe, J.M.*) BHANWAR SINGH *v.* GHOOREY. **1942 O.W.N (B.R.) 535 (2)=1942 A.W.R. (Rev.) 404=1942 O.A (Supp) 430.**

——**S. 31**—*Compromise—Evidentiary value.*

A compromise is tantamount to an admission, and although an admission is not conclusive it can still operate as an estoppel under S. 31 of the Evidence Act. (*Shirreff, S. M. and Sathe, J. M.*) RAGHUBIR *v.* LAKHI. **1942 O.W.N. (B.R.) 308=1942 O.A. (Supp.) 208=1942 A.W.R. (Rev.) 188=1942 R.D. 397.**

EVIDENCE ACT (1872), S. 32.

——**Ss. 32 and 35**—*Applicability—Charge of murder—Statement by wife of deceased made to Village Munsif charging accused—Deponent subsequently committing suicide—Admissibility of statement against accused.*

The wife of the deceased made a statement to the Village Munsif that the husband (deceased) on the day on which he was murdered had found her at a certain place with the accused with whose brother she was in terms of illicit intimacy, that a quarrel ensued between her husband and the accused, and that the accused cut her husband with an *aruval* in the abdomen. She committed suicide the same evening.

Held, that the statement was not admissible in evidence either under S. 32 or S. 35 of the Evidence Act. It did not fall under S. 32 because the death of the deponent did not come into question in the Sessions trial; and it did not fall under S. 35, because the statement was not an entry in a public or official register or record within meaning of S. 35 of the Evidence Act. (*King and Happell, JJ.*) P. CHELLIAH NADAR, *In re.* **202 I.C. 290=15 R.M. 485=43 Cr.L.J. 810=1942 M.W.N. 291=A.I.R. 1942 Mad. 450=(1942) 1 M.L.J. 503.**

——**S. 32**—Dying declaration—Murder charge—Several people implicated—Corroboration, if necessary. *See* 1941 Dig., Col. 555. KHURSHAID HUSSAIN *v.* EMPEROR. **I.L.R. (1942) Lah. 619=43 Cr.L.J. 59.**

——**Ss. 32 and 33**—Relative scope of. *See* 1941 Dig., Col. 555. SULAIMAN *v.* THE KING. **43 Cr.L.J. 123.**

——**S. 32 (1)**—Dying declaration—Mode of proof. *See* 1941 Dig., Col. 556. SULAIMAN *v.* THE KING. **43 Cr.L.J. 123.**

——**S. 32 (1)**—Statement relevant under—Statement made to Magistrate not authorised to record it—Admissibility. *See* 1941 Dig., Col. 556. SULAIMAN *v.* THE KING. **43 Cr.L.J. 123.**

——**S. 32 (3)**—Scope—Statement against interest—Mortgage by trustee—Trust properties recited as being own properties—Suit to remove trustee—Compromise decree declaring properties trust properties—Suit to redeem mortgage after death of mortgagor trustee—Decree— Admissibility to prove title of trust to properties. *See* 1941 Dig., Col. 557. VENKATASUBBIAH CHETTY *v.* JUMMA MOSQUE. **198 I.C. 309=14 R. M. 419=(1941) 1 M.L.J. 754.**

——**S. 32 (5)**—Pedigree—Proof—Statement by dead member of family—Admissibility. *See* 1941 Dig., Col. 557. KHADAM HUSSAIN *v.* MAHOMED HUSSAIN. **I.L.R. (1941) Lah 872.**

——**S. 32 (5)**—*Proof of special knowledge—Necessity—Statement of an aged relation of the family.*

Where the statement in question was made by an aged relation of the family it was *held* that it was doubtful whether it was necessary for him to depose to any particular source of knowledge so as to render his statement admissible under S. 32 (5) of the Evidence Act because he might, as a relation, be presumed to have been well acquainted with the pedigree of his ancestors. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. **1942 O.A. 536=1942 O.W.N. 657—1942 A.W.R. (C.C.) 346 (2).**

——**S. 32 (5)**—Statement as to existence of relationship—Statement by deceased that his property would go to a particular person—Admissibility. *See* 1941 Dig., Col. 557. MA NYUN YIN *v.* MA KYIN. **198 I.C. 42=14 R.R. 157.**

——**S. 32 (7)**—Proof of permament tenancy—Tenancy transferable only if permanent—Statements in

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deeds of transfer—Admissibility. *See* 1941 Dig., Col. 558. JOGENDRA KRISHNA BANERJI *v.* SUBASHINI DASSI. **197 I.C. 376=14 R.C. 351.**

——S 33—*Scope—Evidence not admissible under—If made admissible by consent of parties.*

Evidence otherwise inadmissible cannot be made admissible by consent of parties. Unless a party can be found to have been estopped from objecting to the admissibility of a particular piece of evidence, it cannot be said that evidence not otherwise admissible, or evidence which would have been liable to rejection were objection taken to it, may be perfectly good evidence if admitted by the consent of parties. Therefore, copies of depositions of persons dead at the time they are tendered in evidence and recorded in a prior litigation to which a party to a subsequent litigation was not a party, and as such not falling within the ambit of S. 33 of the Evidence Act, are inadmissible in the subsequent suit even if admitted with the consent of parties. (*Abdur Rahman, J.*) AVVAVU THEVAR *v.* SECRETARY OF STATE. **202 I.C 274=15 R M. 473=1942 M.W.N. 272=A.I.R. 1942 Mad 528=(1942) 1 M L.J. 485.**

——S. 35—Applicability—Statement to Village Munsif implicating accused in murder—Admissibility after death of person making the statement. *See* EVIDENCE ACT, SS. 32 AND 35. **(1942) 1 M.L.J. 503.**

——S. 35—*Certificate of guardianship—Admissibility—Proof of age of minor.*

As a certificate of guardianship is neither a book nor a register nor a record kept by an officer in the discharge of his duties, it is not admissible under S. 35 of the Evidence Act to prove the age of the minor. (*Mukherjea and Blank, JJ.*) KISHORILAL MARWARI *v.* ADHAR CHANDRA BANERJEE. **199 I.C. 10=14 R.C. 530=A.I.R. 1942 Cal. 438.**

——S. 35—*Entry of service of notice in order sheet—Admissibility and Value—Presumption arising therefrom—Evidence Act, S* 114.

An entry in the order-sheet recording that a notice of a proceeding had been served is admissible under S. 35 of the Evidence Act as evidence of the *fact* of service of the notice. It is no doubt only one item of evidence. But whether from that item of direct evidence the Court will be justified in holding that the *fact* of the services of the notice has been sufficiently proved will depend upon the facts and circumstances of the particular case. Such an entry does not raise a presumption under S. 114 of the Evidence Act that a notice had *in fact* been served but it raises a presumption under that section about the regularity of the service, when the fact of service of the notice is proved. (*Mitter and Khundkar, JJ.*) GAIBANDA LOAN OFFICE *v.* SAIYADUNNESSA KHATUN. **46 C.W.N. 967.**

——S. 35—*Jail Registers—Admissibility.*

The Jail Registers are official records kept by public servants in the discharge of their official duties and as such admissible under S. 35 of the Evidence Act as a whole and not merely those entries alone to which reference has been made by witnesses, when there has been no suggestion as to their not being genuine, or properly kept or that they have been tampered with. (*Bennett, J.*) K. RAMA RAO *v.* EMPEROR. **203 I C. 143=15 R.C. 171=44 Cr.L J. 33=1942 O.A. 478=1942 A.L.W. 520=1942 A.Cr.C. 166=1942 A.W.R. (C.C.) 333 =1942 O.W.N. 530=A.I.R. 1943 Oudh 1.**

——S. 35—Khanapuri parcha — *Admissibility—Evidentiary value of.*

A parcha issued at the *khanapuri* stage of a survey of lands is admissible in evidence to show that a holding is a *bhaoli* holding and for testing the correctness of the entries in the record-of-rights. But when such entries

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are challenged in a Civil Court, they must only be considered in conjunction with evidence given at the trial in which the entries are challenged. (*Agarwala, J.*) RAMRANBIJAYA PRASAD SINGH *v.* NAUBAT RAI. **260 I.C. 281=14 R.P. 644=8 B.R. 656=23 Pat.L.T. 42 =A.I.R. 1942 Pat. 346.**

——S. 35—Printed copy of index register of lands granted on lease in city—Admissibiiity in evidence. *See* EVIDENCE ACT, SS. 13,35 AND 74. **44 Bom.L.R. 295.**

——S. 35—*Record-of-rights—Entries in—Presumption of correctness—Duty of Court to give effect to.*

There is a statutory presumption that the entries in a record-of-rights were correct at the time when they were made, and a Court is bound to give effect to this statutory presumption, unless it is proved by evidence given by either of the parties that these entries were incorrect. (*Agarwala, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* APRUP TEWARI. **201 I.C 504=15 R.P. 68=8 B.R. 820=23 Pat.L T. 345=A.I.R. 1942 Pat. 466.**

——S 35—*Survey entries—Two inconsistent entries regarding possession of parties—Presumption.*

The rule that where there are two inconsistent survey entries regarding the possession of the parties each must be presumed to be incorrect at the time it was made and the change of possession must be held to have occurred at some time between the entries, applies only when the only evidence before the Court are the entries in the survey papers. But when there is other evidence on the record it has to be decided whether this other evidence is preferable to the evidence afforded by the survey papers. (*Agarwala, J.*) PARAN MUNDA *v.* SANTOSH MAHTO. **199 I C. 144=14 R.P. 543=8 B.R. 501=A.I.R. 1942 Pat 372.**

——Ss. 36, 83 and 87—*Printed maps of wards of a city prepared by Government—Admissibility.*

Printed maps prepared by Government of the different wards of a city and coming from the office of a Government Officer are admissible in evidence both under S. 83 of the Evidence Act and under Ss. 36 and 87 of the Act as well as under S. 213 of the Bombay Land Revenue Code. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I C. 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

——S. 36—Rennel's maps—Value of. *See* 1941 Dig., Col. 559. SECRETARY OF STATE *v.* MIDNAPORE ZAMINDARY CO. LTD. **46 C.W.N. 218.**

——Ss. 40 to 43—*Applicability—Judgment passed by the British Indian Association in* 1859.

On a question whether a judgment passed by the British Indian Association in 1859 which had not been filed in the Court of the Financial Commissioner within 6 months after passing of the Oudh Estates Act was admissible it was *held* that Ss. 40 to 43 of the Evidence Act are not applicable so as to make it relevant. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. **1942 O.A. 536=1942 O.W.N. 657=1942 A.W.R. (C.C.) 346 (2).**

——Ss. 45 and 137 and C. P. CODE, O. 3, R. 1—*Cross examination of expert—If 'pleading' or 'acting' —If can be done by another expert.*

The cross-examination of a witness is 'acting' and not 'pleading' and hence there is no objection in specific cases for an expert being allowed under special power of attorney to be employed for the cross-examination of an expert in the same line of business on the other side. (*Clarke, J.*) THUNNUDEO RAGHVI *v.* BALDEO RAGHVI. **1942 N.L.J. 449.**

——S. 45—*Foot-print expert—Value of evidence of.*

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Experts in foot-prints are not recognised by the Evidence Act; but a Magistrate is undoubtedly entitled to take into consideration the evidence of a person who has seen a foot-print and taken the foot-print of the accused and found that they are very similar. Such evidence is not, however, sufficient to bring home the offence to the accused in the absence of further knowledge regarding the differences between one foot and another. (*Horwill, J.*) OOMAYAN, *In re.* **200 I.C. 594=15 R.M. 123=43 Cr.L.J. 702=55 L.W. 231 (1)=1942 M.W.N. 293=A.I.R. 1942 Mad. 452 (2).**

——S. 45—"Science or art"—Expert—Tracker of footprints—Evidence of—Admissibility. *See* EVIDENCE ACT, SS. 7 AND 45. **A.I.R. 1942 Sind 11.**

——S. 47—*Proof of handwriting—Facts showing competency of witness—If should be proved.*

A witness need not state in the first instance how he knows the handwriting, since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands. 28 B. 58, Foll. (*Fazl Ali, J.*) SHYAM PRATAP RAM MISSIR *v.* BENI NATH DUBEY. **198 I.C. 711=14 R.P. 498=8 B.R. 459=A.I.R. 1942 Pat. 449.**

——S. 50—*Opinion of person—Relevancy and value.*

Under S. 50 of the Evidence Act, the opinion of a person is relevant only when the following requirements are fulfilled:—(1) The person whose opinion is sought to be given in evidence must be proved to have special means of knowledge on the subject; (2) (*a*) The opinion alone is evidence, (*b*) the opinion as expressed by conduct alone is evidence, or, in other words, (i) conduct only can be given in evidence (ii) from the conduct given in evidence the Court is to see whether it is the result of any opinion held by the person; (3) The opinion which is relevant must be the one *as to the existence* of the relationship. The negative opinion, or the opinion as to the non-existence of the relationship may not be relevant. Under the section, the opinion of a person is only a relevant piece of evidence. It still remains for the Court to weigh such evidence and come to its own opinion as to the "*factum probandum*"—as to the relationship in question. (*Nasim Ali and Pal, JJ.*) CHANDULAL AGARWALLA *v.* KHALILAR RAHAMAN. **I.L.R. (1942) 2 Cal. 299=75 C.L.J. 301=46 C.W.N. 729.**

——S. 54—Scope of—If deals with mode of proof of previous convictions. *See* 1941 Dig., Col. 560. POKAR CHUHARMAL *v.* EMPEROR. **43 Cr.L.J. 12.**

——S. 57—*Vernacular histories—Admissibility.*

Vernacular histories which have never received any recognition as historical works of value and reliability relating to matter of public or general interest are inadmissible in evidence. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. **1942 O.A. 536=1942 O.W.N. 657=1942 A.W.R. (C.C.) 346 (2).**

——S. 57 (7)—*Lease by Court of Wards—Not to be considered if it is not proved.*

It is not correct to say that a lease because it is executed by the special manager of the Court of Wards, is entitled to be taken into consideration by Courts even if they are not proved. (*Sathe, J.M.*) SPECIAL MANAGER, COURT OF WARDS, AMETHI ESTATE *v.* SIRTAJI. **1942 O.W.N. (B.R.) 152=1942 O.A. (Supp.) 117=1942 R.D. 218=1942 A.W.R. (Rev.) 101 (2).**

——S. 58—*Scope of—Admission by counsel—Effect.*

Under S. 58 of the Evidence Act no fact need be proved in any proceedings which parties thereto or their agents agree to admit at the hearing. Hence where a counsel of a party admits a fact, it need not be proved against that party. (*Shirreff, J.M.*) GUR PRASAD *v.* MANNI LAL. **1942 O.W.N. (B.R.) 180=1942 R.D. 246=1942 A.W.R. (Rev.) 248 (2)=1942 O.A. (Supp.) 274 (2).**

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——S. 60—*Evidence recognising particular person some time after his appearance—Admissibility.*

The evidence given by persons who say that they recognised after some time a particular person as the son of so and so cannot be excluded. That evidence really relates to their own perception when they saw that particular person after his appearance and the recollection of their past perception of the said person before his disappearance. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. **202 I.C. 551=15 R.C. 355=47 C.W.N. 9=A.I.R. 1942 Cal 498 (S.B.)**

——Ss. 60 and 118—Statement of child to other people—Child not examined as witness—Admissibility. *See* 1941 Dig., Col. 560. KASHI NATH PANDEY *v.* EMPEROR. **199 I.C. 311=14 R.C. 584=43 Cr.L.J. 548=A.I.R. 1942 Cal 214.**

——S. 65 (c)—Applicability—Previous conviction, —Proof—Secondary evidence—Admissibility. *See* 1941 Dig., Col. 561. POKAR CHUHARMAL *v.* EMPEROR. **43 Cr.L.J. 12.**

——Ss. 67 and 68—*Conveyance of property in N.-W.F. Province—Admission of execution by executant—If proof of execution.*

In the N.-W.F. Province, a conveyance of property does not require to be attested and therefore S. 68 has no application. Hence admission of the execution of the document by the executant is sufficient to prove execution under S. 67. (*Almond, J.C. and Md. Ibrahim, J.*) AGHA WALAYAT SHAH *v.* MT. MAHBUB. **A.I.R. 1942 Pesh. 83.**

——S. 67—Requirements of—If satisfied by proof of admission of execution. *See* REGISTRATION ACT, S. 60 AND EVIDENCE ACT, S. 67. **1942 N.L.J. 214.**

——S. 68—Attesting witness—Requirements regarding. *See* 1941 Dig., Col. 561. SARJOO *v.* JAGATPAL SINGH **197 I.C. 686=14 R.O. 337=A.I.R. 1942 Oudh 201.**

——S. 68—Lease attested by Quanango—Sufficiency of proof under S. 127, Agra Tenancy Act. *See* AGRA TENANCY ACT, S. 127 AND EVIDENCE ACT, S. 68 **1942 O.W.N. (B.R.) 255.**

——S. 71—*'Other evidence'—Meaning of.*

The 'other evidence' referred to in S. 71 of the Evidence Act cannot refer to the statement of witnesses who had seen the attesting witnesses sign in the presence of the executant. It only means any evidence that may be considered satisfactory by the Court seised of the matter. (*Davies.*) MURLI DHAR *v.* ABDUL HUSSAIN. **1941 A.M.L.J. 75.**

——S. 73—*Disputed document—If can be used as basis for comparison.*

A disputed document cannot be used for the purposes of comparison of signatures in another disputed document. (*Shirreff, S. M and Sathe, J.M.*) BRIJ NARAIN SINGH *v* PADARATH KURMI. **1942 O.W.N. (B.R.) 229=1942 O.A. (Supp.) 156 (2)=1942 R.D. 295=1942 A.W.R. (Rev.) 136 (2)=1942 A.L.J. (Supp.) 28.**

——S. 74—Public document—Application for transfer of criminal case from one Magistrate to another—High Court calling for report from Magistrate—Report—If public document—Right to copy of. *See* MYSORE CRIMINAL RULES OF PRACTICE, VOL. I, CH. XXXVI, R. 2. **46 Mys.H.C.R. 402.**

——S. 74—Public document—Printed copy of index register of lands granted on lease in city. *See* EVIDENCE ACT, SS. 13, 35 AND 74. **44 Bom.L.R. 295.**

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——**S. 74**—*Public document—Record copy of lease prepared for private use of Government Officers—Admissibility.*

A mere record copy of a lease prepared for the private use of Government Officers cannot be admitted in evidence as a public document under S. 74 of the Evidence Act unless it is proved to be a public document and unless it is shown that it was the duty of the Government to maintain such a copy. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I.C. 420=15 R.B. 76= 44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

——**Ss. 74 and 78**—*Written statement—Certified copy — Admissibility—Presumption of genuineness—Limits.*

A certified copy of a written statement could only be admitted as a public document under S. 78 of the Evidence Act. To become a public document it must under S. 74 be held to be a public record of a private document. A written statement is not a public document and hence must be proved by direct evidence. A presumption of genuineness cannot be asked to be raised in the case of certified copies of pleadings, where they are not incorporated in any way in the decree of the Court. (*Bennett, J.*) MATA PRASAD *v.* BRIJ KISHORE SINGH. **200 I.C. 265=14 R.O. 589=1942 A.W.R (C.C.) 139=1942 O.A. 118=1942 O.W.N. 191=A.I.R. 1942 Oudh 303.**

——**Ss. 75 and 67**—*Plaint—Proof of—Presumption of genuineness if arises.*

It is not permissible to raise any presumption of genuineness in respect of a plaint which is only a private document and which has to be proved by direct evidence. (*Ghulam Hassan, J.*) USUF HASAN *v.* MAJOR RAUNAQ ALI. **203 I.C. 391=1942 O.W.N. 522=1942 A.W.R. (C.C.) 324 (3)=1942 O.A. 438.**

——**S. 78**—*Resolutions of Parliament—Mode of proof—Copies of "Parliamentary Debates"—If sufficient proof—"Journals"—Meaning of.*

The Volumes of the official "Parliamentary Debates" which show that certain resolutions were passed by the Parliament are adequate legal proof of the passing of the resolutions by the Parliament. The proceedings of Parliament fall under either the second or the fourth of the categories of public documents mentioned in S. 78 of the Evidence Act. The expression "Journals" in S. 78 of the Evidence Act is to be given a broad and general meaning and in its application to Parliament it should not necessarily be confined to the Journals published by the two Houses which contain a formal record of the business. The official Parliamentary Debates are also "Journals" within S. 78. (*Gwyer, C. J., Varadachariar and Zafrulla Khan, JJ.*) NIHARENDU DUTTA MAJUMDAR *v.* EMPEROR. **I.L.R. (1942) Kar. (F.C.) 56=200 I.C. 289=46 C.W.N (F.R.) 9=14 R.F C. 32=55 L.W. 344=8 B.R. 703=43 Cr.L.J. 504=23 P.L.T. 443=1942 P.W.N. 164=1942 M.W.N. 417=5 Fed. L. J. 47=A.I.R. 1942 F.C. 22.**

——**S. 80**—Applicability—Statement recorded by person not authorised by law to record it—Mode of proof of statement properly recorded, *See* 1941 Dig. Col. 563. SULAIMAN *v.* THE KING. **43 Cr.L.J. 123.**

——**S. 83**—Printed map of different wards of city prepared by Government—Admissibility. *See* EVIDENCE ACT, SS. 36, 83 AND 87. **44 Bom.L.R. 295.**

——**S. 87**—Printed map of wards of city prepared by Government—Admissibility. *See* EVIDENCE ACT, SS. 36, 83 AND 87. **44 Bom.L.R. 295.**

——**S. 90**—Applicability—Document not purporting to be in any person's handwriting or to be signed by any known person—Presumption—If arises. *See* 1941 Dig., Col. 563. NAGARAJA RAO *v.* KOOTHAPPAN. **198 I.C. 606=14 R.M 474=(1941) 1 M.L.J. 759.**

——**Ss. 90 and 65**—Copy admissible under S. 65—Presumption if can be drawn. *See* 1941 Dig., Col. 563, GURDIT SINGH *v.* SIRI RAM. **197 I.C. 633=14 R. Pesh. 50.**

——**S. 90**—*Presumption under—Discretion—Interference by appellate Court—Document bearing only seal.*

The raising of presumption under S. 90, Evidence Act, as to the genuineness of a document is a matter which is eminently within the discretion of the trial Court and where a document bore only the seal and there was no signature and where there were strong reasons to doubt its genuineness, the appellate Court *held* that it was not prepared to draw a presumption about its genuineness which the lower Court had refused to do. (*Thomas, C. J. and Agarwal, J.*) BHAIRO SINGH *v.* LAL AMBIKA BAKSH SINGH. **199 I.C. 776=14 R.O. 538=1942 O.A. 168=1942 O.W.N. 225=A.I.R. 1942 Oudh 374.**

——**S. 90**—Production of copy—Presumption. *See* 1941 Dig., Col. 564. HARNAM SINGH *v.* DISTRICT OFFICIAL RECEIVER. **197 I.C. 581=14 R.L. 261.**

——**S. 90**—Scope of—Presumption of genuineness of original from certified copy—If can arise. *See* 1941 Dig., Col. 564. AMJAD HUSSAIN *v.* RAISUNNISA. **16 Luck. 778.**

——**S. 92**—Mortgage—Stipulation that payment should be proved only by endorsements on bond—Payment evidenced by receipt—If can be proved. *See* 1941 Dig., Col. 565. SAGO RAI *v.* RAMJEE SINGH. **23 P.L.T. 379=A.I.R. 1942 Pat. 105.**

——**S. 92**—*Oral agreement to vary rate of interest—Admissibility.*

Where a registered deed of mortgage recites that a certain rate of interest is payable on the principal advanced oral evidence of a subsequent oral agreement to pay a lesser rate of interest is not admissible in evidence. (*Davies.*) MANGI LAL *v.* RAJMAL. **1942 A.M.L.J. 22.**

——**S. 92**—*Oral Evidence—Admissibility—Quabuliyat—Oral agreement as to retention of rent for interest due on loan.*

Where there is a registered Quabaliyat in which provision is made for the payment of rent any oral agreement between the parties as to the retention of such rent for interest due on loan cannot possibly be allowed to be given in evidence under S. 92 of the Evidence Act because it varies definite terms of the registered instrument. (*Sathe, J. M.*) BAHADUR SINGH *v.* RAJ BAHADUR SINGH. **1942 R.D. 510=1942 O.W.N. (B.R.) 420=1942 A.W.R. (Rev.) 291=1942 O.A. (Supp.) 317.**

——**S. 92**—*Promissory note—Intention of parties—Signing by one as surety—Admissibility of oral evidence as to.*

Oral evidence to prove that one of the two executants of a promissory note signed it only as surety is admissible. (*Ghulam Hasan and Madeley, JJ.*) MOHAMMAD HUSAIN *v.* HANOMAN PRASAD **198 I.C. 651=14 R.O. 423=1942 A.W.R. (C.C.) 58=1942 O.A. 36=1942 O.W.N. 63=A.I.R. 1942 Oudh 273.**

——**S. 92, proviso 4**—*Scope—Registered agreement—Endorsement of payment not registesed—Parol evidence to prove waiver by creditor and agreement to accept smaller sum in full discharge—Admissibility.*

If a creditor waives his right under a contract or relinquishes his claim, such an act of grace does not amount to an agreement falling within the exception in proviso 4 to S. 92 of the Evidence Act. A remission

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or relinquishment or discharge does not come within the mischief of S. 92, proviso 4. An endorsement of payment on an agreement which, though not registrable, is registered, evidencing the receipt by the creditor of a smaller amount than is due and discharging the debtor, does not fall within the proviso and therefore parol or oral evidence to prove the creditor's waiver is admissible in evidence, although the endorsement is not itself registered. (*Nageswara Iyer and Singaravelu Mudaliar, JJ.*) BADEMMA *v.* KAMIYA. **20 Mys L.J. 160=46 Mys. H.C R 516.**

——**Ss. 102 and 105**—Scope of burden of proof on the prosecution and accused. *See* 1941 Dig., Col. 566. PARBHOO *v.* EMPEROR. **I.L.R. (1941) All. 843= 197 I.C. 525=14 R.A. 209=43 Cr.L J. 177.**

——**S. 105**—Effect on the onus of the Crown. *See* 1941 Dig., Col. 566. PARBHOO *v.* EMPEROR. **I.L.R. (1941) All. 843=197 I.C. 525=14 R A. 209=43 Cr L.J. 177.**

——**S. 108**—*Presumption of death— Person not heard of for seven years—Onus of proving that he was alive.*

Where it is shown that a person has not been heard of for over seven years, under S. 108 the burden of proving that he is alive lies on the person who asserts it and where he fails to adduce any evidence as to that, it must be presumed that that person was dead. (*Sathe, A.M.*) CHHABRAJ KUNWAR *v.* MATHURA. **1941 O. A. (Supp.) 906=1941 A.W.R. (Rev.) 1125.**

——**S. 110**—Boundary dispute—Possession of disputed land—If important element. *See* 1941 Dig., Col. 567. FANINDRANATH DUTTA *v.* SATYA CHARAN DE. **197 I.C. 756=14 R.C. 378**

——**S. 110**—*Presumption—Applicability — Conditions of.*

The presumption under S. 110 of the Evidence Act would apply only if the possession of the claimant (plaintiff) is *prima facie* not wrongful, and if the title of the defendant is not proved. It is necessary for the plaintiff to prove that his possession was of such a character as to lead to the presumption of title and not such a sort of possession as would be regarded as wrongful in its origin. The presumption under S. 110 will not apply when there is a statutory presumption in favour of the Government. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I.C. 420=15 R. B. 76= 44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

——**S. 112**—*Presumption of legitimacy—Effect of proof of 'access'—Distinction between married woman and widow or spinster living as mistress of somebody—'Access'—Meaning.*

When once the 'access' of the husband is proved the law does not permit evidence to prove the paternity of the child being other than the husband of its mother. The case of a married woman stands on a different footing from that of a spinster or a widow who may be living as a mistress with somebody. For a mistress it may be open to prove that the real father of the child born during the period of her concubinage is different from her paramour. In such a case the presumption which would naturally arise in respect of paternity of the child in favour of the paramour is capable of being rebutted. But the presumption of legitimacy arising in favour of a child born during the continuance of a vaid marriage, when the parties to the marriage could have access to each other at any time when the child could have been begotten, cannot be rebutted as laid down in S. 112 of the Evidence Act. The word 'access' in S. 112 means no more than opportunity of intercourse. (*Niyogi, J.*) MAINA UKARDA GAWARI *v.* DEORAO SONAJI KUNBI.

EVIDENCE ACT (1872), S. 114.

I.L.R. (1942) Nag. 383=200 I.C 766=15 R.N. 29 =43 Cr.L.J. 717=1942 N.L.J. 254=A.I.R. 1942 Nag. 96.

——**S. 112**—Presumption under—Rebuttal—Mere denial of paternity by parents—Sufficiency—Proof of non access—Necessity. *See* 1941 Dig., Col. 568. MASOOMA BEGAM *v.* MAHOMED RAZA. **17 Luck. 416 =197 I C. 560=14 R.O. 328=A.I.R. 1942 Oudh 143.**

——**S. 112**—Scope and effect—Proceedings under S. 488 for maintenance of illegitimate child—Admission of paternity by alleged putative father—Relevancy in absence of proof of non access between applicant and her husband. *See* 1941 Dig. Col. 568. RAJJ BAI AMMAL *v* NATHAR SAHIB. **197 I.C. 883=43 Cr.L. J. 383=14 R M. 476=A.I.R 1942 Mad. 251= (1941) 2 M.L.J. 693.**

——**S. 112**—Scope—Rebuttal of presumption of legitimacy—What amounts to—Burden of proof of non-access—Evidence Act, S. 35. *See* 1941 Dig. Col. 568. MANICKA MUDALIAR *v.* AMMAKANNU. **201 I.C. 39 = 5 R.M. 180=A.I.R. 1942 Mad. 129.**

——**Ss. 114 and 106**—*Account books—Non-production of—Presumption—If affected by fact of burden of proof not being on party bound to produce.*

The plaintiff mortgagee alleged that the mortgage debt was borrowed to pay off debts due by the defendants' ancestral business of trading. The defendants denied the plaintiff's allegation that the debts related to their business and though they maintained account books relating to their business they did not produce them to prove that the debts alleged by the plaintiff to exist at the time of the mortgage were not due by their business.

Held, that the Court was justified in concluding that the production of the account books would not have supported the case of the defendants and the fact that the burden of proof was not on them did not matter.

Held, further, that S. 106 applied and it was not the business of the Court to grope in the dark for facts when the production of books would place their existence or otherwise beyond doubt. (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARI LAL. **I.L.R. (1942) Nag, 543=200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942. Nag. 39.**

——**S. 114**—*Custody of renewed promissory note—Presumption if any.*

When a fresh promissory note is executed in renewal of an earlier one, no legal presumption could be made that the creditor kept the cancelled promissory note for the purpose of proving the consideration for the renewed promissory note. (*Agarwal and Madeley, JJ.*) MST. SARWAR SULTAN BEGAM *v.* SHEIK ABDUL HALIM. **200 I.C. 164=14 R.O. 574=1942 O.A. 124=1942 O. W.N. 202=1942 A.W.R. (C.C.) 145=A.I.R. 1942 Oudh 332.**

——**S. 114**—Entry of service of notice in order sheet —Presumption. *See* **EVIDENCE ACT, S. 35. 46 C. W N. 967.**

——**S. 114**—Finger-prints of accused found on piece of stolen property—Presumption. *See* 1941 Dig., Col. 569. TARA MIA *v.* EMPEROR. **43 Cr.L J. 64.**

——**S. 114**—Knowledge of place of concealment—Presumption. *See* 1941 Dig., Col. 569. DAS RAM *v.* EMPEROR. **197 I.C. 801=14 R.L. 282=43 Cr.L.J. 268.**

——**S. 114**— *Marriage — Presumption from co-habitation.*

Under S. 114 of the Evidence Act there is a presumption in favour of a marriage against concubinage when a man and a women have co-habited continuously. Even if the direct evidence of marriage, if any, be

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unsatisfactory, this fact alone may not displace this presumption. Where there is *prima facie* evidence of co-habitation as man and wife, and a long course of treatment as a wife the presumption of marriage can be repelled only by evidence of the clearest character. (*Nasim Ali and Pal, JJ.*) CHANDULAL AGARWALLA *v.* KALILAR RAHAMAN. **I.L.R (1942) 2 Cal. 299 =46 C.W.N. 729=76 C L.J. 301.**

——**S.114, Illus. (a)**—*Applicability—Accused giving satisfactory explanation—Presumption—If can be raised.*

The presumption under S. 114 of the Evidence Act, Illus. (*a*) only arises when an accused person is in possession of stolen goods soon after the theft and is unable to account for his possession. When an accused has given a satisfactory account for his possession the question of the application of S. 114 of the Evidence Act no longer arises, and then it is necessary to show by evidence, direct or circumstantial, that there was some collusion between the thief and the receiver or that the receiver had real reason to believe that the property which he had purchased was stolen. (*Rowland and Manohar Lall, JJ.*) MEGHU CHAMAR *v.* EMPEROR. **203 I C. 16=15 R.P. 154=9 B.R. 54=43 Cr.L.J. 911=A.I.R. 1942 Pat. 439 (1).**

——**S. 114 (a)**—Presumption of guilt—When could arise. *See* 1941 Dig., Col. 569. NAND LAL *v.* EMPEROR. **17 Luck. 182.**

——**S. 114, Ill. (a)**—*Person found in company of one in possession of stolen property—If can be presumed guilty.*

Under Ill. (*a*) to S. 114 of the Evidence Act, a presumption may be justifiable against a person found in possession of stolen property but not against one who is found in the company of such a person when he is offering it for sale. Unless the prosecution prove circumstances in which by statute a person may be presumed guilty under a particular section of the I. P. Code, the question of presumption of guilt does not arise. (*Varma and Rowland, JJ.*) RAMESHWARI PASI *v.* EMPEROR. **8 B.R. 393=198 I.C. 307=14 R.P. 480=43 Cr.L.J. 353=A.I.R. 1942 Pat. 250.**

——**S. 114, Ill. (a)**—*Scope and effect—If shifts onus of proof on to accused in case under S. 411, I. P. Code—Nature of presumption to be made—Accused giving reasonable explanation—Right to acquittal.*

The onus of establishing the guilt of an accused person always rests on the prosecution. When an accused person charged under S. 411, I. P. Code, is found to be in possession of property recently stolen, the Court can presume, by reason of illustration (*a*) to S. 114 of the Evidence Act, that be was the thief or that he received the property knowing it to be stolen. But that is only a presumption which can be rebutted by the accused giving a reasonable explanation of his possession of the property in question. But that cannot have the effect of throwing the onus upon the accused of proving affirmatively that he had no knowledge of the property being stolen property. By reason of the illustration (*a*) to S. 114, the accused must give a reasonable explanation of his possession and an explanation which may well be true, when the Court is bound to acquit the accused, even if it is not satisfied affirmatively that it is true. (*Harries, C. J. and Manohar Lall, J.*) LALOO KAHAR *v.* EMPEROR. **198 I.C. 400=14 R.P. 477=1942 P.W.N. 35=8 B R. 411=43 Cr.L.J. 355=23 Pat.L.T. 18=A.I.R. 1942 Pat. 439 (2).**

——**S. 114, Ill. (a)**—*Stolen property produced by accused as result of Police inducement—Presumption if arises.*

EVIDENCE ACT (1872), S. 115.

The production of stolen property as a result of pressure or inducement by the Police does not stand on the same footing as an improperly obtained confession. When an involuntary confession leads to the recovery of stolen property, the recovery as regards its admissibility stands on the same footing as a recovery without an accompanying voluntary or involuntary confession and the absence of an explanation by the possessor is subject to the presumption that the possessor is either the thief or a knowing receiver if the production is shortly after the theft. (*Mahomed Munir, J.*) SHERA *v.* EMPEROR. **203 I.C. 62=44 P.L.R. 545=44 Cr.L.J. 62=A.I.R. 1943 Lah. 5.**

——**S. 114, Ill. (b)**—*Accomplice's evidence—Corroboration by circumstantial evidence—If sufficient.*

Evidence in corroboration of the evidence of an approver need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. (*Chatterji and Shearer, JJ.*) RAM DAYAL KAHAR *v.* EMPEROR. **198 I.C. 78=14 R.P. 389=8 B.R. 320=43 Cr.L.J. 296=23 P.L.T. 606=A.I.R. 1942 Pat. 271.**

——**S. 114, Ill. (b)**—*Accomplice evidence—Nature of—Necessity for corroboration.*

Although S. 114, Ill. (*b*) of the Evidence Act provides that a Court may presume that the evidence of an accomplice is unworthy of credit, unless corroborated, the word 'may' is not 'must' and no decision of a Court can make it 'must'. Hence, the evidence of an accomplice stands in the same footing as any other evidence. The Court or jury is not obliged to hold that he is unworthy of credit and must be corroborated. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck. 516=198 I.C. 714=14 R.O. 449=43 Cr.L.J. 416=1941 O.W.N. 1369=1942 A.Cr.C. 20= 1941 A.W.R. (C.C.) 402=1941 O.A. 1018=A.I.R. 1942 Oudh 221.**

——**S. 114, Ill. (b)**—Accomplice—Value of evidence of. *See* 1941 Dig., Col. 570. JAGDISH NARAIN *v.* EMPEROR. **197 I.C. 277=1941 A.Cr.C. 315=43 Cr. L.J. 139=14 R.O. 298=A.I.R. 1942 Oudh 163.**

——**S. 114, Ill. (e)**—*Nature of presumption.*

The presumption under Illustration (*e*) to S. 114 of the Evidence Act is only an optional presumption. The Court is not bound to make it and the counter-illustration itself indicates a case in which the Court would not draw it (*e.g.*) where there are some exceptional circumstances surrounding the doing of the act. (*Blacker, J.*) MST. JAWAI *v.* EMPEROR. **202 I.C. 15=15 R.L. 112=43 Cr.L.J. 791=44 P.L.R. 300=A.I.R. 1942 Lah. 214.**

——**S. 114, Ill. (g)**—*Non-production of document proved to be in a person's possession—Inference.*

Where a person does not produce certain document proved to be in his possession, the only reasonable inference to be drawn from that fact is that, if produced, it would show something which would be adverse to him. (*Sharpe, J.*) PILLAI *v.* DANGALI. **199 I.C. 110=14 R.R. 231=A.I.R. 1942 Rang. 52.**

——**S. 115**—Acquiescence— Requisites. *See* 1941 Dig., Col. 571. RAM AVADH PANDEY *v.* GHISA PANDEY. **17 Luck. 164.**

——**S. 115**—*Conduct—Compromise between Hindu widow and reversioners—Reversioners taking management of property and agreeing to pay widow's debts—If estopped from denying their binding character.*

Where under a compromise between a Hindu widow and the reversioners, the reversioners take up the managemsnt of the property agreeing to pay off the debts due to the creditors of the widow, they are not estopped from subsequently denying that the debt due to

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certain creditors is binding on the estate, when the compromise has not influenced the conduct of the creditors in any manner and it cannot be said that they were misled into acting in a particular way which they would not have done but for the compromise. (*Mukherjea and Blank, JJ.*) JOYCHAND SERAOGI *v.* SHYAMA CHARAN NATH. 199 I.C. 425=14 R.C. 549=A.I.R. 1942 Cal. 448.

——S. 115—*Conduct—Defendant erecting building on debuttar land—Representation by receiver that he would become permanent tenant—Receiver, if estopped from ejecting defendant.*

Where the defendant who purchased some old huts standing on a plot of land included in a debuttar estate, demolished them and erected a substantial building upon the land on the suggestion of the plaintiff who was a receiver of the debuttar estate that in the event of his doing so he would become a permanent tenant and would never be ejected from the land, and further the plaintiff participated in the structure being built by undertaking all the negotiations with the municipal authorities to obtain the necessary sanction for the building to be erected,

Held, that the plaintiff was by reason of his conduct estopped from obtaining against the defendant an order for ejectment. (*Gentle, J.*) SUBODH CHANDRA MITTER *v.* BHAGWAN DAS SHA 46 C.W.N. 483.

——S. 115—*Estoppel—None when truth is known.*

There can be no estoppel when the true state of facts is known to the person pleading estoppel; being aware of the true state of facts, he would not in fact be misled by any representation. (*Harries, C.J. and Fazl Ali, J.*) KANIK MANDAL *v.* MEDNI RAI. 201 I.C 560=15 R.P. 56=8 B.R. 806=23 Pat.L.T. 213=A.I.R. 1942 Pat. 317.

——S. 115—*Estoppel on question of law—Suit for rent in Revenue Court—Plea of want of jurisdiction on particular view of law—Suit afterwards filed in Civil Court—Plea of want of jurisdiction—Estoppel.*

Estoppel under S. 115 of the Evidence Act consists not in putting forward a particular view of the law, but in making a particular representation on a point of fact. It is only when there has been one representation on a question of fact that a party is estopped from putting forward a contrary representation on the same question of fact. In a suit for arrears of rent in a Revenue Court the defendants pleaded that, on the allegations in the plaint, the plaintiff had not established that the property formed part of an estate, and, therefore, no suit lay in the Revenue Court. This plea was upheld by the Court which returned the plaint for presentation to the proper Court. The plaintiff then filed the suit in the Civil Court and the defendants now contended that the Civil Court had no jurisdiction to entertain the suit on the ground that the plaintiff had not made out that the land on which the rent was due was a portion of an estate.

Held, that there was no question of estoppel in the case at all and the defendants were not estopped from contending that the Civil Court had no jurisdiction. (*King, J.*) SUMITRAMMA *v.* SUBBADU. 55 L.W. 396=A.I.R. 1943 Mad. 22=(1942) 2 M.L.J 97.

——S. 115—*False statement of party believed by Court — Subsequent suit between same parties—Estoppel.*

If a party persuades a Court to believe a certain false statement, that cannot operate as an estoppel between the parties to that proceeding in a different suit. The party concerned may be liable to other penalties civil or criminal but the statement cannot operate as estoppel. (*Sathe, J.M.*) DUBARI RAI *v.* RAMDEO RAI. 1942

EVIDENCE ACT (1872), S. 116.

O.A. (Supp.) 377=1942 A.W.R. (Rev.) 351=1942 O.W.N. (B.R.) 578=1942 R.D. 706.

——S. 115—*Gift and mortgage of occupancy holding on same day—Mortgagee marginal witness to deed of gift—Estoppel against denial of validity of gift.*

Where a deed of gift and mortgage of the occupancy holding was executed by the tenant on the same day and the mortgagee was made a marginal witness to the deed of gift and on the death of the tenant, the donee and his heirs, the landholders sued for the ejectment of the mortgagee, *held*: Per *Shirreff, S. M.*, that the mortgagee cannot be allowed to deny the validity of the gift. Per *Sathe, J. M.*, that there could be no estoppel as between the zamindar and the mortgagee. (*Shirreff, S. M. and Sathe, J. M.*) BRIJ BHAN SINGH *v.* PIRTHI SINGH. 1942 R.D. 304=1942 O.W.N. (B.R.) 238=1942 A.W.R. (Rev.) 171 (2)=1942 O.A. (Supp.) 191 (2).

——S. 115—*Representation—Certificate proceedings—Statement in notice that arrears of rent are due from debtor and prohibiting debtor from transferring any of his lands—If amounts to representation that debtor is in possession of property to be sold.*

A statement in an application for a certificate that the debtor against whom it is applied owed the applicant arrears of rent for certain years does not amount to a representation that the debtor was still in possession of the disputed land so as to entitle the purchaser in the certificate proceedings to plead an estoppel against the applicant for certificate or a person acquiring title from the applicant prior to the certificate proceedings. Nor can a notice in such proceedings addressed to the debtor and not specifying any particular property, but merely prohibiting the debtor from transferring any of his immovable property situated in the district, be held to contain any trace of a representation or statement by the applicant to the effect that the debtor was still in possession of the disputed land. (*Harries, C. J. and Fazl Ali, J.*) KANIK MANDAL *v.* MEDNI RAI. 201 I.C. 560=15 R. P. 56=8 B. R. 806=23 Pat. L. T. 213=A.I.R. 1942 Pat. 317.

——S. 115—"*Representative*"—*Party acquiring interest before estoppel arose—If bound by.*

A party deriving interest from a person bound by an estoppel before the date on which the estoppel arises is not bound by that estoppel as his representative, because an estoppel cannot affect the interests which had been acquired before the date on which the estoppel arose. (*Harries, C.J. and Fazl Ali, J.*) KANIK MANDAL *v.* MEDNI RAI. 201 I.C. 560=15 R.P. 56=8 B.R. 806=23 Pat.L.T. 213=A.I.R. 1942 Pat. 317.

——S. 116—Applicability—Lease of lands belonging to lessor as well as to his relation—Lease reciting all lands as being in lessor's possession and enjoyment and containing covenant by lessee for payment of rent to lessor—Suit for rent—Plea of payment of part rent to real owner—Estoppel. *See* 1941 Dig., Col. 574. VENKATANARASIMHA CHARYLU *v.* GANGARAJU. 198 I.C. 616=14 R.M. 482=(1941) 1 M.L.J. 554.

——S. 116—*Applicability—Lessee pleading lease not the real and complete transaction between parties—Denial of status of tenant.*

S. 116, Evidence Act, no doubt estops a tenant from disputing the title of the landlord at the date of the lease. But the section presupposes that the person affected by the estoppel is a tenant. But where the defendant does not accept the position that he is a tenant and asserts that the lease formed along with a sale of contemporaneous date, the true nature of the transaction between the parties, S. 116 cannot come into play. (*Niyogi, J.*) LALCHAND *v.* RAM SINGH. 1942 N.L.J. 136.

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——**S. 116**—Scope—Estoppel—If applies to tenant not put in actual possession by lessor. *See* 1941 Dig., Col. 574. GURUMURTHIAH *v.* SEETHARAMIAH. **46 Mys. H.C.R. 547.**

——**S. 116**—*Sub-sub-tenant, if can deny rights and title of sub tenant.*

In view of S. 116, Evidence Act, it is not open to a sub-sub-tenant who has executed a kabuliyat to deny the title and rights of the sub-tenant to lease land. (*Sathe, J.M.*) ZORE *v.* SIRI LAL. **1942 O.A. (Supp.) 235=1942 A.W.R. (Rev.) 209=1942 O.W.N. (B.R.) 381=1942 R.D. 470.**

——**S. 119**—*Applicability*—" *Unable to speak*"—*Meaning of—Witness under vow of silence—Evidence given in writing to questions put in Court—Admissibility in evidence.*

S. 119 of the Evidence Act applies to the case of a witness who has taken a religious vow of silence and gives his evidence in writing to questions put to him. It is not the practice of the Courts to force any man to act contrary to his religious convictions so long as his acts are legal, and if a witness's religion forbids him to speak the Court will not compel him to speak and he must be deemed "unable to speak" within the meaning of S. 119. The evidence of such a witness given and taken in writing in open Court is properly taken and is not inadmissible. (*Manohar Lall and Meredith, JJ.*) LAKHAN SINGH *v.* EMPEROR. **20 Pat. 898=199 I.C. 638=14 R.P. 629=1942 P.W.N. 23=23 Pat.L.T. 332=8 B.R. 589=43 Cr.L.J. 570=A.I.R. 1942 Pat. 183.**

——**Ss. 123, 124 and 125**—*Applicability and scope—Proceedings under Ch VIII, Cr. P. Code—Police witness—Cross-examination about previous statement made by prosecution witness—Plea of privilege—If open.*

Weston, J.—A Police witness in proceedings under Ch. VIII, Cr. P. Code, cannot claim privilege when asked about a statement made or given to him by one of the witnesses. If such a statement was given in the course of an investigation, the plea of privilege might be based on S. 124 of the Evidence Act, as S. 125 refers to information given before the initiation of proceedings and S. 123 cannot apply. Such a plea of privilege cannot be allowed, for a statement by a person who afterwards gives evidence as to the facts in that statement cannot be said to have been a statement made in official confidence, nor can a police officer be heard to say that the public interest will suffer if the accused are allowed their right of cross-examination. (*Lobo and Weston, JJ.*) EMPEEOR *v* RASULBUX. **I.L.R (1942) Kar. 252=A.I.R. 1942 Sind 122.**

——**Ss. 133 and 114, Ill. (b)**—*Accomplice—Conviction on the testimony of—Corroboration, nature and extent.*

S. 133 of the Evidence Act contains the rule of law regarding the testimony of an accomplice and S. 114 Ill. (*b*) is merely a guide to assist the Courts. There is therefore no bar to the conviction of an accused person even on the uncorroborated testimony of an approver if the Court is fully satisfied about its truth. If any corroboration is required its extent will however vary with the circumstances of each case. Corroboration need not be by direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime and in such a case it should sufficiently implicate the accused—circumstances which have no criminal significance or which are susceptible of explanation are not sufficient corroboration against the accused. (*Thomas,*

EVIDENCE ACT (1872), S. 145.

C.J.) DEBI DAYAL *v.* EMPEROR. **201 I.C. 411=15 R.O. 96=43 Cr.L.J. 661=1942 A.W.R. (C.C.) 281=1942 O.A. 317=1942 A Cr.C. 118=1942 O.W.N. 403=A.I.R. 1942 Oudh 435**

——**S. 133**—*Accomplice—Who is—Test—Onus of proof as to.*

The word 'accomplice' has not been defined by the Act and should therefore be presumed to have been used in its ordinary sense. An accomplice means a guilty associate or partner in crime, or who, in some way or other, is connected with the offence in question, or who makes admissions of facts showing that he had conscious hand in the offence. An accomplice confesses himself a criminal who has been concerned in the commission of a crime, *particeps criminis* whether he is concerned in the strict legal sense as principal in the first or second degree, or merely as accessory before or after the fact. Persons to be accomplices must participate in the commission of the same crime as the accused persons in a trial are charged. Ordinarily the burden of proving that a witness is an accomplice is upon the body alleging it, namely, the accused, though it is the duty of the prosecution to bring the accomplice character of the evidence to the notice of the Court. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck. 516=198 I.C. 714=14 R.O. 449=1942 A.Cr.C. 20=1942 O.W.N. 1369=43 Cr.L.J. 416=1941 A.W.R. (C.C.) 402=1941 O.A. 1018=A.I.R. 1942 Oudh 221.**

——**S. 133**—*Witness—Tendering of for cross-examination—Propriety of.*

The practice of tendering witnesses for cross-examination in a criminal trial is inconsistent with S. 133 of the Evidence Act, and ought not to be employed in the case of a witness whose evidence is not merely formal such a practice leads to confusion and does not induce to the discovery of the truth (*Beaumont, C.J., Wadia and Sen, JJ.*) EMPEROR *v.* KASAMALLI MIRZALLI. **I.L.R. (1942) Bom. 384=199 I.C. 202=14 R.B. 357=43 Cr.L.J. 529=44 Bom.L.R. 27=A.I.R. 1942 Bom. 71 (F.B.).**

——**S. 134**—*Uncontradicted evidence, if necessarily true.*

Under S. 134 of the Evidence Act no minimum number of witnesses is prescribed by law to prove a fact. At the same time the law does not lay down that the statement of witnesses must necessarily be accepted as true unless the opposite party produces evidence of its own to contradict them. (*Shirreff, S.M. and Sathe, J.M.*) DHARICHNA KUER *v.* PARKALLI. **1942 O.A. (Supp.) 253 (1)=1942 A.W.R. (Rev.) 227 (1)=1942 O.W.N. (B.R.) 397 (2)=1942 R.D. 486 (2).**

——**S. 135 and C. P. Code, S. 151**—Party present during examination of his witness—If debarred from giving evidence—Powers of Court—Limits to the exercise of inherent jurisdiction under S. 151, C. P. Code. *See* 1941 Dig., Col. 574. SUBHKARAN SINGH *v.* KEDAR NATH TEWARI. **I.L.R. (1941) All. 612.**

——**S. 138**—Scope—Sessions trial—Tendering witness for cross-examination—Propriety of practice—Eye witness—Tendering of for cross-examination—Legality. *See* 1941 Dig., Col. 575. SADEPPA GIREPPA *v.* EMPEROR. **I.L.R. (1942) Bom. 115=198 I.C. 245=14 R.B. 292=43 Cr.L.J. 328=A.I.R. 1942 Bom. 37.**

——**S. 145**—*Provision not strictly complied with—Previous statement—Admissibility.*

A previous statement made by a witness can be admitted in evidence although the provisions of S. 145 of the Evidence Act have not been strictly complied with, where the witness has been cross-examined gene-

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rally as to the circumstances under which the previous statement was made and in some detail as to particular statements made, and the failure to put each individual statement has not resulted in any miscarriage of justice. (*Lodge and Pal, JJ.*) AYUB ALI *v.* EMPEROR. **200 I.C. 328=15 R. C. 64=43 Cr. L. J. 693=74 C. L. J. 547=A.I.R. 1942 Cal. 277.**

——**Ss. 145 and 155**—*Relative scope.*

S. 145 appears to be included in S. 155 of the Evidence Act. S. 145 enables a witness to be cross-examined and contradicted with reference to previous statements made by him. This is one method of impeaching the credit of a witness. S. 155 deals generally with the impeaching of the credit of a witness and enumerates different methods of contradicting a witness. One of the methods mentioned in S. 155 of impeaching the credit of a witness is by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted and in this sense the whole of the ground covered by S. 145 is included in S. 155. (*Blacker and Ram Lall, JJ.*) MAHOMED SARWAR *v.* EMPEROR. **202 I.C. 340=15 R.L. 119=43 Cr.L.J. 828=44 P.L.R. 269=A.I.R. 1942 Lah. 215.**

——**S. 157**—*Application for guardianship—Recital of date of birth—If can be used as corroborative evidence.*

A recital of the date of birth of a minor in a guardianship application can be used as a corroborative evidence under S. 157 of the Evidence Act in support of the oral testimony of the applicant in a subsequent suit, if the application was made before a competent authority and long before the subsequent dispute arose. (*Mukherjea and Blank, JJ.*) KISHORILAL MARWARI *v.* ADHAR CHANDRA BANERJEE. **199 I. C. 10=14 R.C. 530=A.I.R. 1942 Cal. 438.**

——**S. 159**—*Witness referring to notes taken by another—Such notes read out to him and not read by him—Sufficiency.*

Where a witness refreshing his memory refers to notes taken by another of a speech made at a meeting, it is necessary under S. 159 of the Evidence Act that such notes should have been read by him immediately after the meeting and not merely read out to him. If the witness had read the notes himself, there would be naturally greater guarantee of their correctness. (*Bhide, J.*) EMPEROR *v.* KHURSHID AHMAD MINTO. **44 P. L.R. 167.**

EXECUTION.

See (1) C. P. CODE, S. 47 AND O. 21.
(2) PRACTICE—EXECUTION.

FACTORIES ACT (XXV OF 1934), Ss. 2 (j) and 5—Central Provinces Government Notification No. 202. 2644-VII—If *ultra vires. See* 1941 Dig., Col. 576. BEJONJI *v.* EMPEROR. **I.L.R. (1942) Nag. 402.**

——**Ss. 22 and 23**—*Construction and scope—"Precautions against fire"—Meaning of—If include precautions against consequences of fire—R. 37 of the Rules under Act—If* ultra vires.

The expression "precautions against fire" in S. 22 of the Factories Act mean precautions against the occurrence or outbreak of fire and would not cover precautions against the consequences of fire. S. 23 deals expressly with precautions against the consequences of fire by providing means of escape. Reading the two Ss. 22 and 23 together, it is clear that the intention of the legislature was that in the case of precautions against the occurrence of fire, the matter should be dealt with by rules which would govern all factories, but that, in dealing with precautions against the consequences of fire, it was recognised that all factories could not be dealt with in like manner, and S. 23 therefore contains

FACTORIES ACT (1934), S. 60.

a general provision that provision shall be made for such means of escape as can be reasonably required in the circumstances of each factory, and then leaves it to the Inspector to determine whether such precautions have been taken, and if he thinks that the necessary provisions have not been made, he is given power to serve on the manager of a factory a notice, breach of which would amount to an offence under S. 60 (*a*) (*iii*) of the Factories Act. There is no power under S. 22 to make general rules covering the subject of means of escape against fire which is dealt with by S. 23; and S. 22 is not to be enforced by means of rules. R. 37 of the rules under the Act is therefore *ultra vires*, as it deals with a matter which does not fall under S. 22 or under S. 32, which is the rule making section, but deals with a matter falling under S. 23 which does not enable rules to be made. Breach of R. 37 is not therefore an offence for which there can be a conviction. (*Beaumont, C. J. and Wassoodew, J.*) EMPEROR *v.* HASSIM IBRAHIM. **44 Bom.L.R. 810=A.I.R. 1943 Bom. 5.**

——**S. 37**—Rules under—R. 37—Scope—If *ultra vires. See* FACTORIES ACT, SS. 22 AND 23. **44 Bom. L.R. 810.**

——**S. 39 (1) and R. 70**—*Breach of—Displaying of incorrect notice.*

S. 39 (1) of the Factories Act and R. 70 require that a notice of periods of work for adults in English and in the language of the majority of the workers shall be affixed at the main entrance of the factory. Displaying an incorrect notice is tantamount to not displaying notice prescribed and would be punishable as a breach of S. 39 (1) and R. 70. (*Grille, J.*) ALIBHAI *v.* EMPEROR. **203 I.C. 476=44 Cr.L.J. 69=1942 N.L.J. 518.**

——**S. 60**—*Owners and occupiers of factory—If can escape liability for contravening provisions of the Act by leaving the affairs of the factory in the hands of a manager—"Manager"—If 'occupier' of the factory.*

The owners and occupiers of a factory cannot relieve themselves of their responsibilities regarding compliance with the requirements of the Factories Act by appointing a manager; they must see that the manager carries out his duties. It is only when the manager has acted in express disobedience of their order and they have done their best to see that the provisions of the Act are complied with, that they can themselves escape liability. S. 60 makes it clear that both the manager and occupier are liable. A manager is not a 'managing agent' within the meaning of that expression as used in the proviso to the definition of 'occupier' and hence cannot be deemed to be the occupier of the factory. The fact that the "occupiers" were ignorant persons who trusted to the knowledge and good sense of their manager may be a ground for awarding a smaller punishment but not for acquitting them. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* PAPPANNA. **201 I.C. 457=15 R.M. 399=1942 M.W.N. 168=55 L.W. 253=43 Cr.L.J. 764=A.I.R. 1942 Mad. 347 (1)=(1942) 1 M.L.J. 104.**

——**S. 60 (a) (iii)**—Applicability—Breach of R. 37—Offence. *See* FACTORIES ACT, SS. 22 AND 23. **44 Bom.L.R. 810.**

——**Ss. 60 (c), 63 and 41 and R. 71**—*Failure to produce on demand register of adult—Workers who is liable and under what provision.*

There is nothing in S. 41 (2) of the Factories Act as to the availability of the register of adult workers for inspection. Failure to produce the register on demand would be a breach of Ss. 11 and 63 but it would not be a breach of any rule made under S. 41 (2) since the availability of the register cannot possibly be brought

FACTORIES ACT (1934), R. 71.

within the words "the manner in which it shall be maintained" occurring in S. 41 (2). The words in R. 71 "the register shall always be kept available during working hours for immediate inspection" are thus not *ultra vires* of the Act but these words are *ultra vires* of any rule made under S. 41. Consequently the owner and occupier of the factory who was not present himself and from whom no demand for the production of the register was made cannot be made liable under S. 60 (*c*) of the Act which relates to ss. 39, 40, 41, 44 and 47 only. The breach in question is one punishable under S. 63 of the Act which deals with wilful obstruction of an Inspector or failure to produce on demand any register in the custody of the person from whom the demand for inspection is made. The correct person to prosecute is not the owner but the person from whom the demand is made. (*Grille, J.*) ALIBHAI *v.* EMPEROR. **203 I.C. 476 =44 Cr.L.J. 69=1942 N.L.J. 518.**

——R. 71—If *ultra vires* of the Act. *See* FACTORIES ACT, SS. 60 (*c*), 63, 41 AND R. 71. **1942 N. L.J. 518.**

FAMILY ARRANGEMENT—*Nature and effect of.*

There is nothing peculiar to a family arrangement except that the Courts favour them and view broadly the consideration which supports them. In so far as they are not considered to be transfers they need not be written. In so far as they are in writing and require registration they are affected by the Registration Act. When a family arrangement or settlement is acted upon, though it is not exactly a partition the corporate life of the family comes to an end, when the different members live separately and there is no joint family property left. Each member thereafter holds his property adversely to the others. (*Digby, J.*) CHUNNILAL HIRALAL *v.* MST. RUKHMABAI. **1942 N.L.J. 570.**

FOREST ACT (XVI OF 1927), S. 18 (4)—*Appellate order becoming final—Jurisdiction of Civil Court.*

Where an appellate order rejecting the claim of a person to land included within a proposed forest has become final under S. 18 (4) of the Forest Act, the Civil Court has no power to restore that land or to grant compensation in respect thereto to him or to his successor-in-interest. (*Mitter and Khundkar, JJ.*) MAHALUXMI BANK, LTD., CHITTAGONG *v.* PROVINCE OF BENGAL. **I.L.R. (1942) 2 Cal. 35=201 I.C. 279= 15 R.C. 158=46 C W N. 347=A.I.R. 1942 Cal. 371.**

——Ss. 20 and 9—*Publication of notification—Extinction of rights.*

On the publication of a notification declaring a forest reserved under S. 20 of the Forest Act, all rights in respect of which no claim has been preferred under S. 6 and of the existence of which no knowledge has been acquired by inquiry under S. 7 become extinguished by virtue of the provisions of S. 9. (*Mitter and Khundkar, JJ.*) MAHALUXMI BANK, LTD., CHITTAGONG *v.* PROVINCE OF BENGAL. **I.L.R. (1942) 2 Cal. 35= 201 I.C. 279=15 R.C. 158=46 C.W.N. 347=A.I.R. 1942 Cal. 371.**

FRAUD *See* PRACTICE—FRAUD.

GENERAL CLAUSES ACT (X OF 1897), S. 6 (e)—Applicability—Temporary or expiring statutes. *See* 1941 Dig., Col. 577. KARIM SHAH *v.* ZINAT BIBI. **I. L.R. (1941) Lah. 773.**

——S. 10—Applicability to petitions under Provincial Insolvency Act. *See* PROVINCIAL INSOLVENCY ACT, S. 9 (1) (c) AND GENERAL CLAUSES ACT, S. 10. **1942 A.L.J. 592 (F.B.).**

GOVERNMENT OF INDIA ACT (1915), S. 96-B (2)—*Civil Services (Classification, Control and Appeal) Rules* (1930), *R.* 49 (*ii*) *and U. P. Civil (Judicial) Service Rules* (1933), *R.* 10—*'Increments or promotion' in R.* 49 (*ii*)—*Meaning of—Refusal to include an officer in the 'selection grade'—If amounts to withholding of 'increments or promotion'—Inclusion in the 'selection grade', if can be claimed as of right.*

The increments or promotions spoken of in R. 49 (*ii*) of the Civil Services Rules made under S. 96-B (2). Government of India Act, mean increments and promotion which a member of a service is entitled in the ordinary course by the mere fact of his having been in the service for a certain number of years or of his having come to occupy, as the result of retirements, deaths, etc., a certain place in the list of those who are in the service, and not an increase in salary or the acquisition of a higher official position which would be the result of a selection for appointment to a special grade or to a particular post. Hence, a decision that a particular officer does not deserve inclusion in the selection grade mentioned in R. 10 of the U. P. Civil (Judicial) Service Rules does not amount to the withholding of an 'increment or promotion' or in other words to the imposition of a penalty within the meaining of R. 49 (*ii*). The Government are not bound to select for inclusion in the 'selection grade' mentioned no R. 10 of the U. P. Civil (Judicial) Service Rules the seniormost officer in the grade immediately below the 'selection grade,' or, for the matter of that, any other officer in the service. The decision of the question as to such inclusion rests entirely within the absolute discretion of the authority that has to select. No one has a right to be selected. (*Allsop and Verma, JJ.*) RUP KISHAN AGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **1942 A.L.W. 705=1942 A.W.R. (H. C.) 363=A.I.R. 1943 All. 56.**

——S. 99 (2)—*Rules made under regarding 'establishments'—Seniority in service and officiating in particular posts, if confers right to claim confirmation or appointment to such post.*

A member of the Provincial Judicial Service cannot claim appointment to, or confirmation in, the post of Sessions and Subordinate Judge or the post of District Judge *as a matter of right*, merely because he has attained to a certain position in the order of seniority in the Provincial Judicial Service or because he has been called upon to officiate in one or both of those posts. (*Allsop and Verma, JJ.*) RUP KISHAN AGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **1942 A.L.W. 705=1942 A.W.R. (H.C.) 363=A.I.R. 1943 All 56.**

——(as amended in 1919), S. 30—Agreement with Government—Formal deed—Necessity — Agreement evidenced by correspondence—If offends against S. 30—What would amount to sufficient compliance with S. 30. *See* 1941 Dig., Col. 581. DEVI PRASAD SRI KRISHNA PRASAD *v.* SECRETARY OF STATE. **I.L.R. (1941) All. 741=197 I.C. 390.**

——(1935)—*Mixing up of taxing clauses with measures dealing with other subjects—If prohibited by the Act.*

In the Constitution Act of India there is no statutory bar by which taxing clauses are forbidden from being introduced into measures dealing with other subjects. (*Dar, J.*) EMPEROR *v.* MUNNA LAL. **I.L.R. (1942) All. 302=200 I.C. 526=15 R.A. 3=1942 A.Cr.C. 62=5 F.L.J. (H.C.) 43=43 Cr.L.J. 674 (2)=1942 A.L.J. 112=1942 A.L.W. 81=1942 A.W.R. (H.C.) 46=1942 O.A. (Supp.) 94=A.I.R. 1942 All. 156.**

——S. 45-A, Rules, Schedule I, Part II, Item 51—Assam Bijni Succession Act—If *ultra vires*. *See* ASSAM BIJNI SUCCESSION ACT. **23 Pat.L.T. 419.**

——S. 46 (2)—*Applicability—Pending suit filed in Trichinopoly before Act in respect of properties*

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situate in India and Burma—Separation of Burma—Jurisdiction to try suit after—If taken away as regards properties in Burma.

A suit against persons resident in Rangoon was filed in the Subordinate Judge's Court of Trichinopoly in 1932, but it did not become ready for trial till 1940. The Government of India Act of 1935 came into force on 1st April, 1937, and by virtue of S. 46 (2) of that Act, Burma ceased to be a part of India. The subject-matters of the suit comprised properties not only within the jurisdiction of the Trichinopoly Court, but, also in British Burma.

Held, that the combined effect of the India and Burma Existing Laws Act, 1937, S. (1) and (2), the Government of India (Adaptation of Indian Laws) Order, 1937, and the Interpretation Act of 1889, Ss. 52 and 53, was expressly to preserve to the Court of the Subordinate Judge of Trichinopoly jurisdiction to try the suit; (2) that the plaintiff had a right to file the suit in that Court and the right to continue it in that Court was not taken away by the Government of India Act. (*Mockett and Kunhi Raman, JJ.*) KRISHNASWAMI REDDIAR *v.* VENUGOPALA REDDIAR. **I.L.R. (1942) Mad. 376=203 I. C 17=5 Fed. L. J. (H. C) 14=55 L W 45=A.I.R. 1942 Mad. 614=(1942) 1 M.L. J. 137.**

——**S. 53 (2)**—Scope — Non compliance—Bihar Agricultural Income-tax Act —Para. 18 of Instrument of Instructions to Governors not complied with—Act, if invalid. *See* 1941 Dig. Col. 582. JHALAK PRASAD SINGH *v.* PROVINCE OF BENGAL. **1941 P.W.N. 689 (S.B.).**

——**Ss. 99 and 100**—Scope and effect of—Provincial Legislature—Power to affect prerogative rights of His Majesty—Decree or order of Privy Council—If affected by Madras Agriculturists' Relief Act. *See* 1941 Dig., Col. 582. SUBBAYYA *v.* VENKATA HANUMANTHA BUSHANA RAO. **I L.R. (1942) Mad. 60=200 I.C. 520=15 R.M. 69=(1941) 2 M.L J. 125.**

——**S 100**—Bihar Tenancy Act (as amended in 1938), S. 23-A (*b*)—Scope—If *ultra vires*—Repugnancy to Contract Act, S 37. *See* BIHAR TENANCY ACT, AS AMENDED IN 1938, S. 23-A (*b*). **1942 P.W.N. 66.**

——**S. 100**—*Powers of Indian Legislature—Nature of—Construction of Provincial Acts—Presumption in favour of Legislature.*

Indian Legislatures within their own spheres have plenary powers of legislation as large and of the same nature as those of Parliament itself and every intendment ought therefore to be made in favour of a Legislature which is exercising the powers conferred on it. Its enactments ought not to be subjected to the minute scrutiny which may be appropriate to an examination of the by-laws of a body exercising only delegated powers, nor is the generality of its power to legislate on a particular subject to be cut down by arbitrary introduction of far-fetched and impertinent limitations. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD *v.* EMPEROR. **21 Pat. 587=I.L.R. (1942) Kar (F.C.) 21=14 R.F.C. 19=44 P.L R 261=43 Cr.L.J. 481=1942 M W.N. 378=1942 O.W N. 411=46 C.W N. (F R) 32=1942 A. Cr. C. 122=1942 A.L W. 469=199 I.C 322=1942 A.W.R. (F. C.) 10=1942 O.A. 144=23 Pat L. T. 253=1942 P W N. 129=8 B.R. 555=5 F.L J. 17=A.I R. 1942 F.C 17=(1942) 2 M.L.J. 6 (F C).**

——**S. 100 and Sch. VII, List II, Art 31**—*Power of Provincial Legislature—Scope of.*

S. 100 and Art. 31, List II of the seventh Schedule, Government of India Act, give Provincial Legislatures

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power to legislate with respect to intoxicating liquors, that is to say, with respect to the production, manufacture possession, etc., of such liquors. The power is not confined to merely the regulation or restriction of such manufacture, production or possession, etc. It is impossible to say that prohibiting possession of certain forms of intoxicating liquor in specified areas is anything more than legislation with respect to possession or transport of such intoxicating liquor in such areas. (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD **21 Pat. 178=197 I.C. 618=14 R.P. 359=8 B.R. 249=1942 P.W.N. 47=43 Cr.L.J. 220=5 F. L.J. (H C.) 34=A.I R. 1942 Pat. 351.**

——**S. 100 and List I, Entries 44, 45 and 47**—Provincial Legislature—Power to impose tax or cess on salt. *See* PUNJAB MUNICIPAL ACT, S. 61 (2). **5 F. L.J. 27=A I.R. 1942 F.C 14.**

——**S 100, Sch. VII List 1, Item 38 and List II, Item 27**—Scope—Bihar Money-Lenders Act (VII of 1939), S 13—Applicability to banks. *See* 1941 Dig., Col. 584. DEBABRATA BANERJEE *v.* BANK OF BIHAR, LTD. **1942 Comp C 41.**

——**S. 100**—*Taxes imposed by Legislature on number of items—Some of them only within jurisdiction—Validity of each—Pith and substance rule.*

When taxes are imposed specifically on a number of items, only some of which are within the jurisdiction of the Legislature which imposes them, the validity of each impost can be dealt with by itself and there is no question of the one affecting the other and no scope for the application of the rule of pith and substance. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) ADMINISTRATOR, LAHORE MUNICIPALITY *v.* DAULAT RAM KAPUR. **I.L.R. (1942) Kar. (F.C.) 34=14 R. F.C. 16=44 P.L.R. 284=8 B.R. 586=55 L.W. 765=1942 M W.N 393=46 C W N. (F.R.) 69=199 I. C 331=1942 A.W.R. (F C) 7=1942 O A. 141=1942 A.L.W 213=1942 P.W N. 135=1942 O.W N. 297=23 Pat.L.T 304=5 F.L.J. 27=A.I.R. 1942 F.C. 14=(1942) 2 M L J 1 (F C).**

——**S. 102 (1) and (3)**—*Approval of proclamation by House of Lords—Proof of—Official report of proceedings of that House—If can be accepted.*

The official report of the proceedings of the House of Lords can be accepted as proof that the proclamation of emergency made by the Governor-General under S. 102 (1) of the Government of India Act was approved by the House. (*Bartley and Lodge, JJ.*) BIMAL PROTIVA DEBI *v.* EMPEROR. **202 I.C. 150=15 R. C 309=43 Cr L J 793=(1942) F L J (H.C.) 180=75 C.L J 90=A I.R 1942 Cal 464.**

——**S 107**—Bihar Tenancy Act (as amended in 1937), S. 178 B—If conflicts with Permanent Regulation and if invalid. *See* BIHAR TENANCY ACT (AS AMENDED IN 1937), S. 178 B. **1942 P W.N. 66.**

——**S. 107 (1)**—*Objection under—Question of 'pith and substance'—If arises.*

The question of "pith and substance" does not arise when objection is taken not under S. 100 but under S. 107 (1) of the Government of India Act. (*Gwyer, C J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKHIA. **I.L.R. (1942) Lah. 623=I.L.R. (1942) Kar. (F.C.) 40=14 R.F C. 25=200 I.C 198=5 Fed.L.J. 33=1942 M.W.N 403=8 B.R. 695=23 Pat L T 502=55 L.W 484=44 P.L. R 437=46 C.W.N. (F.R) 61=A.I.R 1942 F C 27.**

——**S. 107 (1)**—*Provincial law—If must be with respect to matter in Concurrent List—Doctrine of "pith and substance".*

Sub-Ss. (1) and (2) of S. 107 of the Government of India Act must be read together and only that kind of

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provincial law is contemplated by sub-S. (1) as is covered by sub-S. (2) which clearly contemplates only a provincial law with respect to one of the matters enumerated in the Concurrent Legislative List. In order to see "with respect to" what matter the Legislature is exercising its legislative function, we are to look to the *pith and substance* of the entire enactment and not to the matter for legislation in a particular provision severed from the context. (*Sen and Pal, JJ.*) BIR BIKRAM KISHORE *v.* TOFAZZUL HOSSEIN. **204 I.C. 168=1942 F.L.J. (H.C.) 189=46 C.W.N. 999=A.I.R. 1942 Cal. 587.**

——**S. 108 (2) (a)**—*'Act of Parliament'—Meaning of—Bengal Permanent Settlement Regulation—If one.*

The expression "Act of Parliament" is used in S. 108 (2) (*a*) of the Government of India Act in the sense of enactments actually passed by Parliament and not of laws passed by a subordinate legislative body under power conferred upon it by an Act of Parliament. The Bengal Permanent Settlement Regulation (I of 1793) is not, therefore, an "Act of Parliament" within the meaning of the section. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) HULAS NARAIN SINGH *v.* PROVINCE OF BIHAR. **I.L.R. (1942) Kar. (F.C.) 1=21 Pat. 521=8 B.R. 573=46 C.W.N. (F.R.) 22=1942 A.W.R. (F.C.) 15=1942 P.W.N. 109=1942 O.A. 149=1942 I.T.R. 115=199 I.C. 1=1942 M.W.N. 316=23 Pat.L.T. 275=14 R.F.C. 7=75 C.L.J. 128=5 F.L.J. 1=A.I.R. 1942 F.C. 8=(1942) 1 M.L.J. 607 (F.C.).**

——**S. 108 (2) (a)**—"Act of Parliament"—Regulation I of 1793—Bihar Agricultural Income-tax Act—Validity. *See* 1941 Dig., Col. 585. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689.**

——**S. 108 (2) (a)**—"British India"—Meaning of. *See* 1941 Dig., Col. 585. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689.**

——**S. 108 (2) (b)**—*Governor-General's Act—If includes Provincial Act requiring Governor-General's assent.*

S. 108 (2) (*b*), Government of India Act, merely limits the power of Provincial Legislatures to repeal or amend Governor-General's Acts or Ordinances enacted or promulgated under Ss. 42 to 44 of the Act. A Governor-General's Act or Ordinance is a very special form of legislation and cannot possibly include an Act of a Provincial Legislative authority, which in the past required the assent of the Governor General for its validity. (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD. **21 Pat. 178=197 I.C. 618=14 R.P. 359=8 B.R. 249=1942 P.W.N. 47=43 Cr.L.J. 220=5 F.L.J. (H.C.) 34=A.I.R. 1942 Pat. 351.**

——**S. 108 (2) (b)**—*Governor-General's Act—Meaning of.*

The Governor-General's Act to which S. 108 of the Government of India Act refers means an Act such as the Governor General is empowered to enact under S. 44 of that Act. Before 1st April, 1937, all Acts required the assent of the Governor-General and the expression "Governor-General's Act" in S. 108 is not intended to include all such Acts. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD *v.* KING EMPEROR. **21 Pat. 587=I.L.R. (1942) Kar. (F.C.) 21=14 R.F.C. 19=44 P.L.R. 261=43 Cr.L.J. 481=1942 M.W.N. 378=1942 O.W.N. 411=46 C.W.N. (F.R.) 32=1942 A.Cr.C. 122=1942 A.L.W. 469=199 I.C. 322=1942 A.W.R. (F.C.) 10=1942 O.A. 144=23 Pat.L.T. 253=1942 P.W.N. 129=8 B.R. 555=5 F.L.J. 17=A.I.R. 1942 (F.C.) 17=(1942) 2 M.L.J. 6 (F.C.).**

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——**S. 108 (2) (b)**—"Governor-General's Act"—Bengal Permanent Settlement Regulation. *See* 1941 Dig., Col. 585. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W.N. 689.**

——**S. 205**—*Certificate—When to be granted.*

As the certificate under S. 205 of the Government of India Act is a part of the judgment, it should be given at the time when the appeal is decided by the High Court. (*Thomas, C.J. and Agarwal, J.*) ABUL QASIM *v.* KING-EMPEROR. **203 I.C. 538=1942 A.W.R. (C.C.) 346 (1)=1942 A.Cr.C. 200=1942 O.A. 533=1942 O.W.N. 654.**

——**S. 205**—*Disposal of appeal under—Case remanded to be tried on merits—Decree after remand—Whether appeal lies to Federal Court against decree in absence of fresh certificate.*

In an appeal under S. 205 of the Constitution Act, the Federal Court held that the plaintiff was entitled to a declaration that he had not been effectively dismissed from his office, and remanded the case to be tried on the merits. On remand the trial Court passed a decree for arrears of pay and gave certain directions as to payment of costs, Court-fee, etc. This decree was confirmed by the Judicial Commissioner's Court with some modifications in the plaintiff's favour. The plaintiff, being dissatisfied with the decree passed by the Judicial Commissioner's Court, filed an application under O. XLIII of the Federal Court Rules praying that in exercise of the inherent powers of the Federal Court the decree of the Judicial Commissioner's Court should be varied in certain particulars.

Held, that the appeal preferred under S. 205 of the Constitution Act had been finally disposed of so far as the Federal Court was concerned and any complaint against the decree passed by the Judicial Commissioner's Court after the remand could be entertained by the Federal Court only on an independent appeal under S. 205, and such an appeal must satisfy the requirements of that section. In the absence of that certificate under that section, the Federal Court had no jurisdiction to entertain the application. When the Federal Court is properly seized of an appeal on a certificate granted under S. 205 of the Constitution Act, it will also have jurisdiction to deal with other questions arising in the case; and in dealing with an appeal properly before it, it may have certain inherent powers. But before these powers can be exercised there must be an appeal validly instituted before it. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) SURAJ NARAIN ANAND *v.* NORTH WEST FRONTIER PROVINCE. **1942 F.L.J. 99=9 B.R. 94=A.I.R. 1942 F.C. 47=(1942) 2 M.L.J. 794.**

——**S. 205**—*Ground for granting a certificate under.*

A certificate under S. 205 of the Government of India Act can be given only when a substantial question of law as to the interpretation of the Government of India Act, 1935 or any order in council made thereunder is involved. It was *held* that the question whether the Defence of India Act (1939) and the rules made under it are *ultra vires* the present Indian Legislature had already been finally decided by the Federal Court in the negative and that hence such a question of law is not a ground for granting a certificate. (*Thomas, C.J. and Agarwal, J.*) ABUL QASIM *v.* KING-EMPEROR. **203 I.C. 538=1942 A.W.R. (C.C.) 346(1)=1942 A.Cr.C. 200=1942 O.A. 533=1942 O.W.N. 654.**

——**S. 205**—*Scope—Certificate—Absence of—Right of appeal—Refusal of certificate alleged to be perverse and malicious—Power of Federal Court to interfere—Jurisdiction by way of contempt proceedings—Limits to.*

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No appeal lies to the Federal Court in the absence of the certificate prescribed in S. 205 of the Government of India Act, and the refusal of a High Court to grant a certificate cannot be questioned by the Federal Court, nor can the reasons which prompted the refusal be investigated by it. The jurisdiction of the Federal Court is limited by statute and cannot be extended by a High Court acting even perversely or maliciously in withholding the certificate. The Court cannot do indirectly what it cannot do directly. Proceedings by way of contempt can ever be the appropriate remedy against a High Court even if it has acted perversely or maliciously. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) GAUBA *v.* THE HON'BLE THE CHIEF JUSTICE AND JUDGES OF THE LAHORE HIGH COURT. **I.L.R. (1942) Lah 712=198 I.C. 1=I L.R. (1941) Kar (F. C.) 176=14 R.F.C. 6=44 P.L.R 48=1942 O.W.N. 82=1942 A L.W 106=23 Pat.L.T. 101=8 B R. 358 =46 C.W.N.(F R.) 7=43 Cr.L.J. 311=75 C.L.J. 153 =1942 A.W.R. (F.C.) 1=55 L.W. 3=4 F.L.J 33= 1942 O A 1=1942 M W.N. 48=1942 P.W.N. 9= A.I R. 1942 F.C. 1=(1942) 1 M.L.J. 74 (F.C.).**

——**S. 208 (b)**—*Leave to appeal to Privy Council —Grant of—Practice—Status of Federal Court.*

Since the primary responsibility for determining constitutional cases lies upon the Federal Court, it ought not without grave reason grant under S. 208 (*b*) of the Government of India Act leave to appeal to Privy Council against its decision. It will treat each case on its own merits and will grant leave sparingly and only in exceptional cases. Even if, therefore, a decision affects a large number of persons and substantial interests, and also involves important questions of law, this does not by itself justify the granting of leave. The Federal Court is the first Court sitting on Indian soil whose jurisdiction, although limited, extends to the whole of British India. Its establishment marked a new stage in India's constitutional evolution; and the evolution of Indian political thought after its inception has served only to increase and emphasize the significance of its authority It is not subordinate to any other Court; and this conception of its status was present in the minds of those who framed the Indian Constitution Act of 1935, when they gave to the Court itself the right to say whether it would permit any cases which came before it on appeal to be reviewed elsewhere. The ancient prerogative right of His Majesty to grant special leave to appeal, though it has now been made statutory by S. 208 (*b*), does not affect this aspect of the matter. (*Gwyer, C J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKKHIA. **55 L.W. 829=203 I.C. 401=1942 F.L.J. 95=9 B R. 89=24 Pat L.T. 1=1943 M.W.N. 2=A.I.R. 1942 F.C. 48=(1942) 2 M.L.J. 797.**

——**S. 210 (2)**—*Scope and effect of—Jurisdiction of Federal Court in contempt.*

S. 210 (2) of the Government of India Act confers powers, not jurisdiction; and unless in any given case the Court has jurisdiction, it has no powers to exercise. The Federal Court as Court of record has all the powers belonging to such a Court including the power to punish for contempt of itself; and S. 210 (2) does no more than give it the same machinery for making that power effective as the High Courts themselves possess. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) GAUBA *v.* THE HON'BLE THE CHIEF JUSTICE AND THE JUDGES OF THE LAHORE HIGH COURT. **I L.R. (1942) Lah. 712=198 I C. 1=I L R. (1942) Kar. (F.C.) 176=14 R F.C 6=44 P L.R 48=1942 O.W. N. 82=1942 A.L.W 106=23 Pat L.T 101=8 B.R. 358=46 C.W.N. (F R.) 7=43 Cr.L.J 311=75 C.L.J.**

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153=4 F.L.J. 33=1942 A.W.R. (F.C.) 1=55 L W 3 =1942 P W.N. 9=1942 O.A. 1=1942 M W.N. 48= A.I R. 1942 F C. 1=(1942) 1 M.L.J. 74 (F.C.).

——**S. 220**—*Jurisdiction to commit for contempt— Lahore High Court.*

The High Court of Lahore is a Court of Record and therefore possesses the ordinary jurisdiction of a Court of Record to commit for contempt. (*Young, C.J., Monroe and Mahomed Munir, JJ.*) K. L. GAUBA, BAR.-AT-LAW, LAHORE, *In the matter of:* **I L.R. (1942) Lah. 411=200 I.C. 182=14 R.L. 449=43 Cr L.J. 599= 44 P.L.R. 206=A.I.R. 1942 Lah. 105 (F.B.).**

——**S. 222 (2)**—*Intention of legislature—Judgment composed by Judge while on leave—Validity.*

Sub-section (2) of S. 222 deals with conditions under which a temporary Judge can be appointed. But from that provision no intention can be imputed to the Legislature to the effect that a Judge on leave cannot think about a case which he had previously heard or utilised the period of his leave in preparing a judgment which he had reserved just before going on leave. On no principle can a judgment be declared invalid simply because it was composed by him while on leave. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. **202 I C 551=15 R.C. 355=47 C.W.N. 9=A.I.R 1942 Cal. 498 (S.B.).**

——**Ss. 223 and 224**—Jurisdiction of High Court— Order of Deputy Collector under Bengal Rent Act. *See* 1941 Dig., Col. 588. SAKKAL SARDAR *v* ISSARDAS THIRANI. **199 I.C. 740=14 R. C. 620=A.I.R. 1941 Cal. 230.**

——**S. 223**—*Nomination of Special Benches for contempt cases—Power of Chief Justice—Lahore High Court Rules and Orders, Vol. V, Chap. 3-B.*

The Chief Justice of the Lahore High Court has power to nominate Special Benches for the disposal of contempt cases. (*Young, C. J., Monroe and Mahomed Munir JJ.*) K. I. GAUBA, BAR.-AT-LAW, LAHORE, *In the matter of* **I.L.R. (1942) Lah. 411=200 I C. 182=14 R.L 449=43 Cr L.J. 599=44 P.L.R. 206= A.I.R. 1942 Lah 105 (F.B.).**

——**S. 224**—*Scope of—Powers of High Court how affected.*

S. 224 of the Government of India Act only means that no powers of interference are conferred on High Courts by it except that of superintending subordinate Courts in matters of practice and procedure not regulated specifically by law. It does not take away any powers High Courts may have under other provisions of law. It does not change the law in respect of the powers that may be exercised by the High Courts under Ss. 439 and 561-A, Cr. P. Code. (*Bennett, J.*) SHATRUNJAVA SINGH *v.* D. S. SAXENA. **1942 O.W. N. 496=1942 O A. 395=1942 A W R. (C.C.) 315.**

——**Ss. 224 (1) (d) and 231 (2)**—Rules framed and tables settled by Lahore High Court—When come into force in Punjab and Delhi. *See* 1941 Dig., Col. 589. HARDWARI MAL *v.* GANGA RAM. **I.L.R. (1942) Lah. 483=197 I.C. 862=14 R.L. 291.**

——**S. 240**—*Wrongful dismissal of Government servant—Suit for damages—Maintainability.*

A suit for damages for wrongful dismissal by a Government servant is not maintainable owing to the provisions of S. 240 of the Government of India Act. The statute does not confer on a Government servant a right enforceable by action in a Court of law to hold his office according to the rules framed by the Government for members of his service and to have it terminated only in accordance with those rules. Where the plaintiff, a clerk in a subordinate Court of justice,

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was dismissed from service and he thereupon brought a suit against the Government for damages for wrongful dismissal.

Held, that the duties carried out by the plaintiff and by his superior officers were part of the machinery for carrying on the administration of justice in exercise of sovereign powers and therefore the suit was not maintainable. (*McNair, J.*) MAHAMMAD ABDUL WABED *v.* PROVINCE OF BENGAL. **4 F.L.J (H.C.) 400.**

——**Ss. 240 (2) and 243**—*Dismissal of Sub-Inspector of Police by authority subordinate to that which appointed him—Suit to declare dismissal void—Maintainability—Availability of benefit of sub S. (2) of S. 240, if affected by S. 243—Dismissal of departmental appeal by the superior authority—If amounts to a dismissal from office by the superior authority.*

A Sub-Inspector of Police appointed by I.G. of Police was dismissed by the Deputy I. G. of Police. After an unsuccessful appeal against such dismissal to the I. G. and the Provincial Government the dismissed officer filed a suit to declare his dismissal void on the ground among others that his dismissal by authority subordinate to that which appointed him was opposed to S. 240 (2) of the Government of India Act. On a preliminary issue it was held that the plaintiff had no remedy by civil action and it was upheld by the appellate Court. On appeal to the Federal Court, it was *held*, that sub-S. (2) of S 240 contained a statutory prohibition to the effect that no office-holder shall be dismissed from service by any authority subordinate to that by which he was appointed, and that the section had been enacted in unqualified terms and the protection thus afforded could not be qualified or taken away by statutory rules.

Held, further, that the plaintiff was entitled to invoke the aid of S. 240 (2) and that S. 243 had not the effect of depriving him of the benefit of sub S. (2) of S. 240. It was also *held* that the dismissal by the I. G. of the appeal against the order of dismissal by the Deputy I.G. was not equivalent to a dismissal from office by the I. G. Under the circumstances their Lordships thought it best to say, that the plaintiff was at least entitled to a declaration that the order of dismissal passed against him was void and inoperative and that the Courts below were not justified in dismissing the suit as wholly unsustainable (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) SURAJ NARAIN ANAND *v* N.-W. F. PROVINCE **I.L.R. (1942) Kar. (F.C.) 165 = 198 I.C. 7 = I.L.R. (1942) Lah. 692 = 14 R.F.C. 1 = 1942 O.W.N 88 = 1942 A.L.W. 99 = 23 Pat.L.T. 121 = 8 B.R. 354 = 4 F.L.J. 22 = 1942 O.A. 3 = 1942 P.W.N 3 = 1942 M.W.N. 49 = 1942 A.W.R. (F.C.) 3 = 75 C.L.J 35 = 46 C.W.N. (F.R.) 1 = 44 P.L.R. 172 = 203 I.C. 389 = A.I.R. 1942 F.C. 3 = (1942) 1 M.L.J. 77.**

——**S. 270**—*Applicability—Income-tax Officers—Suit against for damages—Allegation of trespass and taking away books of accounts as officers—Maintainability of suit without consent of Governor-General.*

S. 270 of the Government of India Act is intended to protect public servants for acts committed before the relevant date in respect of which proceedings may be started against them. The motive with which the acts are done is immaterial. What has to be looked at is that the offence must be in respect of an act done or purported to be done in execution of a duty, *i.e.*, in the discharge of an official duty. Plaintiff brought a suit claiming damages against two defendants who were Income-tax Officers, the 1st defendant being the superior officer of the 2nd defendant, alleging that the 2nd defendant purporting to act under the orders of the 1st defendant trespassed into the plaintiff's premises and took away all the plaintiff's account books wrongfully against his will and consent. The defendants raised a preliminary point that the suit was not maintainable without the consent of the Governor-General under S. 270 of the Government of India Act,

Held, that the acts alleged against the defendants were so closely connected with their position as Income-tax Officers as to make it impossible to say that they were not the kind of acts which are contemplated under the section, and S. 270 of the Government of India Act operated as a bar to suit in the absence of the consent of the Governor-General. (*Bell, J.*) KESARICHAND KAVERLAL *v.* S.H.G. NAYADU. **1942 I.T.R. 413 = 55 L.W. 687 = 1942 F.L.J. (H.C.) 151 = (1942) 2 M.L.J. 523.**

——**S. 270**—*Applicability—Wrongful restraint or confinement—What amounts to—Police Sub-Inspector and constables preventing passengers from boarding train under instructions from superior officer under misapprehension—Acts done* bona fide *in discharge of statutory duty—Liability for damages—Consent of Governor for suit—Necessity—Provincial Government—Liability for acts of servants.*

Government cannot be held liable for damages either when an officer takes an action in pursuance of a statutory duty or when the act committed by him happens to be in excess of his authority unless in the latter case the act is either done by the Government's express orders or is subsequently ratified and adopted by it. Nor can any action be maintained against the Government for a tort committed by its servants if in passing the order in the performance of which the tort is committed the Government was discharging its Governmental functions as a sovereign. The first and second plaintiffs, who were the wife and daughter of the Ex-Maharaja of Nabha filed a suit for damages for wrongful restraint against the Province of Madras represented by the Collector of Madura, and four Police Officials, *viz.*, the District Superintendent of Police, Madura, the Sub-Inspector of the Government Railway Police at Madura Railway Station, the head constable of the Railway Police at Kodaikanal Road Railway Station, and a constable at that station, on the allegations that on the arrival at Kodaikanal Road Station of the train by which they intended to leave for Madras, they were prevented by Sub-Inspector of Police acting under the orders of the District Superintendent from boarding the train, that the gate and the iron fencing at the Railway Station were closed by the Sub-Inspector and constables were posted near the gates which resulted in the wrongful confinement of the plaintiffs and that the Sub-Inspector of Police prevented the plaintiffs from boarding the train on receipt of a telephonic message from the District Superintendent of Police. It appeared, however, that the Police Officers had intended to detain the ex-Maharaja of Nabha and not the plaintiffs, and that the plaintiffs were prevented from boarding the train owing to a misunderstanding of a telephonic message from the District Superintendent to the Sub-Inspector. The plaintiffs were, however, subsequently allowed to take train and reach their destination. The plaintiffs claimed damages for the suffering, both mental and physical, and for the pecuniary loss caused to them. They averred that the acts of defendants, in detaining them, were done by them in their official capacity. Some of the defendants pleaded that the suit was not maintainable without the consent of the Governor of Madras under S. 270, Government of India Act, and that the suit was also barred by S. 53 of the Madras District Police Act.

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Held, (1) that on the facts it could not be said that the plaintiffs were actually confined in the Railway Station or the Railway compound at the Kodaikanal Road Station; (2) that the offences of wrongful restraint or wrongful confinement could not be said to be committed if a person were not restrained or confined himself, but only the liberty of going in a conveyance in which he wished to go, or taking the article which he wished to carry and without which he was not willing to proceed, was denied to him; (3) that had the plaintiffs or their Secretary requested the Sub-Inspector or the constables to be allowed to go out of the Railway compound and had any obstruction been created, it would have been a different matter; (4) that the acts complained of were done by the defendants in the performance of their duty and the suit was therefore not maintainable without the consent of the Governor under S. 270 (1) of the Government of India Act, 1935; and as the said acts were done by them in good faith the suit was liable to be dismissed under S. 270 (2) of the Government of India Act, the onus of proving want of good faith being on the plaintiffs; (5) that the suit was governed by Art. 2 of the Limitation Act as defendants 2 to 5 were acting under S. 54, Cr. P. Code and S. 21 of the Madras District Police Act, and time should be computed from the date of the occurrence and not from any subsequent date when the plaintiffs might have suffered physical injury consequent on their detention; (6) that the suit was barred by limitation also under S. 53 of the Madras District Police Act as defendants 2 to 5 purported to act in the discharge of their duty under the Police Act; (7) that the first defendant, the Province of Madras, could not be proceeded against in respect of the acts of defendants 2 to 5 done in the discharge of the duty imposed on them by statute. (*Abdur Rahman and Somayya, JJ.*) MAHARANI GUR CHARAN KAUR OF NABHA *v.* PROVINCE OF MADRAS **I L R (1942) Mad. 696 = 203 I C 45 = 5 F.L.J. (H.C) 103 = 1942 M.W.N 602 = 44 Cr L J. 45 = A I.R. 1942 Mad. 539 = (1942) 2 M.L.J 14.**

——— **S 270 (1)**—"Purporting to be done"—Meaning of—Test to find out *See* 1941 Dig,, Col.590 EMPEROR *v.* MANGHARAM GHUMANMAL. **197 I.C. 692 = 14 R. S. 116 = 43 Cr.L.J. 241.**

——— **S. 270 (2)**—*Burden of proof—Suit for damages from police officers for wrongful arrest—Want of* bona fides *in making arrest—Onus.*

A suit for damages for wrongful arrest alleged to have been made by police officers (servants of the Crown) falls within the ambit of S. 270 (2) of the Government of India Act of 1935, and the onus of proving want of *bona fides* in making the arrest would lie on the plaintiff and it is not for the defendants to prove *bona fides*. (*Abdur Rahman, J.*) SRINIVASA RAO *v.* PAPA RAO; **1942 M.W N. 807 = 55 L W. 611 (1) = 1942 F.L J. (H.C.) 185 = (1942) 2 M.L J. 417.**

——— **S. 297 (1)**—*Applicability—Intoxicating liquors and narcotic drugs.*

S. 297 of the Government of India Act does not deal with intoxicating liquors or narcotic drugs. It merely limits the power of the Provincial Legislature to legislate with respect to trade and commerce within the province which is one of the items in Art 27, List II, Seventh Schedule of the Act and with respect to the production, supply and distribution of commodities which is one of the matters included in Art 29, List II, Seventh Schedule of the Act. All that S. 297 (1) means is that though a Provincial Legislature has power to legislate with respect to trade and commerce within the province and with respect to production, supply and distribution of commodities, it has no power to legislate

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or take any executive action prohibiting or restricting the entry into, or export from, the province of goods of any class or description. It is to be observed that intoxicating liquors and narcotic drugs appear in a different article and are not included in the general terms "trade or commerce" or "production, supply and distribution of commodities." (*Harries, C.J. and Fazl Ali, J.*) EMPEROR *v.* BHOLA PRASAD. **21 Pat. 178 = 197 I.C. 618 = 14 R.P 359 = 1942 P W N. 47 = 43 Cr. L J, 220 = 5 F.L.J. (H.C.) 34 = 8 B.R, 249 = A.I.R. 1942 Pat. 351.**

——— **S. 297 (1)**—*Scope of—Nature of the law open to objection under—Measures of price control, marketing, etc., if* per se *interfere with free trade clauses in the Constitution Act.*

The law which is open to objection under S. 297 (1) of the Constitution Act is a law made by Provincial Legislature substantially by virtue of the entry relating to trade and commerce or by virtue of the entry relating to production, supply and distribution of commodities And if a law is made substantially by virtue of the entry relating to agriculture or of entry relating to development of industry it is not open to objection under this section. Further the law contemplated by this section is a law which prohibits or restricts entry into or export from the province of goods directly and a law which does not deal directly and in substance with prohibition or restriction of export or import of goods but which deals with other needs of the province and provides for them, though incidentally, the effect of the provision is that in some measure export or import is restricted, such a law is not within the meaning of the section. It follows from the above that the prohibition or restriction contemplated by the section is a prohibition or restriction on the act of export or import and so long as the goods remain the property of the province and are a stock of the province and before they have become the subject of interprovince or foreign trade, the province has every right to expropriate goods or to put any restriction upon them which it considers necessary for the needs of the province All measures of price control, collective marketing and expropriation of goods do not *per se* and as a matter of course interfere with free trade clauses in a constitution, and the interference contemplated by the consritution is a direct interference and not an indirect interference. (*Dar, J.*) EMPEROR *v.* MUNNA LAL. **I.L.R. (1942) A. 302 = 200 I.C. 526 = 15 R.A. 3 = 1942 A Cr C. 62 = 5 F.L.J. (H.C) 49 = 43 Cr L.J. 674 (2) = 1942 A.W R. (H.C.) 46 = 1941 A L W. 81 = 1942 O A. (Supp) 94 = 1942 A.L.J. 112 = A I.R, 1942 A. 156**

——— **S. 297 (1) (a)**—*Applicability—Entry No. 31 of Provincial Legislative List.*

S. 297 (1) (*a*) of the Government of India Act only refers to legislation with respect to entry No. 27 and entry No. 29 in the Provincial Legislative List. It has no application in respect to anything in entry No. 31. (*Gwyer, C J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD *v.* EMPEROR. **21 Pat. 587 = I L.R. (1942) Kar. (F C.) 21 = 14 R.F.C 19 = 44 P.L.R. 261 = 43 Cr.L.J. 481 = 1942 M.W.N. 378 = 1942 O.W. N. 411 = 1942 A L W 469 = 46 C W N. (F R.) 32 = 1942 A Cr C. 122 = 199 I C 322 = 1942 A W.R. (F. C.) 10 = 1942 O A. 144 = 23 Pat.L.T. 253 = 1942 P. W.N. 129 = 8 B.R. 555 = 5 F L.J 17 = A.I.R. 1942 F.C. 17 = (1942) 2 M.L.J. 6 (F C.).**

——— **S. 298 (1) and (2)**—Scope of. *See* PUNJAB ALIENATION OF LAND (SECOND AMENDMENT) ACT (X OF 1938). **5 Fed L.J. 73**

——— **S 299 (3)**—Scope—Bihar Agricultural Income-tax Act—Governor's previous sanction under S. 299 (3)

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not obtained—Bill assented to by Governor—Effect—Validity of Act. *See* 1941 Dig., Col. 591. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. **1941 P.W. N. 689.**

——**S. 306**—Madras Hindu Religious Endowments Act—Notification of temple under—If act of Governor—Jurisdiction of Court to quash by writ of *certiorari*—Arbitrary and illegal orders—Quashing of. *See* 1941 Dig., Col. 592. DEIVASIKAMANI PONNAMBALA DESIKAR *v* BOARD OF COMMISSIONERS FOR H. R. E., MADRAS. **200 I.C. 459=15 R.M. 46=(1941) 2 M.L.J. 175.**

——**Sch. VII, List I, No. 34**—*'Federal law'—Meaning—Competency of local legislature to repeal Sugarcane Act* (1934) *of the Central Legislature.*

'Federal law' as used in entry No. 34 of List 1 of Sch VII of the Constitution Act, is either a law made by the Federal Legislature after it has come into existence or a law made by the Indian Legislature during the transitional period, that is, between the enactment of the Constitution Act and till Federal Legislature comes into existence, but other existing Indian Laws which were enacted before the Constitution Act could not fall within the meaning of the 'Federal law' as used in the Constitution Act. It may be that prior to the enactment of the Constitution Act, sugar and sugarcane were regarded as central subjects and the Indian Legislature had made laws about sugar and sugarcane. But the position changed with the passing of the Constitution Act, sugarcane agriculture and sugar industry then became Provincial subjects and an express declaration became necessary to bring the sugar industry under Federal Control by an Act of Indian Legislature passed after the Constitution Act came into force. No such declaration has till now been made. Hence as sugarcane as an agriculture and sugar manufacture as an industry are entirely provincial subjects the Provincial Legislature is competent to repeal the Sugarcane Act (1934) and to make its own laws about sugarcane and sugar as also about sugar factories. (*Dar, J.*) EMPEROR *v.* MUNNA LAL. **I.L.R. (1942) A. 302=200 I.C. 526=15 R.A. 3=1942 A.Cr.C. 62=5 Fed.L.J. (H.C.) 49=1943 Cr. =1942 A.Cr.C. 62=5 Fed.L.J. (H.C.) 49=1943 Cr. =1942 A.Cr.C. 62=5 Fed.L.J. (H.C.) 49=1943 Cr. L.J. 674 (2)=1942 A.W.R. (H.C.) 46=1942 A.L.W. 81=1942 O.A. (Supp.) 94=1942 A.L.J. 112=A.I.R. 1942 A. 156.**

——**Sch. VII, List I, No. 45**—*Excise duty—Sale tax and cess on entry of goods—Distinction between—"Excise duty", if raised in the British sense of the word.*

The true distinction between an excise duty, sale tax and a cess on entry of goods as used in the Constitution Act does not consist in the fact that the tax is on goods or that the tax is payable by manufacturer or producer but it consists in the fact whether the tax is on the act of production or on the act of sale or on the act of introducing goods in a particular area. Two conclusions follow from this that a tax on consumption of goods or a tax on purchase of goods whatever else it may be, cannot be an excise duty. And a tax on raw produce required by the manufacturer for his manufacture may be an excise duty or may be a general tax or may be a special tax, and the fact whether it is one or the other will depend upon the true nature of the tax in the light of surrounding circumstances of each case. The expression "excise duty" in entry No. 45 of list 1 in Sch. VII, Constitution Act, is used in a restricted sense so as to allow provinces to exercise powers under sales tax and cesses on goods without making those taxes excise duties in the British sense of the word. (*Dar, J.*) EMPEROR *v* MUNNA LAL. **I.L.R. (1942) A. 302=200 I.C. 526 =15 R.A. 3=1942 A.Cr.C. 62=5 F.L.J. (H.C.) 49 =43 Cr.L.J. 674 (2)=1942 A.W.R. (H.C.) 46=1942**

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——**Sch. VII, List I, No. 45, List II, Nos. 49 and 54 and List III, No. 36**—*U. P. Sugar Factories Control Act* (1938), *S.* 29 (2) *and U. P. Sugar Factories Control Rules, R.* 21-*A—Forms of special taxation to which Provincial Legislature can resort—Imposition of cess under S.* 29 (2) *of U. P. Sugar Factories Act, nature of—Act and R.* 21-*A of U. P. Sugar Factories Control Rules if* ultra vires *the Provincial Legislature.*

Fees and cesses are two forms of special taxation which a Provincial Legislature (provided it is given authority to do so) is entitled to resort to in order to recoup itself for any special expenditure which it has incurred for the benefit of a special class of persons against that special class. And the Provincial Legislature may recover the whole of this expenditure either by levying a fee which may be partly recurring and partly non-recurring and recurring portion may be based on monthly payment measured on the consumption of goods by the payer of fee or by levying a cess or partly by levying a fee and partly by levying a cess at its option. The imposition of a cess under Cl. (2) of S. 29 of the U. P. Sugar Factories Control Act is in the first instance a cess within the meaning of Entry No. 49 of List II and not a duty of excise within the meaning of Entry No. 45 of List I and if there be any difficulty in regarding it as a cess it can also be treated as a fee under Entry No. 54 of List II and Entry No. 36 of List III. The U. P. Sugar Factories Act, Cl. (2) of S. 29 and R. 21 A of the U.P. Sugar Factories Control Rules are all *intra vires* the Provincial Legislature. (*Dar, J.*) EMPEROR *v* MUNNA LAL. **I.L.R. (1942) A. 302=200 I.C. 526=15 R.A. 3=1942 A. Cr.C. 62=5 F.L.J. (H.C.) 49=43 Cr.L.J. 674 (2)=1942 A.W.R. (H.C.) 46=1942 A.L.W. 81=1942 O.A. (Supp.) 94 =1942 A.L.J. 112=A.I.R. 1942 A. 156.**

——**Sch. VII, List II, Entry No. 21**—*Scope of.*

Entry No. 21 in List II of Sch. VII of Government of India Act should be read and interpreted as a whole and in the light of entries Nos. 7, 8 and 10 of List III. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKHIA. **I.L.R (1942) Kar. (F.C.) 40=I.L.R. (1942) Lah. 623=200 I.C. 198=14 R.F.C. 25=8 B.R. 695=23 P.L.T. 502=55 L.W. 484=46 C.W.N. (F.R.) 61=44 P.L.R. 437= 1942 M.W.N. 403=5 Fed.L.J. 33=A.I.R. 1942 F.C. 27.**

——**Sch. VII, List II, Entry No. 21; List III, Entries Nos. 7, 8 and 10**—*"Agricultural Land"—Test.*

As the expression "agricultural land" has not been defined in the Government of India Act, it must be understood in the sense which it ordinarily bears in the English language.

Quaere.—Whether for the purposes of the relevant entries in Lists II and III of the Government of India Act it will not be right to take into account the general character of the land (as agricultural land) and not the use to which it may be put at a particular point of time. It is difficult to impute to Parliament the intention that a piece of land should, so long as it is used to produce certain things, be governed by and descend according to laws framed under List II, but that when the same parcel of land is used to produce something else (as often happens in this country), it should be governed by and descend according to laws framed under List III. (*Gwyer C.J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKHIA. **I.L.R. (1942) Kar. (F.C.) 40=I.L.R. (1942) Lah. 623=14 R.F.**

GOVT. OF INDIA ACT (1935), Sch. VII.

C. 25=200 I C. 198=5 Fed L.J. 33=8 B.R. 695=23 P.L.T. 502=55 L.W 484=46 C.W.N. (F R) 61=44 P.L.R. 437=1942 M.W.N. 403=A.I.R. 1942 F.C. 27.

——Sch. VII, List II, Entry No. 31—Power to legislate "with respect to intoxicating liquors" — If includes power to prohibit. *See* BIHAR EXCISE (AMENDMENT) ACT, 1940. 5 F.L.J. 17=A.I.R. 1942 F.C. 17 (F.C.).

——Sch. VII, List II, No. 49—*'Local area'—Meaning.*

The words 'local area' as used in Entry No. 49 of List II have no technical meaning and they are merely used in the dictionary sense of the word and hence it should mean any limited area or any area peculiar to a place, and as such factory area might well be regarded as a local area. *(Dar, J.)* EMPEROR *v.* MUNNA LAL. I.L.R. (1942) A. 302=200 I.C. 526=15 R.A. 3=1942 A.Cr.C 62=5 F.L.J. (H C.) 49=43 Cr.L.J. 674 (2)=1942 A.W.R (H.C.) 46=1942 O.A. (Supp.) 94=1942 A.L.W. 81=1942 A.L.J. 112=A. I R. 1942 A. 156.

GOVERNMENT OF INDIA (CONSTITUTION OF ORISSA) ORDER (1936), S 26—Scope and operation of—Madras Estates Lands Act—Force of in transferred areas—Orissa Laws Regulation, S. 7—Person paying more than Rs. 500 as peishkush in respect of estates transferred to Orissa—Right to benefit of Madras Act IV of 1938. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 3 (ii) PROVISO D. 55 L. W. 648.

GOVERNMENT SERVANTS' CONDUCT RULES—*Breach of—Effect—If renders act null and void—Village officer becoming partner in firm without permission—All transactions of partnership—If null and void—Breach of statute—Distinction.*

The fact that a village officer is prohibited by the Government Servants' Conduct Rules from engaging in business without the permission of the Government does not lead to the conclusion that all the transactions entered into on account of a partnership, in which a village officer becomes a partner without such permission, are null and void. Though an infringement by a village officer of the Rules would amount to misconduct which is punishable, that does not mean that every act which is the subject of misconduct is null and void. Such misconduct can be, and frequently is, condoned and excused, unlike in the case of a breach of statute. If an act is prohibited by statute, it becomes null and void *(Horwill, J.)* PERIAKARUPPAN *v.* SUBBARAMA AYYAR. 1942 M.W.N. 791 (2)=55 L.W. 701=(1942) 2 M.L.J. 563.

GRANT — *Construction—Inam grant for watching temple tower—Land yielding only small income—Statement before Inam Commission reciting that land was "given" for watching temple tower—If confers both warams.*

An inam grant in respect of two parcels of land was made in the time of the Karnatic Rajas, and the service to be performed was the guarding of the Sikaram of the Madura temple. The inamdars were required to provide four men as watchers throughout the day and night. The original grant was not forthcoming. A statement presented by the inamdars to the Inam Commission, when it was sitting, contained in a column an entry to the effect that "the land was given to our ancestors by the Rajas of Karnatic for watching the tower of the aforesaid temple and they were watching the tower of the said Meenakshi Amman temple and enjoying the said manyam land and now we are watching the said Meenakshi Amman temple and enjoying the inam land." The total income from the lands granted was small, amounting to no more than Rs. 136 per annum.

Held, that the words used in the statement implied a gift of the soil to the inamdars who were therefore entitled to both the melvaram and the kudivaram. *(Leach, C. J and Kuppuswami Ayyar, J.)* MADURA MILLS CO., LTD. *v.* MADURA SRI MINAKSHI SUNDARESWARAR DEVASTHANAM. 55 L.W. 471=1942 M. W.N. 459=A.I R. 1942 Mad. 578=(1942) 2 M.L.J. 175.

——Construction — Inam — Grant of lands in village—If of whole village or of part—Entries in main register and statement filed before inam commission—Value of—Inam—An "estate" under Madras Estates Land Act. *See* MADRAS ESTATES LAND ACT (AS AMENDED IN 1936), S. 6 (1), EXPLS. 1 AND 2. 1942 M.W.N. 700.

——Construction—Jagir grant in settlement disputes—If new root of title or merely confirms old status—Suit for possession of villages granted in jagir since resumed—Defendants setting up ancestral Khunt Kate jungle tarasi title—Absence of document to prove plea—Compromise—New grant—Effect of. *See* 1941 Dig., Col. 595. HARAKHNATH OHDAR *v.* GANPAT RAI. 198 I C. 680=14 R.P. 488=8 B.R. 449.

——Jagir—Cis-Sutlej Jagirs and Conquest Jagirs—Punjab. *See* 1940 Dig., Col. 633. DHANWANT SINGH *v.* SANT LAL. 44 P.L.R. 204.

——Jagir—Grant of villages in Chota Nagpur by Maharaja of Chota Nagpur to three brothers—Grantees not Hindus—Incidents of grant—Tenancy—Tenancy-in-common—Rule of primogeniture—If applies. *See* 1941 Dig., Col. 596. HARAKHNATH OHDAR *v.* GANPAT RAI. 198 I.C. 680=14 R.P. 488=8 B.R. 449.

——Rent free grant—Presumption from circumstances. *See* 1941 Dig., Col. 596. KIRPA SANKAR WARRAH *v.* JANKI PRASAD LALLU. A.I.R. 1942 Pat. 86.

——*Service inam—Alienability—Masjid service land—Holder becoming insolvent—Right of Official Receiver to hold and let out lands.*

Masjid service inam lands granted for doing service in a Mosque are inalienable, and where the grantee or holder of such lands becomes insolvent, the Official Receiver has no right to let the lands as being vested in him. *(Mockett and Happell, JJ.)* MASUMAYYA *v.* OFFICIAL RECEIVER, KURNOOL. 55 L.W. 640=1942 M.W.N. 621=A.I.R. 1943 Mad. 72=(1942) 2 M.L.J. 504.

——*Service grant—Inam grant by Mahajans owning Dharmasasanam village as emoluments for doing service in village temple—Alienability—Mortgage by holder—Validity of.*

Where lands in a Dharmasasanam village (village granted to Brahmins) are granted as inam by the Mahajans owning the village, to a person as emoluments for rendering service in the temples in the village, the grant is a service grant; and the mere fact that the grantor is the Mahajans, and not a zamindar, would not make the grant any the less a service grant. An alienation of such lands is invalid as opposed to public policy. Alienation of land granted for service in temples is invalid; this principle applies not only to sales but also to mortgages. The test is whether the alienation in effect places the income from the lands beyond the disposal of the holder of the office and prevents him from enjoying the emoluments which were intended to go to the holder of the office in order to enable him to discharge his duties properly. *(Kuppuswami Ayyar, J.)* CHELLIAH *v.* RANGASWAMI AYYANGAR. 1942 M.W.N. 691=

GRANT

55 L.W. 727 = A.I.R. 1943 Mad 57 = (1942) 2 M.L.J. 624.

——Service grant—Inam—Grant of lands in village for Nitya Naivedya Deeparadhana and other Kainkaryams in Math—If grant for service. *See* MADRAS ESTATES LAND ACT (AS AMENDED IN 1936), S. 6 (1), EXPLS. 1 AND 2. **(1942) M.W.N. 700.**

GROVE. *See also* AGRA TENANCY ACT, S. 3 (15).
U. P. TENANCY ACT S. 3 (6).

——*Exemption from ejectment—Extent— Planting of trees only in part of plot.*

Where a newly planted area is exempted from ejectment on the ground that it has been converted into a grove the exemption cannot extend to the whole plot if it is shown that only one portion of it has been planted with trees in such a way as to render cultivation impossible. (*Shirreff, S.M. and Sathe, J.M.*) SRI KRISHNA DUTTA DUBE *v.* BISHUN CHANDRA. **1942 A.W.R. (Rev.) 429 = 1942 O.A. (Supp.) 455 = 1942 O.W.N. (B.R.) 639.**

——*Transfer of proprietary shares— Groves also, if pass.*

Groves also pass with the transfer of proprietary shares in the mahal unless they are specially exempted in the sale deed. (*Shirreff, J. M. and Sathe A. M.*) TIKA RAM *v.* BADAN SINGH. **1941 O.A. (Supp.) 962 = 1941 A.W.R. (Rev.) 1214.**

GUARDIANSHIP.

See also (1) HINDU LAW—GARDIANSHIP.
(2) MAHOMEDAN LAW—GUARDIANSHIP.
(3) GUARDIAN AND WARDS ACT.

GUARDIANS AND WARDS ACT (VIII OF 1890), Ss. 7 and 39—*Applicant for guardianship of property—It should be resident of district.*

Under the Guardians and Wards Act, it is not essential that a person who applies for being appointed guardian of the property of a minor should be a resident of the district in which the property is situated. The power of the Court under S. 39 of the Act to remove a guardian who is not residing in the district within which the property is situated is discretionary and it cannot reasonably be inferred therefrom that the applicant must necessarily be a resident of the district in which the property is situated (*Bhide, J.*) GHULAM QADAR *v.* ALLAH DIN. **201 I.C. 137 = 15 R.L. 32 = 44 P.L.R. 203 = A.I.R. 1942 Lah. 162 (1).**

——**S. 7**—Duty of Court under—Order for custody in advance—Competency. *See* 1941 Dig., Col 597. SHIWAWWA BALAPPA *v* CHENBASAPPAGOWDA SANGANGOWDA. **198 I.C. 134 = 14 R.B. 271**

——**Ss. 12 and 43 and C. P. Code, O. 39**—Distinction in the powers exercisable under. *See* 1940 Dig., Col. 634. DISTRICT JUDGE, CHHINDWARA *v.* BASORILAL. **I.L.R. (1942) Nag. 45.**

——**S. 17**—*Appointment of guardian—Considerations—Mahomedan minor—Paternal relation—Right of to guardianship of minor boy as against mother who has re-married—Duty of Court to appoint fit and proper person.*

Under the Mahomedan law, in the case of a male minor child of over 9 years, his consanguine brother, who is male paternal relation has a preferential right to the custody over the minor's mother. But this right is not unqualified but is conditional upon the Court being satisfied that the male paternal relation is a fit and proper person to be appointed guardian. According to the proper interpretation of S. 17 of the Guardians and Wards Act, in the case of a Mahomedan guardian to be appointed in the order of relations with preferential rights, the appointment can be made only of a relation who in the opinion of the Court is a fit and proper person. The

GUARDIANS AND WARDS ACT (1890), S 25.

paramount consideration in an appointment under S. 17 is the interest of the child, consistently with the law to which the minor is subject. S. 17 cannot be construed as laying down that once it is shown that there is a relation alive in the order of relations entitled, according to the Mahomedan law, to the guardianship of the child that relation must be appointed. The Mahomedan law does not require that such a relation should be appointed if the Court considers that he is not a fit and proper person to be appointed guardian. The Court, if that relation is not a fit and proper person, must then look, down the list for some other relation, and if there is no other relation, then, under the Mahomedan law, a stranger may be appointed guardian. (*Davis, C.J.*) GHULAM MAHOMED, *In re.* **I.L.R. (1942) Kar. 363 = A.I.R. 1942 Sind 154.**

——**S. 17**—*Appointment of guardian— Primary consideration—Prospective order—Propriety.*

The primary consideration in appointing a guardian under the Act is the welfare of the minor provided that the appointment is not inconsistent with the law to which the minor is subject. After the death of her Hindu husband leaving a young daughter, the wife embraced the Mahomedan religion and married a Mahomedan. The grandmother (mother's mother) and the mother were persons competing for the guardianship. The lower Court held taking into consideration the age, sex and circumstances of the parties, etc., that the mother was the proper guardian but that as the child should be brought up in the religion of her father, the grandmother should be the guardian when the child reaches the age of ten.

Held, that as the child while very young was not likely to have any convictions on question of religion, the mother was entitled to the custody in preference to the grandmother if she was otherwise a suitable guardian.

Held, further, that the order directing that the grandmother should be the guardian after the child became ten years old was not proper. If subsequently the child was brought up in any religion other than Hindu—which was her father's religion and in which she should be brought up—the grandmother could then make an application for getting herself appointed guardian. (*Almond, J.C.*) BUDHAN *v.* BAHADUR KHAN. **202 I.C. 107 = 15 R. Pesh. 34 = A.I.R. 1942 Pesh. 41.**

——**S. 17**—Mahomedan minor—Female relation having preferential right to custody marrying stranger—If thereby disqualified from being appointed guardian—Considerations for Court. *See* 1941 Dig., Col. 598. TUMINA KHATUN *v.* GAHARJAN BIBI. **201 I.C. 106 = 15 R.C. 127 = A.I.R. 1942 Cal. 281.**

——**S. 17**—*Scope and applicability—Admission of co-tenant to an existing tenancy.*

S. 17 of the Guardians and Wards Act relates only to conferment of leases for periods over 5 years and cannot therefore apply to the admission of a co-tenant to an existing tenancy. (*Sathe, A.M.*) NANHEE *v.* GOPI CHAND. **1942 O.W.N. (B.R.) 22 (2) = 1942 O.A. (Supp.) 15 = 1942 A.W.R. (Rev.) 15 = 1942 R.D. 38 (2).**

——**Ss. 19 and 25**—Applicability — Mahomedan minor girls—Maternal grandmother — Application against father for appointment of guardian and for custody—Maintainability. *See* 1941 Dig., Col. 598. FATIMA BIBI *v.* SHAIK PEDA PENTU SAHEB. **200 I.C. 336 = 15 R.M. 79 = (1941) 2 M.L.J. 548.**

——**S. 25**—Custody—Meaning of—Father never having custody of child—Application for custody—Jurisdiction to order custody to father. *See* 1941 Dig., Col. 598. SHIWAWWA BALAPPA *v.* CHENBASAPPAGOWDA SANGANGOWDA. **198 I.C. 134 = 14 R.B. 271.**

GUARDIANS AND WARDS ACT (1890), S. 25.

——S. 25—Father's right to custody of child—Power of Court to impose limits. *See* 1941 Dig., Col. 599. JWALA PROSAD SAHA *v.* BACHU LAL GUPTA. 200 I.C 362=14 R.C. 699=A.I R. 1942 Cal. 215.

——S. 25—Minor never in custody of father—Application by father for his custody—If maintainable *See* 1941 Dig., Col. 599. JWALA PROSAD SAHA *v.* BACHU LAL GUPTA. 200 I.C. 362=14 R.C. 699= A.I.R. 1942 Cal. 215.

——Ss. 29, 30 and 31—Sanction of Court—Extent of protection—Policy of Court—Transaction different from that sanctioned—Avoiding—Restoration of benefit. *See* 1941 Dig., Col. 599. ABBAS HUSEIN *v.* KIRAN SHASHI DEVI. I L.R. (1942) Nag. 161=14 R.N. 213=198 I.C. 313=A I.R. 1942 Nag. 12

——Ss. 41 and 45—*Scope—Powers of Court—Order directing ex-guardian to deposit money in Court—Executability as decree or executable order—Proper procedure for enforcement.*

There is no provision in the Guardians and Wards Act which authorises the execution of an order passed by the District Judge in a proceeding under that Act, directing an ex-guardian to deposit into Court a certain sum of money. Though the Court has ample powers to enforce obedience of its orders by proceeding under S. 45 of the Act, the Act nowhere provides that an order may be executed as if it were a decree or an executable order of a Civil Court within the meaning of S. 36, C. P. Code. It is, however, open to the District Judge to proceed under S. 45 or direct the institution of a regular suit against ex-guardian so that the amount which is ultimately found to be realisable from him may be realised from the properties given by him as security under a security bond executed by him in favour of the Court. A guardian or ex-guardian can be directed to bring in the money which is found due from him upon a proper scrutiny of the accounts and not merely of so much of the money as he admits to be due from him, and in case of his failure to do so, he can be proceeded against under S. 45 of the Act to enforce that order. Such an order cannot be executed as if it were a decree of a Civil Court. (*Harries, C.J. and Manohar Lall, J.*) MUNI LAL AGARWAL *v.* BALBHADAR PRASAD. 21 Pat 223=201 I.C. 268=15 R P. 38=8 B.R. 778 =1942 P.W N. 188=A I.R. 1942 Pat. 422.

——S. 45—Scope—Order directing ex-guardian to deposit money into Court—Executability—Enforcement—Procedure—Powers of Court. *See* GUARDIANS AND WARDS ACT, SS. 41 AND 45. 21 Pat. 223.

——S. 47 (a)—*Application for appointment of guardian dismissed with costs—Order passed in execution of order—Appealability.*

Where a Subordinate Judge had dismissed an application for the appointment of a guardian and in dismissing it had awarded costs against the applicant, an order passed in execution for the costs of such an application would be appealable to the High Court. (*Sale, J.*) SHARBATI DEVI *v.* KALI PARSHAD. 200 I.C. 606= 14 R.L. 469=44 P.L R. 106=A I R. 1942 Lah. 119.

——S. 48—Scope and effect—Judgment appointing guardian for minor—If can be attacked collaterally—Evidence Act, Ss 43 and 44. *See* 1941 Dig., Col. 600. VENKATARANGACHARYULU *v.* AKKAPPA RAO. 198 I.C. 305=14 R.M 417=(1941) 1 M L J. 492.

HIGHWAY—*Dedication—Long user—Presumption from—If and when may arise.*

Dedication of a public right of way can be presumed from long user. To support the inference of dedication, the user must be by the public generally and not by a section of it. Such user, again, must be as of right, that is to say, it must purport to be in exercise of a public right of way, and acquiesced in as such by or on behalf of the owner of the land against whom the presumption of dedication is to be made. As regards the length of public user, the period is material only as one element from which the intention to dedicate may be inferred. There is neither a fixed minimum period which must be proved in order to justify an inference of dedication, nor a fixed maximum period which must compel such an inference. If the user is sufficient to raise a presumption of dedication, it is not necessary that the evidence of user must go back to the date of dedication. Although proof of open, uninterrupted and continuous user may give rise to a presumption of dedication, the presumption is still one of fact, and not of law. It must not be supposed, therefore, that if there is no evidence in rebuttal, the Court shall be bound to give effect to the presumption and hold dedication proved as a matter of course. (*Biswas, J.*) PANCHANON ROY *v.* FAZLUR RAHMAN. I.L.R. (1942) 2 Cal. 427 = 202 I.C 470=15 R.C 347=46 C.W.N. 743=A.I. R. 1942 Cal. 505.

——*Obstruction to—Cause of action—Owner of roadside building—Right of.*

The public is entitled to the use of the whole area which has been dedicated as a road, and it is immaterial whether a portion of the road is metalled or whether a ditch runs alongside the road. An owner of a roadside building whose right of access to the public road is infringed by an obstruction on the public road has a cause of action both as a member of the public and as owner of roadside property. Whether the obstruction is caused by the Municipal Committee or by the Government is immaterial. The owner can bring a suit to remove the obstruction without the Advocate-General's sanction under S. 91, C. P. Code. No damages in such a case can be adequate to compensate the owner for the harm suffered by him which is of a continuing nature and therefore he is entitled to have the obstruction removed (*Almond, J.C.*) MAHOMED AKBAR KHAN *v.* PROVINCIAL GOVERNMENT, N.-W.F.P. 197 I.C. 856=14 R Pesh. 65=A.I.R. 1942 Pesh. 1.

——Obstruction—Wall across public road interfering with enjoyment of property by owner—Suit by latter for mandatory injunction to remove wall—Allegation and proof of special damage—Necessity. *See* 1941 Dig., Col. 601. BHULOGANATHAM PILLAI *v.* RAJAGOPALA PILLAI. 200 I.C. 369=15 R.M. 40= (1941) 2 M.L.J. 105.

——Right to go in procession with music—Worshippers in temple or mosque abutting on high road—Right to insist on stoppage of music. *See* 1941 Dig., Col. 602. IMAM SAB *v.* J. SHAMA JOIS. 46 Mys.H.C.R. 524.

HINDU LAW—*Adoption—Capacity to make—Boy below fifteen years—Adoption by—Validity—Law in Bombay*

According to the Bombay view there is no hard and fast rule that an adoption by a youth or girl who has not completed the age of fifteen years is necessarily invalid. The Court has regarded the question of the possession of the necessary understanding and discretion as a question of fact to be determined on the evidence in the particular case. Though an adopter is aged only 14 years, if it is found that he had sufficient maturity of understanding to comprehend the nature of the act of adoption and its consequences, the adoption must be held to be valid. (*Broomfield and Sen, JJ.*) KASHINATH BALKRISHNA *v.* ANANT MURLIDHAR. 203 I.C. 352 =44 Bom L.R. 629=A.I.R. 1942 Bom. 284.

——*Adoption — Acceptance — Formal words—Not essential.*

HINDU LAW—Adoption.

Where both the adoptive parents asked the natural parents to give their son in adoption to which the latter agreed and all of them took part in the religious ceremony and the boy was clasped to her breast by the adoptive mother and the requirements of giving and taking were sufficiently fulfilled the adoption was not vitiated by the absence of the words 'I accept this boy in adoption'. (*Agarwal and Madeley, JJ.*) GHISSAI RAM *v.* BAREY LAL. **202 I.C. 561=15 R.O. 136=1942 O.A. 471=1942 A.W.R. (C.C.) 340 (1)=1942 O.W.N. 541 =A.I.R. 1942 Oudh 490.**

———*Adoption—Jains—Law applicable — Marwari Jains of* Visa-oswal *community migrating from Jodhpur to Bombay—Adoption by widow—Validity—Consent of husband or sapindas—Not essential.*

Jains are ordinarily governed by the Hindu Law and an alleged custom to the contrary has to be proved by the party setting up that custom. In many respects, however, the Jains are governed by special custom at variance with the Hindu Law. Among Marwari Jains of the *Visa oswal* community who originally belonged to the Jodhpur state but migrated to the Thana District in the Bombay Presidency, the customary law is that a widow can make a valid adoption to her husband without the consent of her husband or of his relations. (*Broomfield and Sen, JJ.*) SUGANCHAND BHIKAMCHAND *v.* MANGIBAI GULABCHAND. **I.L.R. (1942) Bom. 467=201 I.C. 759=15 R.B. 111=44 Bom.L.R. 358=A.I.R. 1942 Bom. 185.**

———*Adoption—Dwyamushyayana form—Son born to adoptee after adoption—Status of—Right to inherit to adoptive father in preference to latter's brother's son.*

A son born to a person adopted in the dwyamushyayana form after such adoption ranks as a grandson of the adoptive father, and inherits his property in preference to a brother's son of the adoptive father. (*Broomfield and Wassoodew, JJ.*) GANAPATRAO SHRIPATRAO *v.* BALKRISHNA GURURAO. **I.L.R. (1942) Bom. 340=201 I.C. 633=15 R.B. 95=44 Bom L.R. 333=A.I.R. 1942 Bom. 193.**

———*Adoption—Dwyamushyayana adoption—Death of adoptee leaving adoptive mother and natural mother—Estate taken by both half and half—Subsequent adoption by adoptive mother—If divests property of natural mother of prior adoptee.*

A son adopted in the dwyamushyayana form inherits in both families, and both families inherit to him. Where a son adopted in that form dies leaving his natural mother and adoptive mother, both of them inherit to him taking his property half and half. If subsequently the adoptive mother adopts another son, that will not have the effect of divesting the natural mother of the estate already vested in her on the death of the prior adopted son. and the second adopted son cannot therefore claim the property inherited by the natural mother of the prior adopted son. (*Broomfield and Macklin, JJ.*) KANTAWA BASAPPA *v.* SANGAN GOWDA. **I.L.R. (1942) Bom. 303=200 I.C. 863=14 R.B. 41=44 Bom.L.R. 269=A.I.R. 1942 Bom. 143.**

———*Adoption—Giving and taking— Formal ceremony if essential*—Datta homam—*If can be subsequently performed by widow of adoptive father.*

Hindu law does not require that there shall be a formal ceremony when a boy is given and accepted. For a valid adoption all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, that the boy shall be handed over and taken for this purpose and that the adoption ceremony shall he performed when the parties belong to the twice born classes. The datta homa can be subsequently performed by the widow of adoptive father.

HINDU LAW—Adoption.

(*Leach, C. J. and Kuppuswami Ayyar, JJ.*) MUTHUVAYYANGAR *v.* THIRUVANGADAMMAL. **I.L.R. (1942) Mad. 682=198 I.C. 132=1942 M.W.N. 153 =A.I.R. 1942 Mad. 395=(1942) 1 M.L.J. 285.**

———*Adoption—Partition of joint family property prior to adoption—Adopted son's right to re-open partition and claim share.*

The head of a joint Hindu family died in 1929, leaving him surviving two sons and the widows of two predeceased sons. In 1936, there was a partition of the family properties between the sons and some time later the widows of the predeceased sons adopted each a son. In a suit by one of the adopted sons for the recovery of a fourth share of the properties,

Held, that the adopted son occupies the same position as a posthumous son and has all the rights of an *aurasa* son for the purpose of succession in the adoptive family though he will take the estate subject to the dispositions made within the competency of the persons entitled to hold such estate till his adoption. Partition does not however stand on the same footing as an alienation of joint family property. Accordingly, the fact that the adoption took place subsequent to the partition does not bar the right of the adopted son to claim his legitimate share as appertaining to his adoptive father in the family property held by the members of the family and not validly disposed of. (*Venkataramana Rao, J.*) SANKARALINGAM PILLAI *v.* VELUCHAMI PILLAI. **1942 M.W.N. 84=55 L.W. 388=A.I.R. 1942 Mad. 338=(1942) 1 M.L.J. 119.**

———*Adoption—Right of adopted son—Partition effected before adoption by coparcener's widow—Right of adoptee to re-open partition.*

Under the Hindu law where property is taken by survivorship the power of the widow of a coparcener to adopt is not affected. Adoption dates back to the date of the death of the adoptive father, and it is to that date that regard must be had for the purpose of determining the rights of the adopted son. The existence of coparcenary at the date of the adoption is therefore not material. A son adopted to a deceased coparcener is therefore entitled to re-open a partition of family property effected by the surviving coparceners before the adoption took place. The adoption restores the position so far as the adopted son is concerned subject to lawful alienation in the meantime. A partition does not amount to an alienation of family properties. (*Leach, C. J., Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) SANKARALINGAM PILLAI *v.* VELUCHAMI PILLAI. **1942 M.W.N. 704=55 L.W. 794=A.I.R. 1942 Mad. 43=(1942) 2 M.L.J. 678 (F.B.).**

———Adoption—Validity—Married person. *See* 1941 Dig., Col. 604. BHARAT BASI NAIK *v.* GOPI NATH NAIK. **197 I.C. 866=14 R.A. 257.**

———*Adoption—Validity—Suit to declare adoption invalid or untrue—Onus of proof.*

Where a plaintiff asks for a declaration that an alleged adoption is invalid or untrue, the burden is on him to make out a *prima facie* case that the adoption challenged by him is invalid in law or never in fact took place. (*Fazl Ali, J.*) KASHI PALEI *v.* RADHIKA DEI. **8 Cut.L.T. 96.**

———Adoption—Widow— Adoption by—Death of adopted son unmarried—Second adoption by widow subsequently—Validity—If divests estate vested in widow. *See* 1940 Dig., Col. 639. PATTU ACHI *v.* RAJAGOPALA PILLAI. **I.L.R. (1941) Mad. 970=200 I.C. 375=15 R.M. 35.**

———*Adoption—Widow—Adoption by widow of* gotraja sapinda *when coparcenary is at an end—Estate already*

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vested in widow of another gotraja sapinda—*If divested—Right of adopted son to sue in respect of.*

An adoption made by a widow when the co parcenary is at an end cannot divest property which has already vested in or through the heir of the last male holder. A widow of a *gotraja sapinda* who succeeds to property as such cannot, by an adoption, alter after her own death the devolution of that property to which she became entitled as the widow of a *gotraja sapinda*, and deprive the reversioner of his rights, whether vested or contingent. The adoptive son does not take the life estate of his adoptive mother; such a theory is entirely unknown to Hindu Law. The estate which an adopted son acquires on adoption is an absolute estate and any suit that he brings with respect to the property claimed must be brought on that footing. When he has been adopted by the widow of a *gotraja sapinda* he cannot bring a suit on that footing, because the adoption by the widow will not alter the order of inheritance of the property. It is not therefore open to the adopted son to sue at all in respect of property which has gone to his adoptive mother as the widow of a *gotraja sapinda*. (*Broomfield and Macklin, JJ.*) MADHAVSANG HARIBHAI *v.* DIPSANG JIJIBHAI. **202 I.C. 648=15 R.B. 178=44 Bom.L.R. 661=A.I.R. 1942 Bom. 280.**

———Adoption—Widow—Adoption by with authority of nearest sapinda—Motive in adopting—Relevancy—Widow actuated by improper motive—If renders adoption invalid. *See* 1941 Dig., Col. 604. KANAKARATNAM *v.* NARASIMHA RAO. **I.L.R. (1942) Mad. 173 1942 A.L.W. 59=1942 O.W.N. 84=198 I.C. 236=14 R.M. 402=(1941) 2 M.L.J. 803 (F.B.).**

———Adoption—Widow—Authority to adopt given by sapinda—If to be to adopt particular person—Authority expressed in general terms—Adoption in pursuance of—Validity. *See* 1941 Dig., Col. 605. VENKAYYA *v.* SREERAMULU. **I.L.R (1942) Mad 163=198 I.C. 248=14 R.M. 410=(1941) 2 M.L.J. 798 (F.B.).**

———*Adoption—Widow—Boy given at datta homam ceremony—Agents of widow taking boy on her behalf—Widow present and accepting boy—Validity of adoption.*

An adoptive parent can delegate some one to accept the child in adoption on his or on her behalf. Where a Hindu widow appoints agents to receive a boy in adoption on her behalf and is herself present at the giving and taking at the datta homam ceremony and accepts the boy through the hands of her agents or representatives, it must be held that there is a lawful giving and taking and that the datta homam ceremony is properly performed. (*Leach, C.J. and Bell, J.*) VIYYAMMA *v.* SURYAPRAKASA RAO. **I.L.R (1942) Mad 608=55 L.W. 154=1942 M.W.N. 188=A.I.R. 1942 Mad. 379=(1942) 1 M.L.J. 331.**

———*Adoption—Widow—Gond Saraswat Brahmins of Karwar in North Kanara—Adoption by widow without husband's authority or consent of coparceners—Validity—Law applicable.*

North Kanara was part of the Madras Presidency until it was transferred to Bombay for administrative reasons in 1861. But this transfer did not affect the *lex loci* and Hindus in North Kanara are presumed to be governed by the Hindu Law as prevailing in the Madras Presidency until the contrary is shown. Gond Saraswat Brahmins in the Karwar District of North Kanara are governed by the *lex loci*, *i.e.*, the Mitakshara School of law prevailing in Madras. Consequently an adoption made by a widow without the authority of her husband or the consent of coparceners is invalid. (*Broomfield and Sen, JJ.*) DATTATRAYA MARUTI *v.*

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LAXMAN JATTAPPA. **I.L.R. (1942) Bom. 584=203 I.C. 139=44 Bom L.R. 527=A.I.R. 1942 Bom. 260.**

———*Adoption—Widow in Madras—Adoption with consent of nearest divided sapindas—Sufficiency—Surviving coparcener insane—Majority of divided sapindas refusing consent falsely alleging coparcener to be sane—Validity of adoption.*

The widow of a member of a joint Hindu family in the Madras Presidency can adopt a son to her deceased husband with the assent of the nearest divided sapindas when the only surviving coparcener is insane. Where a sapinda improperly withholds his consent, it may be ignored. In such a case it is not a question of a majority assenting, but whether those dissenting, if they form the majority, have dissented from improper motives. Where the majority withhold their consent on the basis of an untrue allegation that the surviving coparcener is sane, the refusal may be ignored as being improper, and the consent of the others would be sufficient to validate the adoption. (*Leach, C. J. and Krishnaswamy Ayyangar, J.*) CHELLATHAMMAL *v.* KALITHEERTHA PILLAI. **202 I C 747=1942 M.W.N. 496=55 L.W. 476=A.I.R. 1942 Mad. 606=(1942) 2 M L.J. 206.**

[REVERSED KALITHIRTHA PILLAI *v.* CHELLATHAMMAL. **201 I C 869=15 R M. 378=1942 M.W N. 19=55 L.W. 104=A.I.R. 1942 Mad. 300=(1942) 1 M.L.J. 28.]**

———Adoption — Widow—Power of — Prohibition against adoption—What amounts to—Will by husband in respect of property—Implied prohibition of adoption—When to be inferred—Testator emphasising rights of brother as sole surviving coparcener—If amounts to prohibition of adoption. *See* 1941 Dig., Col. 606. KRISHNAWA YELAGOUDA *v.* RAMAGOUDA KADAGOUDA. **198 I C. 622=14 R B. 329.**

———*Adoption—Widow having natural son living though disqualified by congenital idiocy—Adoption by, invalid.*

Under the Hindu Law a widow is incompetent to a make a valid adoption to her husband when there is a natural born son living although the natural born son is, by reason of congenital idiocy, disqualified from inheriting or providing for his father's spiritual advancement, as he cannot be said to be "aputra". The existence of such a disqualified son is a bar to an adoption by the widow. (*Wadia and Sen, JJ.*) KRISHNAJI HANMANT DIWAN v. RAGHAVENDRA KESHAV MUTALIK. **I.L.R. (1942) Bom. 486=201 I.C. 401=15 R.B. 70=44 Bom.L.R. 371=A.I.R. 1942 Bom. 178 (2).**

———*Adoption—Widow—Unchastity—When makes adoption invalid—Past unchastity—Effect of.*

A Hindu widow living in concubinage and in a state of pregnancy resulting from such concubinage is incompetent to take or receive a son in adoption to her deceased husband. But past unchastity of a widow in itself would not mean that she could not make a valid adoption years after. (*Leach, C. J. and Bell, J.*) VIYYAMMA *v* SURYAPRAKASA RAO. **I.L.R. (1942) Mad. 608=1942 M.W.N. 188=55 L.W. 154=A.I.R. 1942 Mad. 379=(1942) 1 M.L.J. 331.**

———Adoption—Widow—Unchaste widow—Adoption by—Validity. *See* 1941 Dig., Col. 607. RAMU BALA *v.* JANA DALA. **198 I.C. 488=14 R.B. 309=A.I.R. 1942 Bom. 12.**

———Alienation—After-born son or coparcener—Right to challenge—Alienation without necessity—Absence of consent of sons or coparceners then living—Son born before ratification of alienation—Right of, to challenge. *See* 1941 Dig., Col. 607. BHAGWAT

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PRASAD BAHIDAR *v.* DEBICHAND DOGRA. **199 I.C 408=14 R.P. 570=8 B.R. 561=28 P.L.T. 528=8 Cut. L.T. 99=A.I.R. 1942 Pat. 99.**

———*Alienation—After-born son—Right to question.*

A son conceived and born after a mortgage of joint family property cannot challenge it though he may question it. (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARI LAL. **I.L.R. (1942) Nag. 543 =200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 39.**

———Alienation—Co parcener—Mortgage by coparcener—Subsequent partition—Purchaser of separate interest of coparcener—If can question validity of mortgage. *See* 1941 Dig., Col. 608. PANKAJINI DEBI *v.* PRAMATHA NATH GHOSH. **A.I.R. 1942 Pat. 95.**

———*Alienation — Co-widows — Mutual consent to alienations—Inference.*

Where apart from the recitals in the deeds of mortgage executed by two Hindu widows, it is found that both of them executed on the same day the two deeds of mortgage in identical terms to secure the same amounts of debt in order to discharge their respective liabilities in the same debt due from the estate, it can be inferred that each consented to the alienation of the other. (*Allsop and Verma, JJ.*) JAI NARAIN SINGH *v.* COLLECTOR OF ALIGARH. **200 I.C 641=15 R.A 24=1942 A.L.W. 176=1942 A.L.J. 152=1942 O.A. (Supp.) 147 (2)=1942 A.W.R. (H.C.) 71=A.I.R. 1942 A. 189.**

———Alienation—Daughter inheriting mother's property—Alienation of part for meeting marriage expenses of her daughter's daughter—Validity. *See* 1941 Dig., Col. 608. SRINIVASA RAO *v.* SESHA CHARLU. **I.L.R. (1942) Mad. 42=198 I.C. 169=14 R.M. 394=A.I.R. 1942 Mad. 106=(1941) 2 M.L.J. 406.**

———*Alienation—Duty of lender—Enquiry.*

Any person who lends money to a Hindu must be aware that he makes advances under the risk of claims being made by other members of the joint Hindu family, and if he does not take sufficient care to satisfy himself that there is nobody to make a claim or that there is really legal necessity for the advance of the money which is requested of him, then he must bear the consequences. (*Allsop and Verma, JJ.*) BRIJ JIWAN DAS *v.* SRIMATI KAWAL BIBI. **1942 A.W.R. (H.C.) 330=1942 A.L.J. 616=1942 A.L.W. 596=A.I.R. 1942 A. 444.**

———Alienation—Father's alienation not supported by necessity—Right of after-born son to challenge. *See* 1941 Dig., Col. 609. GURMURTHIAH *v.* SEETHARAMIAH. **46 Mys. H.C.R. 547.**

———*Alienation—Father—Mortgage on behalf of himself and his minor sons—Enforceability against sons' interests—Burden of proof—Recitals in deed—Value of.*

In the case of a mortgage of ancestral joint family property executed by a Hindu father for himself and as guardian of his minor sons, if the mortgagee wishes to enforce the mortgage *qua* mortgage and to get a decree for sale against the sons' interests in the family property, the plaintiff would leave the onus on him of proving that the mortgage had been effected by the father for a legal necessity or for the payment of an antecedent debt. The plaintiff must prove either necessity in fact or its legitimate substitute, *i.e.*, a *bona fide* and proper enquiry as to the existence of such necessity or the existence of antecedent debts. Recitals in the mortgage-deed that the debt was advanced to the father for legal necessity are not alone sufficient to shift the onus of proof on to the sons. (*Abdur Rahman, J.*) SREERAMULU *v.* THANDAVA KRISHNAYYA. **55 L.W. 594=A.I.R. 1943 Mad. 77=(1942) 2 M.L.J. 452.**

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———*Alienation — Father —Mortgage— Validity—Antecedent debt—Mortgage for payment of balance of price for property purchased immediately before—If for necessity or antecedent debt—Sons—If bound.*

A Hindu father executed a mortgage deed on 18—3—1927 for Rs. 1,000, which he borrowed for the purpose of enabling him to pay the balance of sale price due in respect of a property purchased by him under a sale deed dated 9—2—1927 and registered on 6-4-1927. In a suit on a mortgage, the mortgagor's son pleaded that the mortgage was not binding upon him as it was not for necessity or antecedent debts. It was found that the two transactions, sale and mortgage were part of the same transaction.

Held, that the fact that the mortgage-deed was executed between the execution of the sale deed and the date of its registration together with the payment of the balance of sale price (which was the amount borrowed under the mortgage-deed) indicated that the two transactions were closely connected and were not independent and the debt was not therefore an antecedent debt which would justify the mortgage so as to bind the mortgagor's son. The mortgage could therefore be enforced only against the father's share in the mortgaged property, and the son was entitled to resist the suit though he was in enjoyment of the property purchased by the father with the aid of the mortgage money. (*Happell, J.*) NANJUNDA REDDI *v.* VENKATAPPA. **55 L.W. 769=A.I.R. 1942 Mad. 758=(1942) 2 M.L.J. 500.**

———*Alienation—Father—Powers of—Self-acquired and joint property.*

It is now settled law that the father has unrestricted power in respect of his self-acquisitions, both movable and immovable. The passage in the Mitakshara prohibiting the alienation of his self-acquired immovable property by the father without the assent of the sons has been construed as laying down a rule founded merely on moral and religious considerations, carrying with it no legal obligation. As regards the joint family property, the power of the father to make a binding loan and the power to dispose of the property are not co-extensive. The validating occasion for a loan made by the father is much wider than that for creating a right *in rem* in respect of the joint family property. (*Nasim Ali and Pal, JJ.*) BUDHKARAN *v.* THAKUR PRASAD. **I.L.R. (1942) 1 Cal. 19=46 C.W.N. 425=75 C.L.J. 59=A.I.R. 1942 Cal. 311.**

———*Alienation — Father—Suit on mortgage by—Death of father—Defences open to after-born son.*

After the institution of a foreclosure mortgage suit one of the defendants died and his son who was born some 7½ months after his death, was brought on record in the father's place as his legal representative.

Held, that the after born son had a dual capacity. In his own right he could not challenge the mortgage, but in so far as he was the legal representative of his father he could take any plea which was open to his father and could continue to defend the suit on grounds which his father had already raised unless of course the right to contest died with the deceased (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARI LAL. **I.L.R. (1942) Nag. 543=200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 39.**

———*Alienation for starting new business when justified.*

An alienation of joint family property for the purpose of starting a new and possibly speculative business would be justified if it was clearly for the benefit of the family for example where property is mortgaged to start a valuable mining business which in the result prospers

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and continues to prosper so that a comparatively poor family is raised to affluence within the course of a few years. In such circumstances minor members of the family, while retaining all the benefits of the new prosperity, cannot challenge the alienati n which made it possible. The borrowing could not be justified on the ground of "necessity" in such a case, but it could, and would, on the ground of "benefit to the estate." The grounds of "necessity" and "benefit" to the estate are separate and distinct. (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARILAL. **I.L.R. (1942) Nag. 543=200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 39.**

——Alienation—Limited owner—Daughter's alienation—Benefit or necessity—Burden of proof—Next reversioner's consent—Effect of—Inquiry proved as to part of consideration only—If sufficient. *See* 1941 Dig., Col. 613. MUNIVENKATAMMA *v.* CHIKRANGANNA. **46 Mys. H.C.R. 475.**

——*Alienation—Limited owner—Powers of—Legatee under will.*

The principles of Hindu law governing the right of a limited owner to alienate for legal necessity do not apply to the case of a legatee whose title depends on the terms of a will. Consequently, the alienation by a widow which is directly contrary to the devolution of the property provided by the will of her husband under which she holds the estate is not merely voidable but void. (*Young, C. J. and Sale, J.*) RAM RAKHI *v.* PEOPLES BANK OF NORTHERN INDIA, LTD. **199 I.C. 677=14 R.L. 415=A.I.R. 1942 Lah. 42.**

——*Alienation—Manager—Legal necessity or benefit—Mortgage for acquiring property for benefit of one member—If supported by necessity or benefit.*

A karta of a Hindu joint family is not entitled to burden the whole of the family property to acquire property which would prove of no benefit whatsoever to the members of the family as such, although it may be of benefit to one individual member thereof. Such an alienation cannot be supported on the ground of legal necessity or benefit. (*Harries, C.J. and Chatterji, J.*) SHYAM BEHARI SINGH *v.* RAMESHWAR PRASAD SAHU. **20 Pat. 904=198 I.C. 208=14 R.P. 393=8 B.R. 337=A.I.R. 1942 Pat. 213.**

——*Alienation—Manager—Mortgage by—Right to challenge on ground of want of legal necessity—Subsequent transferee not acquiring entire interest of family—Right of to impeach.*

An alienation of joint family property cannot be impeached on the ground of want of legal necessity except by the other coparceners or by persons who have acquired the entire interest of all the coparceners in the property. A subsequent transferee who has not acquired the entire interest of the joint family is not entitled to challenge the validity of a mortgage by the manager on the ground that there was no legal necessity. (*Harries, C.J. and Chatterji, J.*) SHYAM BEHARI SINGH *v.* RAMESHWAR PRASAD SAHU. **20 Pat. 904=198 I.C. 208=14 R.P. 393=8 B.R. 337=A.I.R. 1942 Pat 213.**

——*Alienation—Manager—Powers of—Mitakshara Law.*

Per *Pal, J.*—The power defined in Chapter I, section 1, paras. 27, 28 and 29 of the Mitakshara is now taken to be the power of the manager of a joint family governed by the Mitakshara Law to alienate immovable property belonging to the family. The power conferred by these verses is wide enough to include the case of expenditure made "in the interest and for the benefit" of the joint family.

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Per *Nasim Ali, J.*—The answer to the question as to whether an alienation by the karta of a joint family is "for the sake of the family" or "for the benefit of the estate" or "for family interests" will depend on the facts of each particular case. Where the money borrowed by the karta on the mortgage of a tea garden belonging to the joint family was spent for the requirements of that garden which was a source of income to the family, the expenditure was justified by the interests of the family and, therefore, all the members of the joint family, including the minor members are bound by the mortgage. (*Nasim Ali and Pal, JJ.*) BUDHKARAN *v.* THAKUR PRASAD. **I.L.R. (1942) 1 Cal. 19=46 C.W.N. 425=75 C.L.J. 59=A.I.R. 1942 Cal. 311.**

——*Alienation—Mother—Mortgage by mother as guardian of minor sons—One of them found to be a major on date of mortgage—Effect on validity of mortgage.*

Where in a joint Hindu family consisting of brothers, there is a manager in existence, *e.g.*, when the eldest brother is an adult, the mother of the brothers has no right or place at all to act on behalf of the family and her dealings would not bind the family or any member thereof except herself. If the mother makes any alienation by way of mortgage, purporting to do so on behalf of and as guardian of her sons, one of whom is found to be a major on that date, that must be held to be invalid and will not bind any of the sons. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) MARA *v.* BETTASWAMY GOWDA. **19 Mys.L.J. 455=46 Mys. H.C.R. 706.**

——*Alienation—Widow—Alienation—Advancing of her own money—Right to recoup.*

There may be circumstances in which a Hindu widow might pledge her own credit, or use her own money, for the payment of debts binding on the estate. In such a case it would have to be made clear that she intended to advance her own money to the estate with the intention ultimately of recovering the money from the estate. (*Allsop and Verma, JJ.*) JAI NARAIN SINGH *v.* COLLECTOR OF ALIGARH. **200 I.C. 641=15 R.A. 24=1942 A.L.W. 176=1942 A.L.J. 152=1942 O.A. (Supp.) 147 (2)=1942 A.W.R. (H.C.) 71=A.I.R. 1942 A. 189.**

——*Alienation — Widow — Alienation — Binding nature—Debt incurred on the personal responsibility of the widow.*

The question whether a debt incurred by a Hindu widow on her personal responsibility in order to pay a debt binding on the estate is itself binding on the estate is really one of fact. If in the circumstances of a particular case a person advancing the money is led to believe and quite reasonably concludes that the widow is acting on behalf of the estate, the estate would be bound, while, on the other hand if it appears that the advance was made personally to the widow and there was no suggestion that she was borrowing on behalf of the estate, the widow alone would be bound and the creditor would have no remedy against the estate. Where the widow in so many words says that she is hypothecating her personal life estate, the mortgagee could not be under any misapprehension that he is advancing the money to the widow as the representative of the estate. Such a mortgagee having accepted the security of the life estate, could not possibly afterwards turn round and allege that he had any right to hold the property against the reversioners till such time as the mortgage was redeemed. (*Allsop and Verma, JJ.*) JAI NARAIN SINGH *v.* COLLECTOR OF ALIGARH. **200 I.C. 641=15 R.A. 24=1942 A.L.W. 176=1942 A.L.J. 152=1942 O.A. (Supp.) 147 (2)=1942 A.W.R. (H.C.) 71=A.I.R. 1942 A. 189.**

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——Alienation — Widow — Alienation — Burden of proof—Justification for transaction—Position of transferee from alienee. *See* 1941 Dig., Col. 614. RAMANAND LAL *v.* DAMODAR DAS. **I.L.R. (1941) All 820=1942 A.L.J. 94=199 I.C. 369=14 R.A. 367= A.I.R. 1942 All. 110.**

——Alienation — Widow— Alienation— Consent of presumptive reversioner—Effect of. *See* 1941 Dig., Col. 615. HARE KRISHNA DHUPI *v.* UPENDRA KUMAR BHOUMIK. **199 I.C. 593=14 R.C. 593.**

——*Alienation—Widow—Alienation — Necessity — Burden of proof.*

In the case of an alienation by a Hindu widow, the burden of proof must remain on the person who alleges necessity and to say that a suit by a reversioner to recover property alienated by a Hindu widow must fail in the absence of any evidence about the necessity of the loan would be in effect to abrogate the rule of limitation that he is entitled to institute a suit for the recovery of the property within 12 years of the date of the death of the limited owner. Where there is nothing to lead to the conclusion that there was any necessity for the loan except the passage of time and possibly the allegation that the widow was not well off, the alienation will not be binding on the reversioner. (*Allsop and Verma, JJ.*) JAI NARAIN SINGH *v.* COLLECTOR OF ALIGARH. **200 I.C. 641=15 R.A 24= 1942 A.W.R. 176=1942 A.L.J. 152=1942 O.A. (Supp.) 147 (2)=1942 A.W.R. (H.C.). 71=A.I.R. 1942 A. 189.**

——*Alienation — Widow — Alienation—Necessity— Property under 'qurq tahsil'.*

Where the recital in a deed of alienation by a Hindu widow is that the property was under 'qurq tahsil' it only implies that the property had been taken under the direct management of the Collector under the provisions of the U. P. Land Revenue Act so that he could collect the rents and credit them to the payment of the revenue. In such a case the property is in no danger of alienation for the property would be returned as soon as the rents had been collected and revenue paid and would not justify borrowing. (*Allsop and Verma, JJ.*) JAI NARAIN SINGH *v.* COLLECTOR OF ALIGARH. **200 I.C. 641=15 R.A. 24=1942 A.W.R. 176 =1942 A.L.J. 152=1942 O.A. (Supp.) 147 (2)= 1942 A.W.R. (H.C.) 71=A.I.R. 1942 A. 189.**

——Alienation—Widow—Alienation—Partial necessity—Decree and sale—Rights of reversioners. *See* 1941 Dig., Col. 615. RAMANAND LAL *v.* DAMODAR DAS. **I.L.R. (1941) All 820=1942 A.L.J. 94=199 I.C. 369=14 R.A. 367=A.I.R. 1942 All 110.**

——*Alienation—Widow—Alienation— Reversioner— Presumption of consent—Signing as witness—Presumption of legal necessity.*

It is not very safe to assume that when a reversioner signs a document of transfer by the widow as a witness he must necessarily know its contents and must have approved of the transaction. It is true that the consent of the reversioner as a person who may naturally be supposed to have been likely to object to an alienation by the widow if there was ground for objection, may lead in the absence of other evidence to an inference that the property has been alienated for legal necessity but it does not necessarily follow that any consent by a reversioner leads to a definite presumption that the property must have been alienated for legal necessity. (*Allsop and Verma, JJ.*) ALLAH DIYA *v* SONA DEVI. **204 I.C. 133=1942 A.W.R. (H.C.) 218=1942 A.L.J. 443=1942 A.L.W. 329=A.I.R. 1942 A. 331.**

——Alienation—Widow—Gift by—Suit by nearest reversioner to declare void—Maintainability. *See*

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SPECIFIC RELIEF ACT, S. 42, ILL. (E). **I.L.R. (1942) Kar. 340.**

——*Alienation—Widow— Gift to unmarried daughter——Test of validity.*

The texts which provide for the giving of a fourth share of their brother's to unmarried daughters are directory only. Hence the validity of a gift to an unmarried daughter by the widow at the time of marriage has only to be decided with reference to the reasonableness of it under the circumstances of each case. (*Verma and Yorke, JJ.*) KRISHNA PRATAP SINGH *v* PREMBADA KUNWAR. **203 I.C. 97=1942 A.L.J. 487=A.I.R. 1942 A. 365.**

——Applicability—Mahomedans—Plea of application of Hindu Law in matters of inheritance—Proof required. *See* MAHOMEDAN LAW—INHERITANCE. **1942 M.L.R. 4 (Civ.)**

——*Applicability—Migrating family—Law applicable—Presumption.*

Where a Hindu family migrates from one province to another, the presumption is that it carries with it its personal law, *i. e.*, the law and customs as to succession and family relations previling in the province from which it came. It is, however, a rebuttable presumption, (*Broomfield and Sen, JJ.*) SUGANCHAND BHIKAMCHAND *v.* MANGIBAI GULABCHAND. **I.L.R. (1942) Bom. 467=201 I.C. 759=15 R.B. 111=44 Bom.L.R. 358=A.I.R. 1942 Bom. 185.**

——Conversion—Conversion of father and minor son to Christianity—Effect on status—Subsequent re-conversion—If *ipso facto* brings about coparcenary—Debts incurred and alienation made after conversion—If binds son. *See* 1941 Dig., Col. 616. VENKATRAMAYYA *v.* SESHAYYA. **201 I.C. 50=15 R.M. 191=A.I.R. 1942 Mad. 193=(1941) 2 M.L.J. 877.**

——*Coparcener—Alienee of share of—Rights of—Partition—Liability to payment of debts binding on family—Extent—Sale of son's interests in family properties in execution of decree for family debts—Purchaser of sons' shares—Suit for partition—If can be made liable for remaining debts of family—Rule.*

In a suit against two Hindu brothers and their sons on a promissory note executed by the two brothers for joint family necessity, there was a decree against the makers personally, and against their sons, limited so far as the latter were concerned to their interests in the family properties. The creditor had attached the family properties before judgment. A year later the brothers were adjudicated insolvents on their application. The decree-holder unsuccessfully tried to implead in execution proceedings the Official Receiver as representing the two brothers who had executed the note and he had therefore to limit his application for execution to the interests of the sons in the attached properties. The sons' interests in the properties were sold and purchased by the decree-holder and another; and the proceeds of the sale were distributed rateably under S. 73, C. P. Code, to the attaching decree-holder and five other creditors. The purchasers subsequently filed suits individually for partition of the shares of the sons which they had purchased, the estate being then in the hands of the Official Receiver. The lower Courts held that the purchasers were entitled to their shares of the sons subject only to the payment of other family debts.

Held, although the normal rule was that a person acquiring the interest of a Hindu coparcener in the family properties should, when he wished to enforce his rights, institute a suit for partition of all the assets of the family, and the value of the share acquired would be only arrived at after making provision for payment of all the family debts, yet in view of the fact that the

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proceeds of the sale of the sons' shares had been already paid out to creditors rateably, the condition imposed by the lower Courts that the purchasers could take the sons' shares only subject to the liability for the remaining debts of the family would amount to a direction that the same properties be sold twice over for the purpose; that was a position which no Court of equity could ever contemplate. It was in consonance both with natural justice and with the spirit of Hindu Law to hold that a sale for the satisfaction of a family debt was capable of conveying a good title to the purchaser in the circumstances. The diligent creditors having already received their shares from the proceeds of the sale of the sons' shares in the properties, there was no justification for the condition imposed, and the creditors who were still unpaid could resort to the sale proceeds of the interests of the father in the properties in the hands of the Official Receiver. (*Leach, C. J., Krishnaswami Aiyangar and Somayya, JJ.*) SREERAMULU CHETTI *v.* SUBBARAMI REDDI. **I.L.R. (1942) Mad. 738=202 I.C. 191=15 R.M. 460=1942 M.W.N. 413=55 L.W. 405=A.I.R. 1942 Mad. 554=(1942) 2 M.L.J. 90 (F.B.).**

———Debts. *See also* HINDU LAW—ALIENATIONS.

———*Debts—Antecedent debt—Liability for money borrowed for payment of.*

Any money borrowed for the payment of an antecedent debt can be recovered from the joint family property. (*Allsop and Verma, JJ.*) ISHWAR DAYAL *v.* AMBA PRASAD. **200 I.C. 427=15 R.A. 1=1942 A.L.W. 159=1942 O.W.N. 142=1942 A.L.J. 147=1942 A.W.R. (H.C.) 69=1942 O.A. (Supp.) 147 (1)=A.I.R. 1942 All 184.**

———Debts—Father—Decree against as manager—Sons' shares—If liable to be sold in execution. *See* LANDLORD AND TENANT—RENT DECREE. **23 Pat. L.T. 403.**

———*Debts—Father — Decree against—If binding on sons—Promissory note by father for money borrowed "for family expenses"—Suit against father alone—Sons not impleaded—Decree—Execution against sons after partition on ground of pious obligation—Permissibility—Remedy.*

There is no warrant for laying it down as an established universal proposition of Hindu law that whenever the manager or father in a joint Hindu family is sued, the members of the family or the sons, as the case may be, must be deemed to be represented by him. Whether they are or are not so represented is a question of fact depending upon many things, the nature of the claim, the language of the plaint, the subject-matter of the suit and the issues which require decision before the decree can be given. Where in a suit on a promissory note executed by a Hindu father for money borrowed "for family expenses" it was asserted in the plaint that the money was borrowed for family expenses as recited in the promissory note, but the sons were not impleaded and the plaintiff did not ask for any adjudication which would necessarily have the effect of binding the sons; but merely relied on the doctrine of pious obligation.

Held, that the assertion that the money was borrowed for family expenses was an unnecessary assertion the truth of which was not put in issue, and it was impossible to say that in the circumstances the father was ever sued as representative of his family, still less that he in fact represented it. Further, when the sons were separated from their father when execution of such a decree was sought, the remedy of the decree-holder seeking to proceed against the sons' shares lay not in execution but in the filing of a separate suit. (*King, J.*) RANGASWAMI GOUNDAN *v.* KANDASWAMI GOUNDAN. **55 L.W. 672=1942 M.W.N. 663=A.I.R. 1942 Mad. 732=(1942) 2 M.L.J. 361.**

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———Debts—Father—Decree against—Property not attached during father's lifetime—Execution against joint family property. *See* 1941 Dig., Col. 617. PREM DAS *v.* BRIJ MOHAN LAL. **198 I.C. 569=14 R.L. 335.**

———*Debts—Father—Legal necessity—Borrowings for purposes of mill newly established by father.*

Money borrowed by a father of a joint Hindu family for the purposes of a mill which he had established before the birth of a son but which has not been proved to be ancestral property is not for legal necessity and hence the son would not be liable for that debt. (*Allsop and Verma, JJ.*) ISHWAR DAYAL *v.* AMBA PRASAD. **200 I.C. 427=1942 A.L.J. 147=1942 A.L.W. 159=1942 O.W.N. 142=1942 A.W.R. (H.C.) 69=1942 O.A. (Supp.) 147(1)=15 R.A. 1=A.I.R. 1942 All. 184.**

———Debts—Father—Pre-partition debts—Maintenance decree against father prior to partition—Execution against son's share for arrears after partition. *See* 1941 Dig., Col. 617. KAMLA PRASAD *v.* RAM PYARI. **A.I.R. 1942 Oudh 56.**

———*Debts—Father—Promissory note by—Indorsement of note—Debt not assigned—Suit against sons of maker—Liability of sons—If extends to joint family property or is limited to father's separate estate.*

In a suit on a promissory note executed by a Hindu, brought by the indorsee of the note, the indorsement being only of the right under the note and not of the debt on which the note is based, the sons of the maker who are sued on the note are liable only to the extent of the father's separate property that comes into their hands and not to the extent of his share of the joint family property. (*Horwill, J.*) NATARAJAN CHETTIAR *v.* PERUMAL AMMAL. **55 L.W. 823=1942 M.W.N. 703=(1942) 2 M.L.J. 668.**

———*Debts—Father—Son's pious obligation—Extent of—Sale by father without necessity—Setting aside after his death on ground of absence of necessity—Suit by vendee against sons for refund of proportionate share of purchase money—Maintainability—Liability of sons on basis of pious obligation rule.*

A sale by a Hindu father of joint family property for no justifiable purpose does not amount to a breach of trust. Where a sale by the father is set aside during his lifetime on the ground of want of justifiable necessity, the vendee has an enforceable claim against him for the return of a proportionate part of the purchase consideration, and a liability of this nature comes within the pious obligation rule as against his sons. If the transaction is set aside after the father's death, the vendee has a claim against his estate and the situation is the same. The pious obligation of the sons to discharge their father's debt is not affected by the fact that the father's liability is contingent and the contingency arises after his death. (*Leach, C.J., Krishnaswami Aiyangar and Happell, JJ.*) LINGAYYA *v.* PUNNAYYA. **I.L.R. (1942) Mad. 502=198 I.C. 588=14 R.M. 466=55 L.W. 4=1942 M.W.N. 11=A.I.R. 1942 Mad. 183=(1942) 1 M.L.J. 57 (F.B.).**

———Debts—Joint family — Coparcener — Decree against—Execution—Creditor's remedy—If bound to attach and sell interest in whole joint family property—Sale of share in part of joint family property—Legality. *See* 1941 Dig., Col. 618. SHANMUGAM CHETTIAR *v.* NAGASWAMI AYYAR. **201 I.C. 156=15 R.M. 247=A.I.R. 1942 Mad. 97=(1941) 2 M.L.J. 550.**

———*Debts—Joint family—Manager—Antecedent debt—Mortgage of ancestral property to pay consideration*

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for sale obtained two months earlier—Uncle if can bind nephew for antecedent debt.

Where a mortgage of ancestral property is executed to pay the unpaid consideration in respect of a sale obtained a couple of months earlier there is no disso ciation and no real antecedency in fact between the two transactions, for under such circumstances it is reasonable to infer that the vendee must have had the later mortgage in contemplation at the time of the sale. Such a debt would not amount to an antecedent debt. It is only a father that could alienate ancestral property for his antecedent debt. An uncle could not bind his nephew for his antecedent debt. (*Collister and Baipai JJ.*) MAHABIR *v.* SUKH RAM. **I.L.R. (1942) A 498=201 I.C. 415=15 R A. 56=1942 A.L.W 458=1942 A.W.R. (H.C.) 213=A.I R. 1942 A. 361.**

———Debts—Joint family—Manager—Debts of—Legal necessity—Benefit to estate—Onus—Inference of payment of Government revenue. *See* 1941 Dig., Col 619. BABU LAL *v.* SATYANARAIN PRASAD. **I.L.R. (1941) All. 680=197 I C. 509=14 R.A 202.**

———Debts—Joint family—Manager—Decree against on promissory note—Debt incurred for family necessity—Execution against entire family properties—Question of liability of other members not parties to suit—If can be gone into. *See* 1941 Dig., Col. 619. SOMAPPA *v.* NAGI REDDY. **201 I.C 55=15 R.M. 186=A.I.R. 1942 Mad. 62=(1941) 2 M L.J. 1050.**

———Debts—Joint family—Manager—Decree against in respect of family debts—Manager not described as such—Sale of family property—If passes entire interest of whole family—Presumption. *See* 1941 Dig., Col. 619, MULGAND CO-OPERATIVE CREDIT SOCIETY *v.* SHIDLINGAPPA ISHWARAPPA. **I.L.R. (1941) Bom 682=197 I.C. 428=14 R.B. 215.**

———*Debts—Joint family—Manager—Minors—Admission of liability after majority by signing account striking balance due—Personal liability of quandom minors.*

When a debt is incurred by a manager of a joint Hindu family he is personally liable because he is a party to the contract. The others are not ordinarily personally liable and all that a creditor can do in such cases is to proceed against their interest in the joint family assets provided the debt is one which binds them. But if they themselves are parties to the contract, or if they subsequently ratify the contract then they are personally liable and their separate estate can be proceeded against. The manager is not an agent in the ordinary sense of the word but he does represent the family. Also he is not tied down to his status *qua* manager and when other members chose to associate themselves personally with him, they are also bound. They are consequently at liberty to accept his actions at a later date and to ratify them. If they do so they are as much bound as if they had contracted liability in the beginning. (*Stone, C.J. and Bose, J.*) MADANLAL *v.* RAMCHAND. **1942 N. L J. 148.**

———*Debts—Joint family—Manager's mismanagement—Creditor aware of all circumstances advancing on representations of necessity—No proof of inquiry—Binding nature of debt.*

Where from the evidence of the income and the legitimate expenses of a family it was clear that there could have been no necessity to borrow but in fact the estate was grossly mismanaged by the head of the family who had plunged the family into debt, a creditor knowing all the circumstances advanced loans to the manager on the strength of his representations as to necessity without caring to make any inquiry as to the truth of these representations, the debts would not bind

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the other members. (*Collister and Baipai, JJ.*) RADHIKA PRASAD *v* MUNNI LAL. **1942 A L.W. 424.**

———*Debts—Joint family—Manager—Money lending business—Borrowings—Liability of other members—Facts to be proved—Ancestral family business.*

There is a broad distinction between a banking business and a money lending business. The essential function to enable a person, firm or institution to be regarded as a banker, or a bank is that of receiving current deposits against which withdrawals could be made by cheque or any other means. Hence where on the strength of promissory notes amounts are given to a money-lender manager, the transaction is a loan and not a deposit with a banker. In order to make the other members of the family of the money lender liable in respect of such a transaction it must be shown that it was one justified by legal necessity. It has to be found that there was a family business or rather an ancestral family business of money-lending involving both borrowing and lending. The business of money-lending by no means invariably involves the assumption that the money-lender is himself in the habit of taking loans. From the mere fact that a person like his father before him did some money-lending business, it cannot be inferred that it is an ancestral family business. (*Verma and Yorke, JJ.*) GORDHAN DAS *v.* ANAND PRASAD. **I.L.R. (1942) A. 247=1942 A.L J. 246=1942 A. W R. (H.C.) 118=1942 Comp C. 184=1942 A.L.W. 186=A.I R. 1942 A. 242.**

———*Debts—Joint family—Manager not the father—Alienation of minor's share for antecedent debt of grandfather.*

A manager of a Joint Hindu family who is not a father can validity alienate the share of a minor member to satisfy the antecedent debts incurred by the minor member's grand-father provided the circumstances of the family were such as to leave no other reasonable course to satisfy the debts. (*Niyogi, J., agreeing with Bose J.*, on a difference of *opinion between Stone, C.J. and Bose, J.*) DHARMARAJSINGH *v.* CHANDRASEKHAR RAO. **I L R. (1942) Nag. 214=200 I C. 595=14 R.N 3=1942 N.L.J. 273=A I.R. 1942 Nag. 66.**

———Debts—Joint family — Manager — Promissory note for amount borrowed for family business—Endorsement to third party—Suit by endorsee on note against maker alone—Decree—Executability against other members of the family. *See* 1941 Dig., Col. 620. RAMANATHAN CHETTIAR *v.* MUTHURAMAN NAIDU. **I.L.R. (1942) Mad. 204=201 I C. 3=15 R.M. 232=A.I R 1942 Mad. 161=(1941) 2 M.L.J. 816.**

———*Debts—Joint family of two Brahmin minor brothers—Debt incurred by mother for expenses of second marriage of elder aged about 13 years of age—Validity as against the family and as against the minor.*

Expenses incurred by a Hindu (Brahmin) mother for the second marriage of her minor son who on the date of such marriage is only about 13 years cannot be held to have been incurred for a legitimate family purpose so as to be binding on the joint family of himself and his younger brother. But the transaction will be binding on the son who obtains the benefit by reason of the second marriage. (*Venkataramana Rao, J.*) NATARAJA DIKSHITHAR *v.* MAHAGANAPATI DIKSHITHAR. **201 I C 797=15 R.M. 415=55 L W. 313=A.I.R. 1942 Mad. 517=(1942) 1 M L J. 522.**

———*Debts—Manager—Money advanced for constructing family house—One for necessity.*

Money advanced to the manager of a joint Hindu family for the construction of a family house and of a wall, gate, stable, godown and latrine, which are necessary appendages to a house, must be held to be a debt

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supported by family necessity. (*Varma and Manohar Lall, JJ.*) RAM DIN SINGH *v.* RAMPARICHHAN SINGH. **199 I C 657=14 R P 616=8 B R 608=22 Pat L T. 1057=A.I.R. 1942 Pat. 170**

———*Debts—Manager—Necessity—Duty of creditor to make inquiries—Duty to find out past mismanagement, if any.*

A creditor advancing moneys to the manager of a joint Hindu family is not bound to inquire and find out why the debtor stood in need of money or whether it was owing to antecedent mismanagement of the estate. Unless the creditor himself was a party to that mismanagement, if the necessity existed the creditor honestly advancing money must be protected. (*Varma and Manohar Lall, JJ.*) RAM DIN SINGH *v.* RAMPARICHHAN SINGH. **199 I C 657=14 R.P 616=8 B R. 608=22 Pat.L T. 1057=A.I R 1942 Pat 170.**

———Debts—Prepartition debts—Acknowledgment by father after partition—If can keep the debts alive against divided sons. *See* 1941 Dig., Col. 621. MOHANA REDDI *v.* GANGARAJU **I.L.R. (1942) Mad. 95=14 R.M. 332=(1941) 2 M.L.J. 311 (F.B.).**

———*Debts—Widow— Borrowing for maintaining married daughter and son-in-law—Reversioners, if bound.*

Ordinarily it is only a widow that can claim to be maintained from the property left by her husband. The daughter, if indigent may be maintained, but it cannot be said that the daughter's husband and others also should be maintained with borrowings which will be binding on the reversion. It is only if the daughter is indigent,and if her husband is unable to protect her, that widowed mother would be entitled to borrow even for the purpose of maintaining the daughter. (*Somayya, J.*) KOTRABASAVVA *v.* VEERABHADRAPPA. **55 L. W. 58=1942 M.W.N. 360=A.I.R. 1942 Mad. 313=(1942) 1 M.L.J. 235.**

———Divorce—Custom as to—Pakhali caste of Ahmedabad—Custom of divorce—If exists—Validity. *See* 1941 Dig., Col. 621. JINA MAGAN *v.* BAI JETH. **I.L.R. (1941) Bom. 535.**

———*Family arrangement—Validity—Likely future dispute—If good consideration.*

Evidence of a likely future dispute in the family is a good consideration for a family arrangement. (*Pal, J.*) KUNJA LAL *v.* HARA LAL. **46 C.W.N. 947.**

———*Family settlement—Absence of any competing title in person claiming title under—Effect.*

There could be no basis for a valid family settlement conferring title on a person which would bind the reversion where it is not shown that such a person had some competing title of his own in respect of the property in dispute. (*Sir Madhavan Nair.*) RAMAYYA *v.* LAKSHMAYYA. **202 I C 1=46 C W.N. 1008=15 R P C. 26=8 B R 874=1942 O W N. 806=28 P L T. 717=1943 A L W. 2=1942 A L J 392=A.I R. 1942 P.C 54=(1942) 2 M.L J. 249 (P.C).**

———Family settlement—Binding nature—Compromise of litigation affecting rights of different branches of the family—Registration—Necessity. *See* 1941 Dig., Col. 622. BINDESHRI TEWARI *v.* RAM LAKHAN TEWARI. **I.L.R. (1941) All 763=198 I.C. 13=14 R A. 258 =A I.R. 1942 All 12.**

———Father—Suit on mortgage by—Addition of sons as parties—Money decree against father alone—Dismissal of suit against sons—Execution—Interests of sons—If can be proceeded against. *See* 1941 Dig., Col. 618. KESHO RAM *v.* RAM DULARI. **17 Luck. 319=A.I. R. 1942 Oudh 9.**

HINDU LAW—Impartible Estate.

———*Gift—Validity—Requirements.*

According to Hindu Law, acceptance by the donee is essential to the validity of a gift and delivery or taking of possession is but one of the modes of acceptance. It is however, sufficient if the change of possession is such as the nature of the case admits of. Where the donor is out of possession and has done everything in his power to complete the gift, the fact that possession has not been given is no answer to a suit by the donee against the obstructing party. Where the donee was present when the deed of gift was written and the donors had done all that they could do to complete the gift by making an application to the revenue authorities after the registration of the deed for entering the land in the donee's name and by further agreeing to the donee being shown in personal possession of the land which had previously been entered in their possession, the gift was not open to any legal objection whatever. (*Tek Chand and Din Mahomed, JJ.*) MADHO SINGH *v.* JAMES R. R. SKINNER. **203 I C. 404=1942 F L J. (H.C) 201 =44 P.L.R 382=A I R. 1942 Lah 243.**

———*Impartible estate—Maintenance — Illegitimate son of former holder—Right to claim maintenance from succeeding holder of estate.*

An illegitimate son of a former holder of an impartible estate is not entitled to claim maintenance from the zamindari in the hands of the succeeding holder, in the absence of proof of a special custom. (*King and Abdur Rahman, JJ.*) KONDAMA NAICKER *v.* DONDAMA NAICKER. **1942 M.W N. 71.**

———*Impartible estate—Mitakshara—Sudra family —Illegitimate sons of coparcener—If entitled to maintenance out of the estate—Deed—Construction—* "Purusha santhathi"*—If includes illegitimate sons.*

Where the younger sons of a person (a Sudra) claimed that the family property was partible but were persuaded by the father to recognise the impartibility of the estate on a proper allowance being provided in perpetuity for each of the three junior branches and a deed was accordingly executed giving the sum of Rs. 1 000 per month to each of the three younger sons for life and providing *inter alia*: "After the life of the said V (one of the sons) his *purusha santhathi* shall, in perpetuity, be paid the same allowance amount . . . and if any of the aforesaid branches should die without *purusha santhathi* either by way of *aurasa* or by way of adoption the allowance amount shall go to the *gnatis*; and further should any of the said three branches become extinct by the total absence of *purusha santhathi* either by way of *aurasa* or by way of adoption the allowance shall be stopped,"

Held, that the illegitimate sons of V cannot claim to be "*purusha santhathi*" within the meaning of the expression in the clause and V's branch became extinct on his death leaving neither a legitimate nor an adopted son. The term *aurasa* has always been used to refer to the son begotten by a man himself on his lawful wife. [The view of the High Court affirmed on this point.]

Held, further (reversing the decision of the High Court) that the rights of junior members to maintenance out of an impartible estate can only be ascribed to custom. (1941) 2 M.L.J. 972 (P.C.), Foll The illegitimate sons of V are not entitled either to any allowarce under the deed or to maintenance under Hindu Law. (*Sir George Rankin*) KUMARA KRISHNA YACHENDRA *v.* RAJESWARA RAO. **I.L.R (1942) Mad 419=I L R. (1942) Kar. (P.C.) 1=188 I.C. 166=14 R P C 107=8 B R. 394=1942 M W N. 157=55 L W. 65=1942 A.L.W. 154=1942 O.A. 77=1942 P W N. 59=1942 O W.N. 137=44 P.L.R 158 =75 C.L J. 49=1942 A.L.J 194=46 C.W.N. 587=**

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44 Bom.L.R. 551=A.I.R. 1942 P.C. 3=(1942) 1 M L.J. 132 (P.C.).

———Inheritance. *See* HINDU LAW—SUCCESSION.

——— Insolvency of father—Debt contracted by father for family purpose—Son separating from father before insolvency—Power of Official Receiver to sell son's interest—Suit by creditor against son after insolvency of father for recovery of debt—Parties—Official Receiver—If necessary party. *See* PROVINCIAL INSOLVENCY. ACT, S. 28 (2). **(1942) 1 M.L.J. 173.**

———Jain Kalars—Dissolution of marriage by abandonment—Custom not opposed to public policy. *See* CUSTOM—JAIN KALARS. **1942 N.L.J. 510.**

——— *Jains—Widow—Rights in her husband's property—Custom.*

It is a custom among the Jains of the U.P. that a Hindu widow acquires an absolute interest in her husband's self acquired property but there is no such custom with regard to the ancestral property. (*Allsop and Verma, JJ.*) ALLAH DIYA *v.* SONA DEVI. **204 I.C. 133=1942 A.W.R (H.C.) 218=1942 A.L.J 443 =1942 A.L.W. 329=A.I.R. 1942 All. 331.**

———Joint family—Alienation. *See* HINDU LAW—ALIENATION.

——— *Joint family—Ancestral property—Incidents—Effect of partition.*

A Hindu who obtains possession by partition of a share in property which was ancestral before partition, holds his share in that property as ancestral property. If he has no son it is his separate property in the sense that he may alienate it before such time as a son is born to him. A son would acquire an interest in that property at birth if it was originally ancestral property. The only effect of the distinction between ancestral and self-acquired property is that a Hindu son acquires an interest in ancestral property at birth and acquires no such interest in self-acquired property. (*Allsop and Verma, JJ.*) ALLAH DIVA *v.* SOHA DEVI. **204 I.C. 133=1942 A.W.R. (H.C.) 218=1942 A.L.J. 443= 1942 A.L.W. 329=A.I.R. 1942 All. 331.**

——— *Joint family—Business—Ancestral business and business newly started—Distinction.*

The distinction between an ancestral business and one started after the death of the ancestor as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business, with its benefits and obligations. In the other they rest ultimately on contractual arrangement between the parties. (*Davis, C.J. and Weston, J.*) HARIOMAL KALUMAL *v.* FIRM UTTAMCHAND. **198 I.C. 567=14 R.S. 144=A.I.R. 1942 Sind 17.**

———Joint family—Business—Ancestral business—Minor becoming sole owner by inheritance—Manager appointed by guardian carrying on business in the usual course — Liabilities— Minor, if bound—Rights of third parties. *See* 1941 Dig., Col. 623. SUGAN CHAND & CO. *v.* LADURAM BALKISANDAS. **I.L.R. (1942) Nag. 281.**

——— *Joint family—Business—Ancestral business—What is—Business carried on by father in partnership with stranger—Death of father—Eldest son starting fresh business of same nature as old—If ancestral business—Debts of—Liability of other sons.*

A Hindu carrying on business in medicine in partnership with a stranger died in 1926, leaving three sons who were all minors on that date. The business was not wound up till 1935 and all the assets of the business continued to remain with the stranger-partner. In the meanwhile, the eldest son of a deceased who had become a major, started a business in medicine in 1929, and

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borrowed money on a promissory note for the purposes of that business. The two younger sons denied their liability for the debt on the ground that the business was a new business and not an ancestral business for which they could be made liable.

Held, that the business started by the eldest son (manager) had absolutely no connection with the old business carried on by his father, and the fact that the business started was of the same nature as the old business could not make it an ancestral business so as to render the younger sons liable for its debt. (*Venkataramana Rao, J.*) SOUNDARARAJALU *v.* SHANMUGAM. **1942 M.W.N. 67=55 L.W. 148=A.I.R. 1942 Mad. 324=(1942) 1 M.L.J. 184.**

———Joint family—Business—Dissolution of firm—Previous accounts of business—If can be gone into. *See* 1941 Dig., Col. 624. GURDIT SINGH *v.* SIRI RAM. **197 I.C. 633=14 R. Pesh. 50**

——— *Joint family business—Business started by father—Nature of descent to son—Right of grandsons.*

In the case of a business started by the father his interest in the business on his death becomes ancestral in the hands of his sons and consequently is "property" in which his grandsons obtain an interest by birth. As it would be impossible to divide such a business into parts, some ancestral and others not, the whole must be treated as ancestral joint family property in the hands of his grandsons. The after born sons cannot question what their fathers and grandfather did before they were born and any alienation made for the benefit of the business or for necessity would be justifiable. (*Stone-C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARI LAL. **I.L.R (1942) Nag. 543=200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 39.**

——— *Joint family business—Management of one item of business by junior member—Binding nature of his acts regarding other members.*

In a joint family in which several businesses are carried on, the karta or the eldest member of the family cannot manage all. He has necessarily to entrust portions of it to the younger members, and their acts would therefore bind the whole family. (*Agarwal and Madeley, JJ.*) PIAREY LAL *v.* MAHADEO PRASAD. **199 I.C. 698=14 R.O 514=1942 R.D. 320=1942 A.W.R. (C.C.) 109= 1942 O.W.N. 157=1942 O.A. 88=A.I.R. 1942 Oudh 311.**

——— *Joint family—Business—Nature of—Individual or joint—Burden of proof.*

Whether or not it can be said that if a joint family is possessed of some joint property, there is a presumption that any property in the hands of an individual member is not his separate individual property but joint property, no such presumption can be applied to a business. A member of joint undivided family can make separate acquisition of property for his own benefit and unless it can be shown that the business grew from joint family property, or that the earnings were blended with joint family estate, they remain free and separate. The question whether the business was begun or carried on with the assistance of joint family property or as a family business is a question of fact upon which the initial burden of proof lies upon those who claim a share in the business. It is intelligible that a junior member minded to commence a business might well be told that the family do not want to engage in the particular venture proposed or to be responsible for the debts incurred in connection therewith, but that a certain sum could be provided on loan to enable the venture to be carried on by the junior on his own account. Such an instance serves to show how wrong it would be to jump to the conclusion that

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what appears to be a loan is not in truth a loan because there is a joint business or some other joint property. In such cases the junior member upon a partition will be entitled to his share in the assets of the joint business which made the loan including the debt due from or money recovered from himself. There is no more paradox in this than already lies in the fact of the family or firm having made him a loan. (*Sir George Rankin.*) BHURU MAL *v.* JAGANNATH. **46 C.W.N. 613=1942 A.L.J. 264=199 I.C. 334=I.L.R. (1942) Kar. (P.C.) 33=14 R.P.C. 121=8 B.R. 591=55 L.W. 377=1942 O.W.N. 417=1942 O.A. 310=1942 A.W.R. (P.C.) 25=1942 A.L.W. 450=44 Bom. L.R. 767=23 P.L.T. 620=A.I.R. 1942 P.C. 13=(1943) 1 M.L.J. 70 (P.C.).**

——*Joint family — Business — Extension—When justified.*

The extension of the joint family business of manufacturing chadas a sort of plain large anklet worn by women for the manufacture of brass pots is justifiable, the extension being *ejusdem generis* with the manufacture of chadas as the class of persons who manufacture the one usually manufacture the other as well. (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARILAL. **I.L.R. (1942) Nag. 543=200 I.C. 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 39.**

——*Joint family—Coparcener—Right to give valid discharge—Decree in favour of joint family—Payment to junior member—If satisfaction of decree—Joint decree—Payment to one decree-holder.*

A payment of the amount due under a decree to one of a number of joint decree-holders cannot be treated as satisfaction of the decree even in part unless it is admitted by the other decree-holders or proved that he and the others to whom the money was due owned separate and definite shares in the decree. Where the joint decree is owned by a Hindu joint family, payment to one of the members will not operate as satisfaction wholly or in part of the decree or of the share of that particular member in the decree, when such member is a junior member who is not the karta and is not duly authorised to receive payment on behalf of the joint family. (*Harries, C.J. and Dhavle, J.*) KUMAID KUMAR SINGH *v.* AMAR NATH SINGH. **21 Pat. 322=204 I.C. 234=A.I.R. 1943 Pat. 10.**

——*Joint family—Co-parcener—Suit against—Attachment of property before judgment—Death of co-parcener before judgment—Subsequent decree—Executability against property in hands of survivor—Effect of attachment.*

Where there is an attachment before judgment of family property in a suit against a member of an undivided Hindu family who is not sued as the representative of the family and the defendant dies before the decree is passed, the right of the survivor in the property is not affected, and he gets the property free of the attachment. In such a case the attachment is merely intended to protect the property from alienation by the defendant pending the decision of the suit; and until the decree is passed the attachment cannot operate to render the property attached available for sale in execution (*Leach, C.J. and Lakshmana Rao, J.*) KALIANNA GOUNDAN *v.* MASAVAPPA GOUNDAN. **1943 M.W.N. 38=A.I.R. 1943 Mad. 149=(1942) 2 M.L.J. 750.**

——Joint family—Debts. *See* HINDU LAW (1) ALIENATIONS. (2) DEBTS.

——Joint family—Essential features—Joint family property—Letters of administration—If can be granted.

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See SUCCESSION ACT, S. 278. **44 P.L.R. 330 (F.B.).**

——*Joint family—Father's insolvency — Effect—Attachment of family property by decree holders against father — Effect—Son questioning father's debts—Rights—Effect of S. 64, C. P. Code.*

On the insolvency of a Hindu father, the power of the father to sell his son's share in the joint family property for his own debts vests in the receiver. Where there is an attachment of the family property in execution of decrees against the father before the insolvency, it is not open to the son to take advantage of the attachment and claim that the receiver has no power to sell the property It is only by S. 64, C. P. Code that certain disabilities are imposed upon the father when the son's interest is attached. S. 64 does not put an end to the power of sale. Its only effect is that such transferees cannot prejudice the rights of the attaching creditor. So long as there is no dispute raised by the attaching creditor regarding the sale by the receiver it does not lie in the mouth of the son to question the sales. The power of the father to sell does not come to an end by virtue of the attachment; it is only qualified by the attachment. It is only the attaching creditor that may insist upon his rights being worked out. The son has no right to rely on it. Moreover if he questions all the debts of the father he cannot take advantage of the attachment of the decree holders and at the same time challenge their debts. He would not be enforcing a claim under the attachment within the meaning of S. 64. C. P Code. (*Grille, C.J. and Puranik, J.*) LAXMINARAYAN *v.* DINKAR SHANKER RAO. **1942 N.L.J. 599.**

——*Joint family—Gift—Deposit of money in joint names of husband and wife—Husband owner of money and after his death wife to get same—Construction—Bequest—Validity—T. P. Act, Ss. 122 and 123.*

The deposit by a Hindu of his own money in a bank in the joint names of himself and his wife, and on the terms that it is to be payable to his wife after his death, does not constitute a gift by him to his wife; there is a resulting trust in favour of the husband in the absence of proof of a contrary intention, there being no presumption of an intended advancement in favour of the wife. The ownership of the money deposited depends upon the source from which it came. The fact that there is a provision that it is payable to the wife after the husband's death obviously indicates a bequest rather than a gift of the money, but a Hindu father has no power to make a will in respect of joint family property which will bind his son. A Hindu joint family consisted of one *T*, his wife *B D*, and his son *K*. On 30—4—1932, *T* deposited a sum of Rs. 5,000 with a limited company in the joint names of himself and his wife, and the receipt given by the company stated, "*T* is the owner of the money. After his lifetime, *B D* is to get the same." *T* died on 20—9—1932, and disputes arose between the widow and the son of *T* as to the money, each claiming it to the exclusion of the other.

Held (1) that the mere fact that the deposit was made in the name of *B D* also did not show that a gift to her was intended; (2) that as *B D* had no interest in the money at the time it was deposited it must be held to be either *T's* property or the joint family property of himself and his son *K*; (3) that though a bequest was intended in favour of *B D*, it was invalid as a Hindu father had no power to make a will of joint family property; (4) that to constitute a legal and valid gift, there must be a transfer of the ownership to the donee during the lifetime of the owner under Ss. 122 and 123, T. P. Act: (5) that on the construction of the deposit receipt, it

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must be held that there was no gift of the money and it was also clear that there was no such delivery of the property as was required to make a valid gift ; (6) that if the son *K* showed that the family consisting of himself and his father possessed joint family property which included this sum of money, the son *K*, would be entitled to the amount. (*Broomfield and Macklin, JJ.*) KESHAVLAL TRIBHOVANDAS *v.* BAI DAHI. **204 I C. 212=44 Bom.L.R. 839=A.I.R. 1943 Bom. 7.**

——*Joint family—Joint family business—Continuation after separation—Status and rights of members—Debt due to family—Suit by former karta—Maintainability—Applicability of O. 1, R. 9 C. P. Code.*

Where after partition the members of the original joint family carry on the business formerly carried on by the family, the position of the members of the family with respect to the said business is that of partners and the business becomes one held by them as tenants in common. A suit by the former karta alone in respect of debt due to the partnership cannot lie Hence if such a suit is brought it has to be dismissed and O. 1, R. 9 does not apply to such a case. (*Bennett and Ghulam Hasan, JJ*) BEHARI LAL *v.* RAMCHANDRA SHARMA. **200 I.C 172=14 R O. 570=1942 A.W.R. (C.C.) 141=1942 O.A. 120=1942 O.W.N. 184=A.I.R. 1942 Oudh 335.**

——*Joint family—Joint family and ancestral property—Distinction.*

The Mitakshara gives the sons a right by birth in all joint family property whether ancestral or otherwise and makes it clear that they succeed by survivorship and not by inheritance in both cases, but there is a difference between joint family property and ancestral joint family property. Although the son has a right by birth in his father's and in his grandfather's property still, since he is dependent on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property; but, since both have indiscriminately a right in the grand father's estate, the son has a power of interdiction. (*Stone, C.J. and Bose, J.*) BAHADUR SINGH *v.* GIRDHARILAL **I.L.R. (1942) Nag. 543=200 I C 166=14 R.N. 319=1942 N.L.J. 121=A.I.R. 1942 Nag. 89.**

——*Joint family—Joint family or ancestral property—Self-acquired property of father and sons forming joint family—Father and sons forming joint family—Self-acquired property of father taken by sons—If ancestral property—If taken as tenants-in-common.*

Where a Hindu father who is a member of joint family with his sons leaves self acquired property, such property comes into the hands of the sons not as tenants-in-common but as joint tenants. They take it as joint family property. (*Harris, C.J. and Chatterji, J.*) SHYAM BEHARI SINGH *v.* RAMESHWAR PRASAD SAHU. **20 Pat. 904=198 I.C. 208=14 R.P. 393=8 B.R. 337=A.I.R. 1942 Pat 213.**

——Joint family—Joint family property—Acquisition by joint labours—Absence of nucleus. *See* 1941 Dig., Col. 624. LACHMI NARAIN *v.* MUSADDI LAL. **17 Luck. 327=197 I. C. 217=14 R.O. 287=A.I.R. 1942 Oudh 155.**

——Joint family—Joint family property—Acquisition by members out of capital or income. *See* 1941 Dig., Col. 624. BAJI RAO TUKARAM *v.* RAM KRISHNA. **198 I.C. 581=14 R.N. 228=A.I.R. 1942 Nag. 19.**

——Joint family—Joint family property—Ancestral or self-acquired property—Bequest by father to sons—Limited interest conferred—Character of property—Presumption as to—Joint tenancy or tenancy-in-common. *See* 1941 Dig., Col. 625. RAMACHANDRA

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AYYAR *v.* RANGANAYAKI AMMAL. **200 I.C. 102=14 R M. 704=(1941) 1 M.L J. 557.**

——Joint family—Joint family property—Ancestral property—Property inherited from maternal grandmother. *See* 1941 Dig., Col. 625. MOHAN LAL *v.* RAM DAYAL. **16 Luck. 708.**

——Joint family—Joint family property—Creation in the absence of nucleus. *See* 1941 Dig., Col 625. SHAMRAO *v.* KRISHNARAO. **198 I C. 393=14 R.N. 219.**

——Joint family—Joint family property—House built out of contributions by brothers earning and living separate. *See* 1941 Dig., Col. 625. MOHAN LAL *v* RAM DAYAL. **16 Luck. 708.**

——Joint family—Joint family property—Incidents. *See* 1941 Dig., Col. 626. PREM DAS *v.* BRIJ MOHAN LAL. **198 I.C 569=14 R.L. 335.**

——Joint family—Joint family property—Nucleus proved to exist—Presumption. *See* 1941 Dig., Col. 626 GURDIT SINGH *v.* SIRI RAM. **197 I.C. 633=14 R. Pesh 50.**

——*Joint family—Joint family property—Presumption—Property acquired by member—Presumption from nucleus—When arises.*

In order to raise the presumption that a property acquired by a member of a joint family is a joint family property, not only should the nucleus of the joint family property be established to be sufficient for the acquisition of the property but it should also be established that it was available to the acquirer. (*Akram and Pal, JJ.*) AMRITA LAL SEN *v.* SURATH LAL SEN. **203 I.C. 188=75 C.L.J. 372=46 C.W.N. 239=A.I.R. 1942 Cal. 553.**

——Joint family—Joint family property—Property acquired by joint exertions without ancestral nucleus. *See* 1941 Dig., Col. 627. PREM DAS *v.* BRIJ MOHAN LAL. **198 I.C. 569=14 R.L. 335.**

——Joint family—Joint family property—Property jointly acquired by members—Presumption. *See* 1941 Dig., Col. 627. GURDIT SINGH *v.* SIRI RAM. **197 I C. 633=14 R. Pesh 50.**

——Joint family—Joint family property—Separate property thrown into common stock. *See* 1941 Dig., Col. 627 GURDIT SINGH *v.* SIRI RAM. **197 I.C. 633=14 R. Pesh. 50.**

——*Joint family—Joint or separate property—Insurance policy.*

A member of a joint undivided family can make separate acquisition of property for his own benefit, and unless it can be shown that the business from which such property is acquired grew from the joint family property, or that the earnings were blended with joint family estate, they remain free and separate. Therefore, a policy of insurance the premiums for which have been paid by a member of a joint family out of his separate estate is his separate property. (*Almond, J.C.*) MOHAR SINGH *v.* REVEL KAUR. **201 I.C. 341=15 R Pesh. 21=A.I.R. 1942 Pesh. 42.**

——*Joint family—Manager—Accounts—Decree on basis of accounts taken—If can be passed.*

Although the *karta* of a joint family is liable to account to the coparceners, a decree cannot be passed against him for the money that may be found due on the accounts being taken, without partition or without removal of the *karta* from his position as such *karta*. So long as the family remains joint, the assets found out on accounting must be in the custody of the *karta*. (*Pal, J.*) KUNJA LAL *v.* HARA LAL. **46 C.W.N. 947.**

——*Joint family—Manager—Promissory note by—Suit on—Other coparceners not impleaded—Decree not providing for execution against family property—Remedy of creditor.*

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Where the manager of a joint Hindu family, who is not the father, is sued on a negotiable instrument executed by him in his personal capacity, and the decree in such suit contains no direction that it shall be executed out of family property, only the defendant can be called upon to satisfy the decree. The creditor has only himself to blame if he contents himself with suing on the instruments. He could, if he wished, add a claim on the debt and join the other coparceners as defendants or he can bring a separate suit against them on the debt. (*Leach, C.J., Wadsworth, Lakshmana Rao, Krishnaswami Ayyangar and Patanjali Sastri, JJ.*) NAGI REDDI *v.* SOMAPPA. **204 I.C. 198=1942 M.W.N. 728 (2)=55 L.W. 789=A.I.R. 1943 Mad. 1=(1942) 2 M.L.J. 691 (F.B.).**

——*Joint family—Nominal nucleus—Purchase by one of the brothers—Conduct showing treatment as joint property—Effect.*

Where though there was a nominal nucleus, it was not by any means enough to enable the purchase of a house, one of the brothers forming a joint family, purchases a house in his name out of his earnings and by his conduct in allowing his brothers to live with him in that house and enjoy it as joint family property waives his rights of self acquisition, the property will be deemed to have been brought into family. (*Niyogi, J.*) NAGORAO *v.* VITHOBA. **1942 N.L.J. 21.**

——Joint family—Nominal sale by one brother to another—If effects a division in status and affects the right of survivorship. *See* 1941 Dig., Col. 628 RAMANNA *v.* JAGANNADHA RAO. **I.L.R. (1941) Kar. (P.C.) 83=I.L.R. (1942) Mad. 886.**

——Joint family—Presumption—Absence of joint family property. *See* 1941 Dig., Col. 628. MOHAN LAL *v.* RAM DAYAL. **16 Luck. 708.**

——*Joint family—Presumption of jointness—Scope of.*

At the outset one starts with the presumption that a Hindu family is joint but the presumption becomes weaker and weaker further one goes from the founder of the family. (*Niyogi, J.*) WASANT NILKANTH POTEY *v.* BALWANT RAO. **1942 N.L.J. 478.**

——*Joint family—Presumption—Separate entry in khewat—Contracting of debts in their own name—If sufficient to prove separation.*

Where a number of sons are left by a Hindu father, the legal presumption according to Hindu Law is in favour of their jointness and not separation. The facts that their names are separately shown in the khewat and that some of them have contracted debts in their own name are not sufficient to prove separation in the family. (*Shirreff, J. M. and Sathe, A. M.*) BALMAKUND *v.* BUDHU SINGH. **1941 R.D. 1120=1941 O.A. (Supp.) 954=1941 A.W.R. (Rev.) 1206.**

——*Joint family—Right of representation—Alienation for necessity—Right to effect—Coparcener other than manager—Competency of.*

It is well-settled that only the manager of a joint Hindu family has power to alienate for value joint family property for family necessity so as to bind the interests of all the undivided members of the family, whether they are adults or minors. There is no warrant for the view that any coparcener may deal with joint family property for necessity. (*Harries, C.J. and Chatterji, J.*) SHYAM BEHARI SINGH *v.* RAMESHWAR PRASAD SAHU. **20 Pat. 904=198 I.C. 208=14 R.P. 393=8 B.R. 337=A.I.R. 1942 Pat. 213.**

——*Joint family—Right to give valid discharge of debt—Mortgage debt due to family—Payment to junior member under direction of manager—If valid payment—Right of junior member to give remission.*

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Where a payment under a mortgage in favour of a joint Hindu family is made to a junior member of the family under the express direction given by the manager of the family (the mortgagee), it is a payment made to a person authorised to receive it and operates as a valid discharge of the debt to the extent of the payment. But the junior member has no right to make any remission when he is not authorised to do so. (*Manohar Lall, J.*) GOPALJEE JHA *v.* UPENDRA NARAIN JHA. **202 I.C. 495=15 R.P. 122=9 B.R. 8=23 Pat.L.T. 384=A.I.R. 1942 Pat. 408.**

——Joint family—Who go to constitute it—Effect of adoption—Continuity of family—Termination, if possible. *See* 1941 Dig., Col. 629. BAJIRAO TUKARAM *v.* RAM KRISHNA. **A.I.R. 1942 Nag. 19=198 I.C. 581=14 R.N. 228.**

——Maintenance—Female—Nature of right—Arrears due to female claimant if her stridhan. *See* 1941 Dig., Col 630. JANARDHAN *v.* SONABAI. **198 I.C. 293=I.L.R. (1941) Nag. 16=14 R.N. 211=A.I.R. 1942 Nag. 30.**

——*Maintenance—Illegitimate son—Father not possessed of any joint family property—Liability to maintain adult illegitimate son.*

An illegitimate son cannot claim higher rights than a legitimate son; and a Hindu father who is not possessed of any joint family property is under no obligation under the Hindu Law to maintain his adult illegitimate son during his lifetime. (*Venkataramana Rao, J.*) MUNIAPPA MUDALIAR *v.* KUPPUSAMI MUDALIAR **202 I.C. 124=15 R.M. 459=1942 M.W.N. 80 (1)=55 L.W. 86=A.I.R. 1942 Mad. 419 (2)=(1942) 1 M.L.J. 181.**

——Maintenance—Impartible estates — Illegitimate sons of preceding holders—If entitled to maintenance. *See* HINDU LAW—IMPARTIBLE ESTATES.

——*Maintenance—Widow—Claim for arrears of maintenance—Discretion of Court—Matters to be considered in deciding amount of arrears.*

The Courts dealing with claims for arrears of maintenance by Hindu widows have a very large discretion to grant or withhold those arrears with special reference to the urgent need and necessities of the widow. Conduct on the part of the widow, such as to lead the person in charge of the estate to believe that he would not be called upon to meet suddenly a claim for a large sum of money, is a matter to be considered in deciding whether a claim for arrears of maintenance ought to be allowed in whole or in part. (*Broomfield and Sen, JJ.*) DATTATRAYA MARUTI *v.* LAXMAN JATTAPPA. **I.L.R. (1942) Bom. 584=203 I.C. 139=44 Bom.L.R. 527=A.I.R. 1942 Bom. 260**

——*Maintenance—Widow entitled to, in possession of family property—Suit by reversioners to recover—Provision for maintenance in decree—Desirability.*

Where a widow entitled to maintenance is in possession of family property, in a suit brought by the reversioners to recover it, it is open and proper to make provision for her maintenance from out of that property in any decree that might be passed. It is in the interests of justice that, instead of forcing the defendant to file a suit for maintenance the question be disposed of in that suit itself (*Verma, J.*) DHAURAJI KUER *v.* RAM RAJ CHAUBE. **199 I.C. 595=14 R.A. 388=1942 A.L.J. 44=1942 O.A. (Supp.) 60=1942 A.L.W. 53=1942 A.W.R. (H.C.) 34=A.I.R. 1942 All. 135.**

——*Maintenance—Widow of predeceased son—Right to be maintained by heirs taking under will—Dayabhaga School.*

The legal liability upon a Hindu heir for the maintenance of the daughter-in-law in a family governed by

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the Dayabhaga school exists whether the heir take upon intestacy or by will or by gift Consequently, the widows of a predeceased son of a testator is entitled to claim maintenance by the sons of the testator who take under his will. (*Ameer Ali, J.*) FOOL COMARI DASI *v* DEBENDRA NATH SEAL. I.L.R. (1942 1 Cal. 202= 202 I.C. 30=15 R.C. 278=46 C.W.N. 379=A.I.R. 1942 Cal. 474.

———*Maintenance—Widow— Quantum — Considerations—Burden of proof as to income—Consequences of failure to produce account books.*

Courts should not go into minute details in maintenance cases but should rather view things broadly. A maintenance holder is not entitled to an exact percentage of the total income and persons in possession of only a limited estate should have something to form a sinking fund against bad times. In the case of a tonsured widow, she does not require a great deal of money either for her clothes or jewels or for her entertainment She is entitled to live in the style that she ought to have been living in the time of her husband. Liberty could always be given to either party to apply for a variation on change of circumstances. If people who defend maintenance suits do not exhibit their account books or go into the witness-box to prove how much the income is, the Court can draw an inference from such a reticence and they would have to thank only themselves, if the suit results in a decree for more maintenance than should have been awarded if they had produced all the available evidence. (*Stone, C. J. and Bose J.*) CHANDRABHAGABAI *v.* ANNAPURNABAI 1942 N.L.J. 367.

———Maintenance—Widow—Right of to maintenance —Nature and extent of—Claim for arrears of maintenance accrued due during husband's life time—Enforceability against property in the hands of surviving coparcener. *See* 1941 Dig., Col. 631. RAGHUNATH AMBAIDAS *v.* DWARKABAI JAGANNATH. 197 I.C. 887=14 R.B. 256.

———*Maintenance—Widow—Right of—Young widow leaving family house to live with parents—If affects right or amount of future maintenance.*

The fact that a Hindu widow, who is very young leaves the family house and goes to live with her parents cannot be said to be guilty of improper conduct which would affect her right to maintenance. Nor would it be a ground for reducing the amount of her future maintenance. (*Broomfield and Sen JJ.*) DATTATRAYA MARUTI *v.* LAXMAN IATTAPPA I.L.R. (1942) Bom 584=203 I.C. 139=44 Bom.L.R. 527= A.I.R. 1942 Bom. 260.

———Maintenance—Wife — Right of, to separate maintenance—Grounds—Husband continually neglecting wife—Liability to pay separate maintenance *See* 1941 Dig., Col. 632. VENKAYYA *v.* RAGHAVAMMA 200 I.C. 794=15 R.M. 154=I.L.R. (1942) Mad. 24=A.I.R. 1942 Mad. 1= (1941) 2 M.L.J. 263.

———Marriage—Anuloma marriage—Validity of *See* 1941 Dig., Col 632. SUBBARAMAYYA *v.* VENKATASUBBAMMA. I.L.R (1941) Mad. 989=199 I.C. 882= A.I.R. 1942 Mad. 656=(1941) 1 M.L.J. 724.

———Marriage—Asura form—Payment of money to father of girl for making jewels for girl in pursuance of stipulation therefor as condition of giving the girl in marriage—If bride price. *See* 1941 Dig., Col 633. VELAYUTHA PANDARAM *v.* SURYAMURTHI PILLAI. 201 I.C. 191=15 R.M. 266=A.I.R. 1942 Mad. 219= (1941) 2 M.L.J. 770.

———*Marriage—Byragis—Marriage between persons of different castes—Validity.*

HINDU LAW—Partition.

The Byragi sect is one to which members of various castes—Brahmins, Kshatryas, Vaisyas and Sudras—all may be admitted. There are no special ceremonies for such admission and once a person becomes a Byragi, he ceases to belong to the caste to which he originally belonged. A marriage between a Byragi male and a Byragi female is valid and cannot be held to be invalid merely because the parties belonged to different castes originally. (*Somayya, J.*) RAGHAVA DOSS JEE *v.* SARJU BAYAMMA. 202 I.C. 89=15 R.M. 437=55 L.W. 72=1942 M.W.N. 214=A.I.R. 1942 Mad. 413 (1)=(1942) 1 M.L.J. 205.

———Marriage —Eligibility —Prohibited degrees—Rules and exception—Trigotra rule—Mode of computation—Rule, if applies where boy and girl are connected through bandhu. *See* 1941 Dig., Col 633. ANILA BALA DEBI *v.* MADHABENDU NARAIN ROY. 200 I.C. 469=15 R.C. 41=A.I.R. 1942 Cal. 245.

———*Marriage—Forms—Custom among Santals—Smearing of vermillion on girl's forehead.*

The smearing of vermillion by a Santal man on the forehead of a Santal girl amounts to a ceremony of marriage and the girl must either go and live with him or take steps to get divorced. (*Meredith and Shearer, JJ.*) DHUMA MANJHI *v.* EMPEROR. 203 I.C. 163= 15 R.P. 161=9 B.R. 67=43 Cr.L.J. 918.

———*Marriage—Lunatic—Marriage of, validity.*

The marriage of a Hindu lunatic, though improper and immoral and discouraged by Hindu law, is not invalid if duly solemnized. Whatever injunction against such a marriage may be read into the ancient commentaries, it would be of a directory rather than of a mandatory character. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104= 1942 A.L.J. 197=1942 A.L.W. 245= A.I.R. 1942 All. 267 (2).

———*Marriage—Prohibited degrees—Trigotra rule—Mode of computing gotras.*

In counting the *trigotras* for the *trigotra* rule, which is an exception to the general rules of prohibition, the *gotra* of the bridegroom should always be excluded. The starting point in the computation would be the *gotra* of any of the four persons, namely, the father, the *matripitribandhu* the maternal grandfather or the *matribandhu* through whom the girl is related and within seven or five degrees from whom the girl stands. The difference of three *gotras* will be established if the second *gotra* differs from the first and the third from the second, although the third *gotra* is a repetition of the first. (*Mitter Mukerjea and Sen, JJ.*) BIJAN MAJUMDAR *v.* RANJIT LAL. I.L.R (1942) 2 Cal, 443=202 I.C. 33=15 R.C. 280=46 C.W.N. 753= A.I.R. 1942 Cal. 458.

———*Partition—Allotment of property subject to charge—Charge alone, it can be repudiated—Minor members—Right to question.*

When at a partition among the members of a joint Hindu family properties are given to each and an item is charged with the payment of maintenance to a person and his wife and children, the member accepting the property cannot seek to repudiate the charge alone. Where the interests of the minor sons are the same as that of their fathers, their interests must be held to be sufficiently represented by their fathers and they cannot later on seek to question it. (*Allsop and Verma, JJ.*) GAJPATI RIKH *v.* MRS. MAY IDA RIKH. 203 I.C. 9=1942 A.L.W. 411=1942 A.W.R. (H.C.) 170=A.I.R. 1942 A. 254.

HINDU LAW—Partition.

———*Partition—Charge created over properties allotted to one sharer in favour of another for meeting sradh expenses—Enforceability by assignee of properties.*

Two Hindu brothers *A* and *N* were allotted properties under a partition deed, and under the deed a charge was created over the properties allotted to *N* in favour of *A* for the purpose of meeting the expenses of certain ceremonies, such as a Samaradhana, Navaratri Pooja, the Mahalaya and the Sradhas of their maternal grandfather and grandmother. The plaintiff got an assignment of the properties allotted to *A* and the defendants purchased the properties of *N* subject to the charge. In a suit by the plaintiff to enforce the charge against the properties of *N* in the hands of the defendants,

Held, that though some of the ceremonies mentioned could be performed only by persons in a particular degree of relationship, the plaintiff could get the same performed or conducted by persons competent to conduct them, and they were therefore not disentitled from enforcing the charge by reason of the fact that they could not themselves perform the same. (*Chandrasekhara Ayyar, J.*) SHESHAMMA SHEDTHI *v.* VASUDEVA BHATTA. 55 L.W. 633=1942 M.W.N. 816=A.I.R. 1942 Mad. 711 (2).

———*Partition—Division of some properties only—Rights as regards other properties.*

Where there has been a partial partition of some only of the properties, the possession of the parties will be that of tenants in common and not joint tenants. (*Ghulam Hasan and Madeley, JJ.*) RAM BHAROSE SINGH *v.* VIJAI KUMAR SINGH. 1942 O.W.N. 456=1942 O.A. 366=1942 A.W.R. (C.C.) 309 (1)=A.I.R. 1943 Oudh 63.

———Partition—Evidence of—Keeping of earnings separate—Living in different places—Effect. *See* 1941 Dig., Col. 634. MOHAN LAL *v.* RAM DAYAL. 16 Luck 708.

———Partition—Joint family firm—One member taking certain property and abandoning his claim in joint family property without specification of share—Effect of. *See* 1941 Dig. Col. 634. GURDIT SINGH *v.* SIRI RAM. 197 I.C. 633=14 R. Pesh. 50.

———*Partition—Lunatic—Rights.*

A person who has become a lunatic is debarred from claiming his share by partition and is not entitled to claim a share when the coparcenary estate is partitioned; but his right is not extinguished, and he succeeds by survivorship if he finds himself the last coparcener. A lunatic cannot claim his share even through a guardian or manager as a guardian or manager cannot obtain for him what he is not qualified to obtain for himself under Hindu law. Hence decrees obtained by the manager of a lunatic coparcener against other coparceners do not operate as a partition on behalf of the lunatic, as the lunatic was debarred from participation by his personal law. There is nothing to prohibit a lunatic coparcener from receiving property in lieu of maintenance and he can receive what would have amounted to his share if he were under no disability, if the other coparcener or coparceners choose to let him have it, *e.g.*, the sane brother disclaiming or renouncing his claim over lunatic's share.

Per *Allsop, J.*—Where exclusion depends upon unsoundness of mind it is clear that there can be no absolute criterion by which to Judge whether a person is liable to be excluded. In each case it would be necessary to decide whether unsoundness of mind was of such a character as would justify exclusion. It is a question of degree and the members of a family who were of sound mind at the time of a partition might well in some circumstances hesitate whether the person of unsound mind was in such a condition that exclusion was justifiable. It would surely not be right, if they gave him a share, afterwards to allow them to resile from their position and to allege that the share should not have been given and that the partition was liable to be avoided. There might also be cases where the members of sound mind might consider it more convenient to allow the person of unsound mind a share rather than to render themselves liable for his maintenance after the partition. Therefore, it cannot be laid down as an absolute rule that there can be no partition between a brother of sound mind and one of unsound mind. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All 267 (2).

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———*Partition—Lunatic—Test.*

A person who was found by the Court as incapable of protecting his own interests although capable of understanding simple words of command was held to have been an insane person in the sense that he was debarred from participation in the ancestral estate, (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. I.L.R. (1942) All. 518=202 I.C 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W 245=A.I.R. 1942 All. 267 (2).

———*Partition—Minor members—When can ask for.*

For a minor to obtain partition through Court it was originally thought that he should establish malversation But that had changed and what is now required in the ordinary case is to see whether the interest of the minor would be advanced, where there are disputes between the minor's mother and the rest of the members when there is a neglect of the minor by the rest and when there is separation in board or lodging, partition can be directed. (*Stone, C.J. and Bose, J.*) MUKUND RAO BALAJI DESHMUKH *v.* GOVIND RAO PADAM RAO. 1942 N.L.J. 434.

———Partition—Mother—Position and rights of. *See* 1941 Dig., Col. 634. RADHABAI *v.* PANDARI NATH BAPU. I.L.R. (1942) Nag. 534.

———Partition—Mother—Reopening at insurance of—Procedure. *See* 1941 Dig., Col. 635. RADHABAI *v.* PANDARI NATH BAPU. I.L.R. (1942) Nag. 534.

———Partition—Mother—Right to share—Basis and extent of—Mother living with father after separation of son—Father's power of disposition over his wife's share. *See* 1941 Dig., Col. 674. NANURAM *v.* RADHABAI. I.L.R. (1942) Nag. 24.

———Partition—Partial partition—Rule against—If can be relaxed. *See* 1941 Dig., Col. 635. HEMANTA KUMAR *v.* SATISH CHANDRA. 198 I.C. 348=14 R.C. 458=46 C.W.N. 212.

———Partition — Paternal Grandmother — Right to share on partition between grandson and collaterals of his deceased's father—Right to share—When arises. *See* 1941 Dig. Col. 635. JOTIRAM EKOBA *v.* RAMCHANDRA TRIMBAK. I.L.R. (1941) Bom. 638=197 I.C. 788=14 R.B. 247.

———*Partition—Proof of—Precise date not known—Acts and conduct of members—Value of evidence as to.*

Where there is no definite information regarding partition, the evidence of acts and conduct of the several members becomes relevant for consideration. Simply because a party is unable to state the precise date of partition, that would not preclude him from proving separate residence, separate enjoyment of property and other acts indicating partition. Thus the question whether there was a partition or not becomes a matter of inference from evidence on record. (*Niyogi, J.*) WASANT NILKANTH POTEY *v.* BALWANT RAO. 1942 N.L.J. 478.

HINDU LAW—Partition.

———*Partition—Provision for marriage of female members—Sisters and daughters of brothers—Difference.*

Although in a partition between brothers where there are unmarried sisters provision has to be made for their marriage where one of the brothers has three unmarried daughters, he has to get his share and only out of that to marry his daughters. (*Stone, C J and Bose, J.*) MUKUND RAO BALAJI DESHMUKH *v.* GOVIND RAO PADAM RAO. **1942 N.L.J. 434.**

———*Partition—Re union—What constitutes—Effect of re-union—Law as to.*

A re-union as understood in the Hindu Law is completed not by the union of the coparceners alone, but by the union of their wealth. It is not the result of any *quasi-contract* but the product of an agreement, express or implied from conduct, between the persons reunited to throw again together their separate wealth with the special compact that they should share in the profits and losses which may happen to accrue.

Its effect on the present ownership of the parties, on a possible second partition and on the rule of succession in case one dies while still re united, is determined by special texts. (*Nasim Ali and Pal, JJ.*) GOKULPATI DUTTA *v.* PASHUPATI NATH DUTTA. **I.L.R. (1942) 1 Cal. 85=201 I.C. 642=15 R.C. 257=46 C.W.N. 86=A.I.R. 1942 Cal. 331.**

———Partition—Re-union—Who can re-unite. *See* 1941 Dig., Col. 674. NANURAM *v.* RADHABAI. **I.L.R. (1942) Nag. 24.**

———*Partition—Right of member of joint family to claim share—Division for convenience, if can be made.*

A member of a joint Hindu family who is ordinarily entitled to disrupt the family at will cannot be deprived of that right merely because the result would be that he could take the whole family property as a result of the disruption and leave to the other member only a right to be maintained. It is possible for members of a joint family to divide the property up among themselves for the purpose of more convenient enjoyment or management without the intention of making a partition which would sever the title so that some might be full proprietors of certain of the original properties and some absolute proprietors of others. That would, of course, be a matter of intention, but the intention can only be gathered from the conduct of the members of the family. No Court can consider alleged mental reservations. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. **I.L.R. (1942) All 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All. 267 (2)**

———*Partition—Sane brother if can separate from insane brother.*

There is no rule of Hindu law which precludes a sane person from separating himself from his insane brother. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. **I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All. 267 (2).**

———*Partition—Separation in status—Suit on behalf of two minors—If effects—Separation from each other.*

The joint filing of a plaint by two plaintiffs cannot automatically and invariably bring about their separation *inter se*. The question depends upon their wishes or intentions. When one coparcener separates from the others, there is no presumption that the latter remain united nor is there a presumption that they are separated. The decision whether the other members remain joint or become divided must therefore depend upon their own actions. Where a suit for partition on behalf of two minors was brought by their maternal grandfather for their share,

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Held, that the two plaintiffs speaking through their next friend did not intend to separate from each other. (*King, J.*) VENKATESWARA RAO *v.* VENKATANARAYANA **201 I.C. 703=15 R.M. 391=55 L.W. 228=1942 M.W.N. 113=A.I.R. 1942 Mad. 422=(1942) 1 M.L.J. 222.**

———*Partition—Separation—Onus of proof.*

The presumption of Hindu Law being one of jointness between the members of a family, the onus of proving separation is on the party alleging it. (*Varma and Manohar Lal JJ.*) RAM DIN SINGH *v.* RAMPARICHHAN SINGH **199 I.C. 657=14 R.P. 616=8 B.R. 608=22 Pat.L.T. 1057=A.I.R. 1942 Pat. 170.**

———Partition—Severance in status—Suit for partition by minor—Effect of—Insolvency of father—Sale of minor's share by Official Receiver—Propriety and validity of—Procedure *See* 1941 Dig., Col. 636. OFFICIAL RECEIVER, EAST GODAVARI *v.* VEERREDDI. **200 I.C. 483=15 R.M. 57=(1941) 2 M.L.J. 951.**

———Partition—Severance of status—Suit for partition on behalf of minor coparceners—Effect. *See* 1941 Dig., Col. 636. MULGUND CO OPERATIVE CREDIT SOCIETY *v.* SHIDLINGAPPA ISHWARAPPA. **I.L.R. (1941) Bom 682=197 I.C. 428=14 R.B. 215.**

———*Partition—Suit for, by minor coparcener—Severance, if effected.*

Mere institution of a suit for partition by a minor coparcener does not affect any severance of status. (*Grille, C.J. and Puranik, J.*) LAXMINARAYAN *v.* DINKAR SHANKER RAO. **1942 N.L.J. 599.**

———*Partition—Suit for—Right to demand account.*

A coparcener seeking partition is not ordinarily entitled to require the manager to account for his past dealings with the family property and all that he is entitled to is an account of the family property as it exists at the time of his demand for partition. It is only in rare cases of fraud or assertion of hostile title and exclusion from participation in joint family estate that a claim for account for past dealings may be entertained. (*Grille, C.J. and Puranik, J.*) LAXMINARAYAN *v.* DINKAR SHANKER RAO. **1942 N.L.J. 599.**

———Partition—Wife—Rights of. *See* 1941 Dig., Col. 637. GURDIT SINGH *v.* SIRI RAM. **197 I.C. 633=14 R. Pesh. 50.**

———*Religious endowment—Creation of charitable trust—Writing, if necessary.*

Under the Hindu law the absence of a deed creating a charitable trust cannot invalidate the endowment for no writing is necessary to create an endowment except where the endowment is created by will, in which case the will must be in writing and attested by at least two witnesses if the case is governed by S. 57, Succession Act. (*Sir Madhavan Nair.*) HEM CHAND *v.* PEARY LAL. **203 I.C. 1=47 C.W.N. 46 (2)=9 B.R. 70=1942 A.L.J. 718=1943 A.L.W. 7=1943 O.W.N. 1=56 L.W. 8=45 P.L.R. 36=A.I.R. 1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C).**

———*Religious endowment—Dedication in favour of deity having no permanent image—Validity.*

Under Hindu Law, a gift in favour of a deity is valid although it has no permanent image and its image is prepared every year for puja and thrown into a river after the puja, which lasts for a few days, is over. (*Mukherjea and Blank, JJ.*) PURNA CHANDRA CHAKRABARTY *v.* KALIPADA ROY. **201 I.C. 557=15 R.C. 234=46 C.W.N. 477=A.I.R. 1942 Cal. 386.**

———*Religious endowment—Idol—Position of* shebait,

Under Hindu Law the deity is a juristic entity having the capacity of receiving gifts and holding property. But it is only in an ideal sense that property can be said to belong to an idol, the possession and manage-

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ment of it must, in the nature of things, be entrusted to some person as *shebait* or manager. The authority of the *shebait* is in this respect analogous to that of the manager for an infant heir. On this view the *shebait* becomes for all practical purposes the *de facto* owner of the deity's estate. Though he may not be a trustee he by virtue of his office becomes the administrator of the property attached to the temple. The *shebait* is a sentient representative of the deity and as such has all the rights of an owner of the property subject of course to the limitation that the property and its income is to be devoted entirely for the purposes of the deity. On a construction of the deed of gift to the deity in a temple it was held that the *panch* was entitled to rendition of accounts from the *shebait* but was not entitled to recover any balance in his hands (*Niyogi J.*) PHUTTIBAI HEMCHAND PARWAR *v.* SHRI DEO PARASNATH CHOTA MANDIR. **I.L.R. (1942) Nag 555=202 I.C. 185=15 R.N. 74=1942 N.L.J. 415=A.I.R. 1942 Nag. 105.**

——*Religious endowment — Idol—Representation—Shebait claiming indemnity out of* debuttar *estate in another capacity.*

Where in a suit a shebait is claiming an indemnity out of the *debuttar* estate in another capacity, the deity is entitled to representation other than that through the shebait, and the consent of the shebait would not be binding upon the deity even in the absence of fraud. (*Ameer Ali, J.*) SRIDHAR JIU *v.* SOSHI MUKHI DASI. **I.L.R. (1942) 1 Cal. 365.**

——Religious endowment—Idol—Right of suit—Rights of shebait and worshipper to sue—Distinction between—Suit by worshipper as next friend of idol dismissed for default owing to his negligence—Fresh suit by *shebait* as next friend of idol—If barred—Analogy between minor and idol—C. P. Code, O. 9 R. 9. *See* 1941 Dig., Col. 640. TARIT BHUSAN RAY *v.* SREE SREE ISWAR SRIDHAR SALAGRAM SILA THAKUR. **I.L.R. (1941) 2 Cal 477=199 I.C. 486=14 R.C. 561=A.I.R 1942 Cal. 99.**

——Religious endowment—Mahant—Powers of—Scheme under S. 92, C. P. Code. *See* 1941 Dig., Col. 641. SRIJIB NYAYATIRTHA *v.* DANDY SWAMI JAGANNATH ASHRAM. **199 I.C. 841=14 R.C. 648.**

——Religious endowment—Right of suit—*De facto* mahant—Suit by—When maintainable. *See* 1941 Dig. Col. 641. SOM GIRI *v.* RAM RATAN GIRI. **I.L.R. (1941) All. 711=197 I.C. 696=14 R.A. 238.**

——Religious endowment—Rights of suit—Persons entitled to sue in respect of endowed property. *See* 1941 Dig., Col. 642. TARIT BHUSAN RAY *v.* SREE SREE ISWAR SRIDHAR SALAGRAM SILA THAKUR **I.L.R. (1941) 2 Cal. 477=199 I.C. 486=14 R.C. 561=A.I.R. 1942 Cal 99.**

——Religious endowment—Shebait—Co-shebaits—Accounts—Suit by shebait against two co-shebaits for their removal from office and for account—One of them alone found liable to be removed—Liability of dismissed shebait to account to both plaintiff and other shebait—Basis and period of accounting. *See* 1941 Dig., Col. 642. NIRMAL CHANDRA *v.* JYOTI PRASAD. **197 I.C. 763=14 R.C. 382**

——Religious endowment—Shebait—Removal from office—Ground for—Abuse of fiduciary position—No actual misappropriation. *See* 1941 Dig., Col. 643. NIRMAL CHANDRA *v.* JYOTI PRASAD. **197 I.C. 763=14 R.C. 382.**

——Religious endowment—Shebait—Removal from office—Ground for—Subsequent lunacy. *See* 1941 Dig., Col. 643. NIRMAL CHANDRA *v.* JYOTI PRASAD. **197 I.C. 763=14 R.C. 382.**

HINDU LAW—Reversioner.

——Religious endowment—Shebait—Right to sue—Suit for removal of co-shebaits from office and for accounts—Maintainability—Deity, if necessary party. *See* 1941 Dig., Col. 643. NIRMAL CHANDRA *v.* JYOTI PRASAD. **197 I.C. 763=14 R.C. 382.**

——Religious endowment — Shebait—Succession—Alteration of line—Power of shebait adding to existing foundation. *See* 1941 Dig., Col. 643. NIRMAL CHANDRA *v.* JYOTI PRASAD. **197 I.C. 763=14 R.C. 382.**

——*Religious Endowment—Shebaits—Suit by some—Maintainability—Suit for ejectment by some shebaits impleading others as defendants—Ejectment notice issued by plaintiffs alone—Suit, if maintainable.*

A suit instituted on behalf of a deity by some of the shebaits only is maintainable when the others who were unwilling to be joined as co plaintiffs have been impleaded as defendants. The underlying principle with reference to the procedure to be followed when a deity sues through some only of its shebaits is that all the shebaits must be impleaded whether as plaintiffs or as defendants in order to ensure that, in adjudicating upon the matter before it, the Court will not overlook some aspect of the case which may affect the interests of the endowment. It is, however, difficult to apply this principle in matters affecting the general management of an endowment before a suit with reference thereto is actually instituted. A notice of ejectment issued by some of the shebaits is not valid and the fact that the others did not wish to be associated with it would not alone be sufficient to validate it. A suit for ejectment brought by some of the shebaits impleading the others as defendants is not maintainable when the suit is based on an ejectment notice issued by the plaintiffs alone. It is arguable that circumstances might possibly arise in connection with the administration of *debutter* property, in which in the interests of the deity some of the shebaits might properly act without the consent of the others, for instance, when the other shebaits had either disqualified themselves from acting in that capacity or had done something which was detrimental to the best interests of the estate. (*Edgley and Biswas, JJ.*) RADHA CHARAN SAHA *v.* ISWAR JOYKALI. **201 I.C. 579=15 R.C. 248=74 C.L.J. 539=46 C.W.N. 94=A.I.R. 1942 Cal. 295.**

—— Religious endowment—Shebait—Transfer of palas of worship—Validity of custom. *See* 1941 Dig. Col 644 JOGESH CHANDRA GHOSE *v.* SREE DHAKESWARI MATA. **198 I.C. 837=14 R.C. 509=A.I.R. 1942 Cal 26.**

——*Re-purchase by Hindu of property which originally belonged to his forebears—Consideration provided from self-acquired property—Property becomes self-acquired and not ancestral.*

Where a Hindu purchases property which belonged originally to his forebears and the consideration is provided entirely out of self-acquired property, the property becomes self-acquired property and not ancestral property and as such can be disposed of by will. (*Sir Charles Clawson.*) SITARAM *v.* MUNNI BIBI. **200 I.C. 883=1942 A.W.R. (P.C.) 15=55 L.W. 444=1942 O.A. 324=8 B.R. 769=1942 A.L.W. 485=15 R.P.C. 1=1942 O.W.N. 470 (P.C.).**

——*Reversioner—When remote reversioner entitled to sue.*

A remote reversioner is not entitled to bring any suit in respect of the estate unless he can show that the next reversioner refuses without sufficient cause to sue or that he has concurred in the act alleged to be wrongful or has colluded with the limited heir or is precluded from suing by his own act or conduct or is from poverty not in a position to sue. (*Thomas, C.J. and Ghulam Hasan, J.*)

HINDU LAW—Sanyasis.

SITLA BAKSHSH SINGH *v.* SURENDRA BIKRAM SINGH. 1942 O.W N. 687=1942 O.A. 545=1942 A. W.R. (C.C.) 352 (1)=A.I.R. 1943 Oudh 68.

———*Sanyasis—If should be Brahmins.*

There is no custom or any rule of Hindu Law which debars anybody but a Brahmin to become a Sanyasi, or to be appointed a mahant of a Sanyasi math. Any member of a twice-born caste can be a Sanyasi and a mahant. (*Allsop and Verma, JJ.*) BASDEVANAND GIR *v.* SHANTANAND. 202 I.C. 458=15 R.A. 165 =1942 A.L.W. 463=1942 A L.J. 561=1942 A.W.R. (H.C.) 205=A.I.R. 1942 A. 302.

———*Succession — Bandhus — Precedence—Test to decide—Mitakshara Law.*

According to the Mitakshara Law, athma bandhus have precedence in question of succession over pithru and mathru-bandhus. Among athma bandhus *inter se* and among bandhus of the same class, the test to decide precedence in succession is propinquity and not the religious efficacy. (*Rachhpal Singh, C.J. and Wazir, J.*) HARNAM SINGH *v.* MUNSHI PRABH DAYAL. 44 P.L. R. J & K. 1.

———*Succession—Bombay School—Heir to property inherited by daughter on her death as maiden—Father's sisters of full and half blood—Preference—Hindu Law Inheritance (Amendment) Act, reference to, if justified.*

According to the Bombay School property inherited by a daughter from her father passes on her death as a maiden to her father's heirs in the absence of brother, mother or father, Where there are sisters of the father of the whole and of the half-blood, the question as to who is to have the priority has to be decided acoording to Hindu Law of inheritance and considerations derived from the Hindu Law Inheritance (Amendment) Act are irrelevant. The Act is almost the worst possible guide in a matter of old Hindu Law of inheritance, inasmuch as its whole purpose is to alter the old law. According to the old law sisters of the half blood are excluded by those of the whole blood. (*Stone, C.J. and Bose, J.*) SHAKUNTALABAI *v.* THE COURT OF WARDS. I.L.R. (1942) Nag. 629=199 I C. 379= 14 R.N. 274=1942 N.L.J. 65=A.I.R. 1942 Nag. 57.

———*Succession—Brother or uncle becoming joint after separation but not re-united—Right to preference.*

The Smritis, the Dayabhaga or the Mitakshara do not anywhere lay down that a brother or uncle who after separation becomes joint but not re-united as understood in the Hindu Law is entitled to any preferential claim to succession. (*Nasim Ali and Pal, JJ.*) GOKULPATI DATTA *v.* PASHUPATI NATH DATTA. I.L.R. (1942) 1 Cal. 85=201 I.C. 642=15 R.C. 257= 46 C.W.N. 86=A.I.R. 1942 Cal. 331.

———Succession—Brother's self-acquired property—Brother living with deceased and brother living separate —If take equally. *See* 1941 Dig., Col. 645. SHAMRAO *v.* KRISHNARAO. 198 I.C. 393=14 R N. 219.

———*Succession — Daughter — Married daughter likely to adopt son—Right to succeed—Dayabhagya.*

According to the Dayabhaga, in order to entitle a married daughter to succeed, it is enough that she is likely to have male issue. A married daughter who is likely to adopt a son must be regarded as one who is likely to have male issue. It follows therefore that a daughter, who is past child bearing age at the time of the death of her widowed mother and whose husband was willing to adopt a son even during the lifetime of the mother and in fact adopted a son shortly after her death is entitled to succeed to the property of her father in preference to his other remote agnatic relations. (*Muker-*

HINDU LAW—Succession.

jea and Biswas, JJ.) UMAKANTA BHATTACHARJEE *v.* BEDBATI DEBI I.L.R. (1942) 1 Cal. 299=74 C. L J 564=46 C.W.N. 113=A.I.R. 1942 Cal. 265.

———*Succession—Disqualification—Congenital idiot—Right to marry and transmit right of enjoyment to issue—Status of disqualified member—Sons of disqualified person—Right of succession.*

It is a fundamental rule of Hindu law that a son born to a member of a joint family has on birth the right to share in the family estate. The fact that the son is born with an affliction which disqualifies him from enjoying his share does not rob him of his birth right. The affliction merely prevents his enjoyment of the right while the affliction lasts. A congenital idiot has the status of a coparcener notwithstanding that he is excluded from the enjoyment of his share during the period of his disqualification, and he can lawfully marry and transmit a right of enjoyment of the family properties to his issue. (*Leach, C J., Krishnaswami Ayyangar and Somayya, JJ.*) AMIRTHAMMAL *v.* VALLIMAYIL AMMAL. I.L.R. (1942) Mad. 807= 203 I.C. 648=55 L.W. 540=1942 M W.N 518=A.I. R. 1942 Mad. 693=(1942) 2 M.L.J. 292 (F B).

———*Succession—Disqualification—Dumbness not congenital—If ground of disqualification.*

Under the Mitakshara School of Hindu Law, prevailing in Mysore, dumbness is not a ground of disqualification from inheritance or becoming a manager unless it is congenital. Any defect arising after birth is not a ground of disqualification. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) MARA *v.* BETTASWAMY GOWDA. 19 Mys.L.J. 455=46 Mys. H.C.R. 706.

———*Succession—Disqualification—Murderer—Children of—If disentitled to succeed to property of murdered man.*

Although under the Hindu Law a murderer cannot succeed as heir of the person whom he has murdered, the children of the murderer are not disqualified from inheriting, if their title is not traced through the murderer. The murderer has to be regarded as non-existent, and can never become a stock of descent. Where a widow succeeding to the estate of her husband is murdered by her daughter and her husband, the daughter's son is not disentitled to succeed to the property of his grandparents, as he does not trace his title through his mother. (*Venkataramana Rao, J.*) STANUMURTHIAYYA *v.* RAMAPPA. 201 I.C. 207=15 R.M. 268= 54 L.W. 748=1942 M.W.N. 308=A.I.R. 1942 Mad. 277=(1942) 1 M.L.J. 21.

———*Succession—Illegitimate son—Son of a Sudra by Thakur woman—Right to share.*

The son of a sudra by a Thakur woman is not a 'dasiputra' and is not entitled to share in the inheritance along with a legitimate son. (*Ghulam Hasan and Agarwal, JJ.*) MAHABIR PRASAD *v.* RAJ BAHADUR SINGH. 203 I.C. 244=15 R.O. 186=1942 O.A 428=1942 A W R. (C C.) 320=1942 O.W.N. 614= A.I.R. 1943 Oudh 27.

———*Succession—Mitakshara — Property allotted to widowed mother at partition between sons—Nature of estate—Agreement that on her death sons should take property equally—Death of one son before widow—Effect —Right of heirs of such son.*

Immoveable property obtained by a Hindu widow, *e.g.* a mother, on a partition between her sons, is not under the Mitakshara, her stridhan devolving on her stridhan heirs on her death. It reverts to the next heirs of her husband in the absence of an express agreement among the co-sharers to the contrary. Where the sons agree that on their mother's death the properties allotted to her should go to the sons equally and one of the sons dies

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before the mother, the property after the widow's death would go to the surviving son and the heirs of the deceased son, half and half, and not to the surviving son alone. (*Manohar Lall, J.*) KRISHNA PANDA *v.* JHORA CHOWDHURANI. **203 I C 65=15 R.P 152=8 Cut. L.T. 37=9 B R 50=A.I.R 1942 Pat. 429.**

———*Succession—Mitakshara — Succession to self-acquired property of father—Divided and undivided sons—Preference.*

Per *F. B.: Hamilton J, dissenting.*—On the death of a Hindu leaving self-acquired property the undivided sons succeed to such property to the exclusion of the divided son under the Mitakshara law.

Per *Collister, J.*—Undivided sons will succeed to the self-acquired property of the father in preference to a divided son, whether such property was acquired before or after partition and whether the divided son was or was not given a share in such property at the time of separation.

Per *Hamilton, J.*—There is no coparcenary of father and sons in the self-acquired property of the father and therefore no reason to prefer an undivided to a divided son. (*Collister, Rajpai and Hamilton, JJ.*) GANESH PRASAD *v.* HAZARI LAL **202 I.C. 350=15 R A. 142=1942 A L.J. 289=1942 A.W.R. (H.C.) 133=A.I.R. 1942 All. 201 (F B).**

———Succession—Separated sons and son living with father in father's property—Rights of. *See* 1941 Dig., Col. 645. AMBIKA *v.* JAMUNA PRASAD. **17 Luck. 72.**

———Succession—Stridhan—Brahmin widow having illegitimate son and illegitimate daughter—Latter—If excludes former. *See* 1941 Dig. Col. 646. SUBBAYYA *v.* CHANDRAYYA. **198 I.C. 506=14 R.M 439=(1941) 2 M.L.J 442.**

———Succession—Stridhan—Mithila School—Woman dying without issue—Husband's paternal great grandfather's grandson—Priority over husband's sister or sister's son—Mitakshara rule—Applicability in Mithila. *See* 1941 Dig., Col 646. NAUBAT SINGH *v.* SHAMBARAT KUAR. **8 B.R 164=A.I.R. 1942 Pat 161.**

———Succession—Stridhana—Sulka—Amount paid by bridegroom's father—Not in any sense payment for purchasing bride—Stridhana property. *See* 1941 Dig., Col. 646. SURAYYA *v.* BALAKRISHNAYYA. **198 I.C. 438=14 R.M 437=(1941) 1 M.L.J. 496.**

———Succession—Widow—Widow of gotraja sapinda—Unchastity—If bar to inheriting property of husband's kinsmen. *See* 1941 Dig., Col. 647. AKOBA LAXMAN *v.* SAI GENU LAXMAN. **14 R.B. 203.**

———*Widow—Acquisition—Property acquired out of income—If stridhan or accretion to husband's estate—Test.*

It is now well settled that a widow has absolute power of disposition over the income of her husband's property and she is not bound to save a single farthing. If however, she chooses not to spend the entire income and invests a portion thereof in the acquisition of immovable properties, the question arises as to whether such properties are to be treated as an accretion to the husband's estate or are to be regarded as stridhan properties of her own. In such suits, the true test is to ascertain the intention of the widow. If she evinces an intention to appropriate the property to herself and separate it from the corpus of the estate, it would certainly be her absolute property. But if she deals with it in the same way as the rest of her husband's property it would follow the estate from whence it came. If a Hindu widow invests the accumulations from the deceased husband's estate, *prima facie* it is her intention that they should be regarded as accretions thereto, and not as a separate estate descendible in a different line of succession. Where a twelve annas share of a *putni* property was acquired by her husband during his life-time, the subsequent purchase of the remaining four annas share by the widow is in the nature of an acquisition which has the effect of enlarging the original nucleus particularly when the accounts of the sixteen annas *putni* are kept together and rents are realised similarly and the whole thing is treated as one integral property throughout the life-time of the widow. (*Mukherjea and Blank, JJ.*) JOYCHAND SERAOJI *v.* SHYAMACHARAN NATH, **199 I.C 425=14 R.C. 549=A.I.R. 1942 Cal. 448.**

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———*Widow—Adverse possession against—If binds reversioner.*

Possession held adversely against a Hindu female heir is not effective against and binding on the reversioners. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v.* GIRDHARI LAL **I.L.R. (1942) A, 259=200 I.C. 269 =14 R.A. 423=1942 A.L.W. 161=1942 O.A (Supp.) 145 (2)=1942 A W.R (H.C.) 84 (2)=1942 A.L J. 179=A.I.R. 1942 A. 175.**

———*Widow—Adverse possession by—Predeceased son's widow in possession—Absence of proof of consent—Effect.*

Where a predeceased son's widow is in possession of property of the family and there is no proof of any consent on the part of the rightful heirs to her holding the property, her possession must be considered to be adverse to the rightful heirs. (*Bennett, J.*) MATA PRASAD *v.* BRIJ KISHORE SINGH. **200 I C. 265=14 R.O. 589=1942 A.W.R. (C.C) 139=1942 O.A. 118 =1942 O.W.N. 191=A.I.R. 1942 Oudh. 303.**

———Widow—Alienation. *See* HINDU LAW—ALIENATION.

———*Widow—Maintenance—Decree against husband's brother, but not charged on property—Enforceability against legal representative of judgment-debtor.*

A decree for maintenance obtained by a widow against her husband's brother the payment of which is not charged on any property can be enforced against the legal representative of the judgment-debtor on the latter's death to the extent of the assets in the hands of the legal representative. (*Bennett, J.*) MUNNI BIBI *v.* RADHEY SHIAM. **203 I.C. 621=1942 O.W.N. 748=1942 O.A. 612.**

———*Widow—Remarriage—Absence of custom—Irregular union, if can be turned into marriage by performance of ceremonies or subsequent legislation—Presumption of marriage when arises.*

If at the time of marriage in a particular form (*e.g., Karao*) it could be contracted only by virtue of a custom, and there was no such custom, then an irregular union could not be turned into a marriage by any amount of ceremonies or subsequent enactment. There may be cases where a presumption of lawful marriage having taken place may arise from the fact of two persons living together over a long period and being regarded by neighbours and friends as husband and wife, but such a presumption has no application to a case of a Hindu widow's remarriage not sanctioned by custom and which took place prior to the Hindu widow's Remarriage Act. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v.* GIRDHARI LAL. **I L.R. (1942) A. 259=200 I.C. 269=14 R.A. 423=1942 A.L.W. 161 =1942 O.A. (Supp.) 145 (2)=1942 A.W.R (H.C.) 84 (2)=1942 A.L.J 179=A.I.R. 1942 All. 175.**

———*Widow—Remarriage—Custom among Khattris.*

There is no ancient custom (and indeed no modern custom) of widow remarriage among Khattris. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v.* GIRDHARI LAL. **I.L.R. (1942) A. 259=200 I.C. 269=14 R.A. 423=1942 A.L.W. 161=1942 O.A. (Supp.) 145 (2)**

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=1942 A.W.R. (H.C.) 84 (2)=1942 A.L.J. 179= A.I.R. 1942 All. 175.

———*Widow—Remarriage — Remarried widow in possession of her deceased husband's property for over 12 years—Nature and effect of her possession.*

Where after remarriage a Hindu widow remains in possession of her first husband's lands for over 12 years, but does not claim to do so in her own right though it is doubtful if she can do so but only as her husband's widow, she acquires the property for her first husband and on her death his reversioners succeed to the estate. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v* GIRDHARI LAL. **I.L.R. (1942) A. 259=200 I.C. 269 =14 R.A. 423=1942 A.L.W. 161=1942 O.A. (Supp.) 145 (2)=1942 A.W.R. (H.C.) 84 (2)=1942 A.L.J. 179=A.I.R. 1942 All. 175.**

———Widow—Surrender by—Effect—Surrender by widow in favour of nearest reversioners—Receipt of amount for maintenance—Inclusion of item of property which afterwards turned to be property of one of the surrenderees—Claim by latter—Estoppel or election —Applicability—Transfer of Property Act, S. 35. *See* 1941 Dig., Col. 648. VENKATARAYUDU *v.* NARAYANA. **199 I.C. 466=14 R.M. 584=(1941) 1 M.L.J. 349.**

———*Will—Bequest by person not paternal ancestors to two brothers forming members of coparcenary—Legatees being agnates of testator—Nature of interest taken—If tenancy-in-common or joint tenancy.*

Where a gift or bequest is made to two or more persons who are members of a Hindu coparcenary they nevertheless take as tenants-in-common, and not as joint tenants, unless a contrary intention appears from the grant. The rule that where a father gives property by will to his sons, the latter take as members of a joint family, even if correct, has no application to the case of a gift by a person not a direct paternal ancestor but merely an agnate. Where a Hindu testator who has no male issue gives property by will to two brothers constituting an undivided family, who are his agnates and reversioners, and who according to the recitals in the will have all along been obedient and dutiful to him and have been treated by the the testator as his sons, in the absence of a clear indication in the will that they are to take as coparceners, they take the property severally as tenants in common. (*Harries, C.J. and Fazl Ali, J.*) RAM NATH SINGH *v.* DHANWANTI KUER. **197 I.C. 443=14 R.P. 305=8 B.R. 209=1941 P.W.N. 673=A.I.R. 1942 Pat. 136.**

———Will—Construction—Gift to person as intended illatom son-in-law—Death of such person before marriage—Bequest if takes effect—Marriage—If condition precedent to taking under will—Gift—If one to *persona designata*—Test. *See* 1941 Dig., Col. 650. RAMAMMA *v.* VENKATALAKSHMAMMA. **200 I.C. 49=14 R.M. 688=(1941) 1 M.L.J. 286.**

———*Will—Construction—Gift to person named and after his death to their sons or son—Forfeiture clause that if any legatee disputed will, he shall forfeit benefit given by will—Effect—If clause* in terrorem—*Forfeiture incurred by legatee—If affects his sons or accelerates their interest—Sons—If take as joint tenants or tenants in common.*

S, a Hindu, died on 27—5—1899, leaving a will which provided, *inter alia*: (1) I bequeath to the following persons for life the interest of the sums of money set forth against his or her name, namely . . . . . and I direct the executors to invest these several sums in some good security in their names as trustees thereof and to pay interest accruing thereon to each of these persons respectively from time to time during his or her lifetime and until the said sums are invested, the executors shall pay to each of these persons interest out of my estate at the rate of 4 per cent. from the date of my death till the date of such investments. On the death of any of these persons, such interest shall be paid to the sons or son of the deceased person during their or his lifetime. Thereafter half the amount of such interest be paid to the widow of such deceased person, if alive, and to the daughters of such persons, if alive, and the remaining half shall form part of my trust fund . . . . . (2) I declare that this will deals with my self-acquired properties and the same have been acquired by me without any aid from the family fund which is distinct from my self-acquired property and which is in charge of my brother *M*; and I direct that if any of my brothers raises any dispute regarding my sole right to the same and regarding any of the provisions of this will and refuses to acknowledge my right to make this will, he shall forfeit any benefit given him by this will. The will was dated 26th March, 1899, and the executors named in the will obtained probate thereof on 22nd March, 1900. In 1905, *M*, the eldest brother of *S*, brought a suit alleging that the property disposed of by *S* in his will was joint family property, and *S* having been a member of an undivided Hindu family, the will was invalid and a nullity. The sons of *M*, including *G*, were also parties to this suit, which was ultimately dismissed by the Privy Council who held that the property disposed of by the will was the self-acquired property of *S* except as to one item, a dwelling house, which was joint family property. *M* died in 1916 leaving five sons, including *G*. of these five sons, the last *T* was born only in 1909, long after the death of *S*. In 1937, *G*, one of the sons of *M*, brought the present suit against the trustees of the estate of *S* for recovery from them of Rs. 9,426 1-3, which the plaintiff claimed as due to him under the first clause above mentioned, partly as one of the heirs of his father *M*, and partly in his own right, or alternatively in his own right only.

Held, (1) that S. 121 of the Succession Act of 1865 (S 134 of Act XXXIX of 1925), did not apply to the case as *S* was a Hindu, and as the will was executed on 26th March, 1899; (2) that there was nothing in the forfeiture clause (2) read with the 1st clause of the will repugnant to the Hindu law and therefore, in the absence of any rule of Hindu law applicable in such a case, the validity and binding force of the forfeiture clause in the will of a Hindu must be determined according to the principles of S. 121 of the Succession Act of 1865, (3) that S. 121 (S. 134 of the Act of 1935) was a departure from the English law, and the forfeiture clause could not therefore be regarded as one *in terrorem*, and therefore *M* must be held to have incurred a forfeiture when he instituted the suit in 1905 contesting the will of *S* under the forfeiture clause; (4) that the forfeiture, incurred by *M*, did not, however, affect the present plaintiff or the other sons of *M*. though they were parties to the suit of *M*; (5) that the forfeiture incurred by *M* did not accelerate the legacy to the son or sons of *M*, including *G*, and the legacy in respect of the sons of *M*, became payable only in 1916 on the death of *M*; (6) that the legacy in favour of the son or sons of *M* was not void, because one of them, *T*, the last, was not born till 1909; the legacy was void only so far as *T* was concerned, but it was a valid legacy so far as the plaintiff and the other three sons of *M* were concerned; (7) that where a gift or bequest was made to two or more persons who were members of a coparcenary they nevertheless took as tenants in-common and not as joint tenants or co-parceners, unless a contrary intention appeared from the grant; that in this

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case, as the testator indicated a "contrary intention" by the use of the words "sons or son", it must be held it was the intention of the testator that the sons of *M* should take the interest as joint tenants with survivorship and they took accordingly ; (8) and that the 4 sons of *M* including *G*, became entitled to the legacy in their own right and not through their father. (*Lobo, J.*) GOPALDAS *v.* HEMANDAS, **I.L.R. (1942) Kar. 392=A.I.R. 1942 Sind 145.**

——Will—Father—Power to make bequest of joint family property. *See* HINDU LAW—JOINT FAMILY—GIFT. **44 Bom.L.R. 839.**

HINDU LAW OF INHERITANCE (AMENDMENT) ACT (II OF 1929)—If a guide as to old Hindu law of inheritance. *See* HINDU LAW—INHERITANCE. **1942 N.L.J. 65.**

HINDU WIDOWS' REMARRIAGE ACT (XV OF 1856), S. 3—*Appointment of guardian—Duty of Court.*

S. 3 of the Hindu Widows' Re-marriage Act in no way makes it incumbent upon the Court to appoint a guardian nor does it provide in every case where a Hindu widow remarries, some one should be appointed in her place. The scheme of the section is to allow any one of the relations named to apply to the Court in case of re-marriage of a widow, to be appointed guardian of the child, so that the Court may consider the position and if it thinks fit, appoint some person other than the mother, preferably from among the named relations in the order given as guardian of the child. If the mother as the result of her second marriage should have renounced her position as guardian, then the paternal grandfather may be appointed, but if when an application has been made, the Court is of the opinion that it is in the best interests of the minor for the time-being to remain with the mother, there is nothing in the section which compels it to appoint a guardian of the child. (*Davis, C.J. and Weston, J.*) KELANBAI *v.* UDHAVDAS SHIVDAS. **I.L.R. (1942) Kar. 29=15 R.S. 11=201 I.C. 478=A.I.R. 1942 Sind 121.**

HINDU WOMEN'S RIGHTS TO PROPERTY ACT (XVIII OF 1937) (as amended by Act II of 1938)—*Applicability—Both agricultural and non-agricultural property left by deceased..*

As the Hindu Women's Rights to Property Act as amended by Act II of 1938 is *ultra vires* of the Indian Legislature and does not operate to regulate succession to agricultural land in the Governor's Provinces but operates only to regulate devolution by survivorship of property other than agricultural land, where the property left by the deceased is both agricultural and non-agricultural, the widow would have no right under the Act to succeed her husband even to a limited interest so far as the agricultural property is concerned. (*Ghulam Hasan, J.*) ANANT LAL *v.* RAM ADHAR. **198 I.C. 443=14 R.O. 397=1941 O.A. 1071=1941 O.W.N. 1359=1942 A.W.R. (C.C.) 16=1942 R.D. 25=A.I.R. 1942 Oudh. 216.**

——**(XVIII OF 1937 and amendment Act XI of 1938)**—*Applicability—Succession to* maliki *or proprietary right in land in Bihar—Law applicable—Hindu Law of inheritance.*

The Hindu Women's Rights to Property Act of 1937 and the amendment Act of 1938 do not operate to regulate succession to agricultural land in the Governor's Provinces. Succession to a *maliki* or proprietary right is without doubt a succession to agricultural land or to rights in or over land including the relation of landlord and tenant. A zamindar or landlord in Bihar clearly has rights in and over land, is concerned with the collection of rents and is a party to the relation of landlord and tenant. Succession to a proprietary interest is therefore governed not by Act XVIII of 1937 and Act XI of 1938, but by the ordinary Hindu Law of inheritance. (*Middleton.*) SARASWATI DEI *v.* KAPILDEO SINGH. **8 B.R. 650.**

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——**S. 3**—*Applicability—Money decree under U. P. Encumbered Estates Act—Right of son's widow on the death of decree-holder.*

Hindu Women's Rights to Property Act applies where succession to non-agricultural land is concerned. Hence where a person in whose favour a money decree under the U.P. Encumbered Estates Act has been passed dies his son's widow is entitled under the Hindu Women's Rights to Property Act to share in the decree and this would be so whether the son predeceased his father or not. (*Sathe, J. M.*) MAHENDRA SINGH *v.* BAI JANTI. **1942 A.W.R. (Rev.) 220 (1)=1942 O.A. (Supp.) 246 (1)=1942 O.W.N. (B.R.) 368=1942 R.D. 457.**

——**S. 3 (2) and (3)**—Interest taken by widow in joint family property—Extent of—Liability for debts of deceased husband. *See* 1941 Dig., Col. 653. SARADAMBAL *v.* SUBBARAMA AYYAR. **I.L.R. (1942) Mad. 630=15 R.M. 250=201 I.C. 152=A.I.R. 1942 Mad. 212=(1941) 2 M.L.J. 862.**

——**S. 3 (2) and (3)**—*Scope and effect of—Right of widow—If obtained by inheritance—Suit on promissory note in favour of deceased husband—Succession certificate—Not necessary.*

A Hindu widow who is given a right under S. 3 of the Hindu Women's Right to Property Act does not obtain such right by survivorship; she was not a coparcener before her husband's death and is not one after that. It does not, however, follow that she obtains it by inheritance, so as to make it obligatory on her to obtain a succession certificate under S. 21 of the Succession Act in a suit on a promissory note in her deceased husband's favour. As the widow does not inherit no succession certificate is necessary. The effect of S. 3 (2) and (3) of the Act (XVIII of 1937), is a survival of the husband's *persona* in the wife, giving her the same rights as her husband had except that she can alienate the property only under certain circumstances. (*Horwill, J.*) NATARAJAN CHETTIAR *v.* PERUMAL AMMAL. **55 L. W. 823=1942. M.W.N. 703=(1942) 2 M.L.J. 668.**

——**S. 3 (2) and (3)**—*Scope of—If affects rights of survivorship of sons.*

Sub-Secs. (2) and (3) of S. 3 of the Hindu Women's Rights to Property Act do not contemplate that the sons of a deceased Hindu are to be excluded by the widow upon the death of their father. The right conferred upon the Hindu widow by sub-Sec. (3) is merely a limited right such as a Hindu widow possesses under the ordinary Hindu Law with an additional privilege conferred by the section that she could independently claim partition as a male owner which was denied to her under the Hindu Law. The rights of survivorship in a joint Hindu family possessed by the sons are not taken away by sub-Ss. (2) and (3) of S. 3 of the Act. (*Ghulam Hasan, J.*) ANANT LAL *v.* RAM ADHAR. **198 I.C 443=14 R.O. 397=1941 O.A. 1071=1941 O.W.N. 1359=1942 A.W.R. (C.C.) 16=1942 R.D. 25=A.I.R. 1942 Oudh 216.**

HUSBAND AND WIFE—Advancement—Deposit by husband of money in joint names of himself and his wife—Effect of. *See* HINDU LAW—JOINT FAMILY—GIFT. **44 Bom.L.R. 839.**

——Deposit of husband's salary in bank in names of husband and wife—Presumption—Loan by husband alone—Right of latter to claim set off of money in names

of himself and wife against loan—Rule. *See* COMPANY —WINDING UP—SET OFF. (1942) 1 M.L.J. 161.

———Dissolution — Jurisdiction of Courts—Tests—British and non British subjects—Law in India. *See* 1941 Dig., Col. 653. NOOR JEHAN BEGUM *v.* EUGENE TISCENKO. 199 I.C. 549=14 R.C. 601.

———Indian Christians—Purchase by husband in name of wife—Doctrine of advancement—If applicable. *See* TRUSTS ACT, S. 82. (1942) 1 M.L.J. 528.

———Marriage—Dissolution—Law as to—Personal Law of one of parties—If applicable. *See* 1941 Dig., Col. 653. NOOR JEHAN BEGUM *v.* EUGENE TISCENKO. 199 I.C. 549=14 R.C. 601.

———Marriage—Rights and obligations of parties—Law applicable—General principles of private international law—Matrimonial actions—Jurisdiction of Courts. *See* 1941 Dig., Col. 654. NOOR JEHAN BEGUM *v.* EUGENE TISCENKO. 199 I.C. 549=14 R.C. 601.

———Separation deed—Covenant that neither party to have any claim against other in respect of any matter or account—Deed acted upon for several years—Subsequent suit by wife for judicial separation and alimony on ground of desertion—Maintainability. *See* 1941 Dig., Col. 655. ROZARIO *v.* ROZARIO. 198 I.C. 102 =14 R.B. 269.

———Money deposited by husband in Bank in the names of himself and his wife—Presumption as to. *See* COMPANY—WIND UP—SET OFF. (1942) 1 M.L.J. 161.

———Separation—Deed of—Nature and incidents of —Duty of Court to enforce—Rules. *See* 1941 Dig., Col. 655. ROZARIO *v.* ROZARIO. 198 I.C. 102=14 R.B. 269.

tural income" was exhausted and therefore when the residue, after satisfying the prior trusts, was appropriated by the assessee in his secondary capacity as beneficiary, it has ceased to be "agricultural income" and had lost the protection of S. 4 (3) (*viii*):

Held, that so long as the services were and are performed the assessee was and will be, beneficially interested in the surplus income of the properties and was, and will be, a beneficiary in respect of that surplus under the trusts of waqf. And the agricultural income which he received as mutwalli did not change its character when he received the residue as beneficiary.

Held, further, that in determining the amount of the agricultural income in such residue which would be exempt from assessment, the principle to be applied was that the prior charges on the mixed income fund should be apportioned between the component parts thereof rateably and in consequence the surplus which remains should be rateably attributed to agricultural and non-agricultural income. Therefore the method to apply was to treat the residue in the hands of the assessee as being composed of agricultural and non-agricultural income in the same ratio as the total of these two classes of income bore to each other at the time when they passed into the common fund. (*Collister, Baipai and Braund, JJ.*) SYED MUHAMMAD ISA *v.* COMMISSIONER OF INCOME-TAX, CENTRAL PROVINCES. I.L.R (1942) All. 425=200 I C 758=15 R.A. 33= =(1942) I.T.R. 267=1942 A.L.W. 333=1942 A.L.J. 358=1942 A.W.R. (H C.) 234=A.I.R. 1942 All. 194 (S.B.).

———S. 2 (1)—"*Officer of Crown*"—*Meaning of Collector—Position of.* *See* 1941 Dig., Col. 657. JHALAK PRASAD SINGH *v.* PROVINCE OF BIHAR. 1941 P.W N. 689 (S.B.).

———S. 2 (1) (a)—Interest on arrears of rent payable under S. 67, B. T. Act—If agricultural income—Liability to income-tax. *See* 1940 Dig., Col. 692. RADHIKA MOHAN ROY WARD'S ESTATE, *In the matter of*. 199 I.C. 763=14 R.C. 634.

———S. 2 (6-A)—"Dividend"—Distribution of accumulated profits of company to shareholders in the form of bonus shares—If "dividend". *See* 1941 Dig., Col. 658. COMMISSIONER OF INCOME-TAX MADRAS *v.* RAMASWAMY CHETTIAR. I.L.R. (1942) Mad. 182= 198 I.C. 260=14 R.M. 414= (1941) 2 M.L.J. 900 (S.B.).

———S. 3—'*Association of individuals*"—*Hindu widows, wives of brothers carrying on business but not as registered firm—Widows earning income from deposit in joint names—Assessment as association of persons—If justified.*

The assessees, two Hindu widows who were the wives of two Hindu brothers, carried on a business in Jubbalpore and also earned income on a lakh of rupees deposited in Bombay. They were not registered as a firm and were therefore assessed on the business and on the income from the deposit as an association of individuals. They claimed that so far as their profits in Bombay from the deposit were concerned, they should be regarded as individuals receiving an income in Bombay and that the income should not be assessed together with their income from business as an association of persons.

Held, that in view of a decision of the High Court holding that the assessees did not form a joint Hindu family, the question whether their property in Bombay was their *stridhan* or not was immaterial, and the income from the deposit belonged to them as an association of individuals and the Income-tax department was therefore justified in assessing them as an association of individuals. (*Stone, C.J. and Bose, J.*) COMMISSIONER

INCOME-TAX ACT (XI OF 1922), S. 2 (1)—Agricultural income—Mustagee—Amount paid by to zamindar—Interest on—Not taxable. *See* INCOME-TAX ACT, S. 4 (3) (viii). 21 Pat. 461=8 Cut.L.T. 46=1942 I. T.R. 147=8 B.R. 645=199 I.C. 868=14 R.P. 636= 23 Pat.L.T. 736=A.I.R. 1942 Pat. 381.

———S. 2 (1)—*Agricultural income*—Zar-i-chaharum nazarana.

Zar-i-chaharum which is one-fourth of the sale price of houses when houses are transferred by one person to another and to which the zamindar is entitled is not agricultural income within the meaning of S. 2 (1) of the Income-tax Act. Nor is *nazarana* which represents the consideration received by the zamindar for granting permission to a person to build a house on a plot of land belonging to the zamindar, agricultural income. (*Collister and Baipai, JJ.*) BISHWANATH *v.* COMMISSIONER OF INCOME-TAX, C. & U.P. I.L.R. (1942) All. 398=201 I.C. 209=15 R.A. 48=1942 I.T.R. 322 =1942 A.L.W. 351=1942 A L.J. 543=1942 F.L.J. (H. C.) 167=1942 A.W.R. (H. C.) 354=A.I.R. 1942 All. 295.

———Ss. 2 (1) and 4 (3) (viii)—*Mutawalli allowed to appropriate residue of agricultural and non-agricultural income in lieu of his services—Agricultural income if ceases to be so when received by him as beneficiary—Method of determining amount to be treated as agricultural income out of total fund.*

Under two deeds, a person was appointed mutwalli and he was to receive both the agricultural and non agricultural income, and after performing the functions of his office, was allowed to appropriate the residue of the amount received in lieu of his services. The whole of the amount received by him was sought to be assessed on the ground that once the income of the agricultural properties reached the hands of the assessee in his primary character as mutwalli, its character as "agricul-

INCOME-TAX ACT (1922), S. 3

OF INCOME-TAX, U. P. AND C. P. *v.* MOHANLAL HARGOVIND. 1942 I.T.R 84.

——**Ss. 3 and 4 (3)**—*Madras Bar Council—Income of—Taxability.*

The Madras Bar Council is an individual or Association of persons within the meaning of S. 3 of the Income-tax Act and its income is taxable unless exemption is obtained under S. 4 (3) of the Act. The income of the Bar Council derived from investments of the Council, if held by the Council for educational purposes, would be exempt from tax under S. 4 (1) of the Act; but the income derived from enrolment of members of the profession and examination-fees of apprentices-at-law would be taxable. (*Leach, C.J. and Lakshmana Rao, J.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* BAR COUNCIL, MADRAS. **56 L.W. 60=1943 I.T. R. 1=A I.R. 1943 Mad. 137=(1942) 2 M.L.J. 782.**

——**S.3**—*Total "income"—Impartible raj—Maintenance payable to widows of prior holder made a charge on estate—Amount paid by holder to widow's prior holder—If part of total income—Assessability to income-tax in his hands.*

The assessee succeeded to a *raj* on the death of his predecessor after a protracted civil litigation against the widows of the late Raja who claimed the entire estate on the ground that the assessee was not a member of the joint family with the deceased and that there was no male member in the family. The assessee claimed that he was a member of a joint Hindu family with the late Raja and was therefore entitled to the estate by survivorship and by the custom of lineal primogeniture. The assessee's contention was upheld, but the decree awarded maintenance to the widows of the late Raja and made the arrears of maintenance a charge on the estate. The assessee paid the widows in the year of assessment 1937-1938 a sum of Rs. 19,587, as maintenance allowance under the decree and claimed deduction but the Income-tax authorities treated it as part of his income and included the same in the assessable income of the assessee.

Held, that the amount paid by the assessee to the widows of his predecessor was not a part of his income, but was the amount received by him for and on account of the widows and therefore was an admissible deduction and no tax was payable by him on that amount. It was not the case of the assessee applying part of his income in a particular way; it was rather an allocation of a sum out of his revenue before it became income in his hands. (*Harries, C.J. and Manohar Lall, J.*) SHIVA PRASAD SINGH *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **201 I.C 179=15 R.P. 32=23 Pat.L. T. 323=8 B.R. 766=1942 I.T.R. 249=A.I.R. 1942 Pat. 456.**

—— **S. 4**—*Firm—Branch in British India accepting orders and concluding contracts—Contracts sent to head office outside British India for execution and payments made there—If carries on business in British India—Liability to tax.*

The assessee, a firm consisted of four brothers, who were joint and lived in Muttra in the United Provinces. The firm sold salt which was obtained from a lake in Rajputana outside British India. The head office of the firm was at Rajputana, but it had a branch at *M* in British India, where a business of selling salt to persons in the district was carried on. One of the partners came to *M* at intervals. There was a clerk at *M*. Orders for salt were accepted and contracts for sale and delivery of salt were concluded at *M*, and the orders were sent to the head office at Rajputana for execution, and payments made at the head office.

Held, (1) that the assessee carried on business in British India; (2) that the assessee was liable to be taxed

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under S. 4 of the Income tax Act. (*Harries, C.J. and Fazl Ali, J.*) HARDEO BENGAL SALT CO. *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **202 I.C. 304=15 R.P. 110=8 B.R. 871=1942 I.T. R. 13=A.I.R. 1942 Pat. 313.**

——**S. 4**—*Income in respect of mortgage—Computation—Mortgagee purchasing mortgaged property in execution of his decree.*

Whatever may be the right of a mortgagee when a sum of money is paid to him in cash by the mortgagor to appropriate it towards principal or interest, when the mortgaged property is purchased in satisfaction of the debt, the mortgagee receives a transfer of the property at the value of the purchase price in satisfaction *pro tanto* of the liability of the mortgagors for principal and interest and to the extent therefore that the purchase price exceeds the principal sum due there is a realisation of interest, that is payment of interest—and such payment is liable to income-tax. (*Collister and Bajpai, JJ.*) LACHMANDAS BRIJ BALLABADAS *v.* COMMISSIONER OF INCOME-TAX C. P. AND U. P. **1942 A L.W. 205=1942 O.W.N. 289=1942 I.T.R. 186.**

——**S. 4**—*Income—Interest—Appropriation of—Decree obtained by assessee against two persons for principal and interest on handnotes and costs—Payment of lump sum by one debtor in full discharge of his half of liability—Amount to be appropriated as interest.*

The assessee had lent a sum of Rs. 22,103 to two brothers on 3 handnotes which provided for payment of interest. The assessee obtained a decree against them on 26—2—1934 for Rs. 31,682 being the principal amount together with Rs. 6,579 interest and Rs. 3,000 costs. The decree provided for future interest at 6 per cent. The assessee started execution on 12—6—1937, and pending the same he entered into an agreement with one of the judgment-debtors in 1938-1939, under which the latter was discharged from all liability on his paying the assessee a sum of Rs. 21,000 in payment of half the decree debt. The assessee did not appropriate this sum in his books in any particular manner, but the Income-tax Authorities appropriated Rs. 3,000 towards costs, Rs. 13,977 towards interest and Rs. 4,023 towards principal.

Held, that the payment made to the assessee by one of the judgment-debtors was in respect of half the costs, half the principal and half the interest, and the amount paid as interest could not therefore be greater than the sum actually paid, *viz.*, Rs. 8,448-8-0 (*Harries, C.J. and Manohar Lall, J.*) SIDESHWAR PRASAD NARAIN SINGH *v.* COMMISSIONER OF INCOME-TAX, B. AND O. **203 I.C. 437=15 R.P. 178=9 B.R. 82=1942 I.T. R. 344=A.I.R. 1942 Pat. 467.**

——**S. 4**—*"Received"—Meaning—Royalty payable to assessee—Deposit to his credit in his account in bank by lessee—Assessee disputing quantum of royalty and validity of lease granted by agent and treating amount as "suspense"—Assessee mixing up amount with other amounts in bank and operating on it—Effect—If constitutes receipt of income.*

The assessee who was the proprietor of a big zamindari estate was assessed to income-tax in 1937-1938 on his income from different sources comprising among others royalties received from various lessees for working the coal mines located on his estate. The leases were granted, at a time when he was a minor, by the Court of Wards who administered his estate at that time. Upon the assessee attaining majority he took charge of his estate during the previous year of account 1937-1938. One of the lessees who had to pay a sum of Rs. 1,38,955 as total royalty had already paid Rs. 50,209-14-3, during the first part of 1937-1938, when the assessee

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was still a minor, and he paid Rs. 88,756, in the latter part of 1937-1938 when the assessee had himself assumed charge of his estate. In the return filed by the assessee for the assessment year 1938-1939, the assessee showed and included only the sum of Rs. 5,00,209 14-3, paid by this lessee but not the sum of Rs. 88,756, the assessee's contention being that he had kept this sum in a suspense account on the ground that there was a dispute between him and the lessee in question with regard to the correct amount of the royalty payable and also with regard to the validity of the lease itself because he intended to repudiate the leases granted by the Court of Wards, that, therefore, he had never received the sum in question and was not bound to pay income tax on that amount. The lessee in question was in the habit of paying the royalty from time to time to the credit of the assessee in his account in the Imperial Bank of Calcutta under the arrangement with the Court of Wards and he paid in this sum of Rs. 88,756 also to the account of the assessee in that Bank. It was found, however, that the assessee had operated upon this sum by agreeing to have it mixed up with the other amounts to his credit in the Bank, but the account was operated upon not in the previous year but in the following year (*i.e.* 1938-1939).

Held, that the assessee received the amount in question as income and it was mixed up with the other sums to his credit in the Bank over which he had complete control, and that that amount was therefore assessable to income-tax in the year 1938-1939. (*Harries, C. J. and Manohar Lal, J.*) KAMAKHYA NARAIN SINGH *v.* COMMISSIONER OF INCOME-TAX, B. & O. **202 I.C. 270=15 R.P. 107=8 B.R. 868=1942 I.T.R. 177=A.I.R. 1942 Pat. 491.**

——**S. 4 (2)**—Remittances from foreign business—If profits—Presumption—Nature — Remittance towards cost of production—Assessability. *See* 1941 Dig., Col. 661. COMMISSIONER OF INCOME-TAX, BURMA *v.* BHAGWANDAS BAGLA. **1942 I.T.R. 35.**

——**S. 4 (3) (1)**—Applicability—Association—Profits used for charitable purposes, absence of legal obligation to devote profits to such uses—Profits—If exempt from tax. *See* 1941 Dig., Col. 661. ALL INDIA SPINNERS ASSOCIATION, *In re.* **I.L.R. (1941) Bom. 572=198 I.C. 30=14 R.B. 264.**

——**Ss. 4 (3) (1) and 41 (1), proviso**—*Applicability—Trust for political purposes or national purposes—If charitable—Exemption—Assessment—Maximum rate—If leviable.*

"Charitable purposes" in S. 4 (3) of the Income-tax Act would include relief of the poor, education, medical relief and the advancement of any other object of general public utility. Trusts for the benefit of the inhabitants of a particular locality are regarded as charitable, but trusts for the benefit of a particular political party or for the advancement of particular political purposes or opinions are not regarded as charitable. A gift for such purposes as a particular individual or individuals may consider to be charitable is not a good charitable purpose although a gift for such charitable purposes as the managing committee of a trust may think fit would be good, because the committee would be bound to keep within the ambit of charity, and if they go beyond the legal boundary, they can be controlled by the Court. The objects of a trust created by a deed were (1) the advancement of any purpose which might in the controlled opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional; (2) the political advancement of India having for its goal the acquisition of complete autonomy or "swarajya" to be attained by all constitutional agitation and means; (3) the diffusion of political education and knowledge as to the political affairs of India and propoganda work both in India as well as in any part of the world outside India having for its aim the acquisition of complete national autonomy or "swarajya" as aforesaid; (4) any object which may conduce to any of the aforesaid objects.

Held, (1) that the objects specified in the four clauses were clearly distributive and since the whole of the trust fund could be applied for any one or more of the objects specified, the trust could not be regarded as charitable if any of those objects did not fall within the term "charity"; (2) that clauses (1) and (2) went too far, and the gift was for a political purpose; (3) that the trust for a national or political purpose could not be regarded as charitable so as to fall within the purview of S. 4 (3) (i) of the Income-tax Act; (4) that the case fell within the first proviso to S. 41 (1) of the Income-tax Act and the maximum rate of income-tax was leviable. Although it was rather hard on the trust, that was not a matter with which they could deal. (*Beaumont, C.J. and Kania, J.*) LOKAMANYA TILAK JUBILEE NATIONAL TRUST FUND, BOMBAY, *In re.* **198 I.C. 544=14 R.B. 313=1942 I.T.R. 26=43 Bom.L.R. 1027=A.I.R. 1942 Bom. 61.**

——**S. 4 (3) (1)**—*"Trust wholly for charitable purposes"—What constitutes—Right to exemption under clause.*

N who was interested in motor engineering and transport companies created an industrial and educational trust and purported to endow it with immovable properties and shares held by him in six transport companies of which he had the control. He constituted himself the managing trustee and gave himself full power to deal with the assets. The Instrument of Trust provided, *inter alia*, "that the trustees shall as early as they consider it expedient utilise the trust for the purpose of starting an institute for industrial and scientific research and training," and the foundation of the institution was left over until the companies had made sufficient money for the purpose. The founder also reserved to himself a power to revoke the trust at any time, and had powers to utilise the assets for his own purposes or the purposes of his companies.

Held, that it could not be said that a trust was created wholly for charitable purposes so as to entitle it to the benefit of S. 4 (3) (*i*) of the Income-tax Act. (*Leach, C.J., Krishnaswami Ayyangar and Bell, JJ.*) COMMISSIONER OF INCOME TAX MADRAS *v.* G. D. NAIDU INDUSTRIAL EDUCATIONAL TRUST. **I.L.R. (1942) Mad. 921=203 I.C. 220=15 R.M. 603=1942 I.T.R. 358=55 L.W. 500=A.I.R. 1942 Mad. 625=(1942) 2 M.L.J. 230 (F.B.)**

——**S. 4 (3) (1), Expl.**—*'Trust for charitable purpose'—Trust fund for relief of poverty among employees of firm—If constitutes.*

In order that a trust fund created for the relief of poverty may be a trust wholly for charitable purpose within meaning of S. 4 (3) (*i*) of the Income-Tax Act read with the Explanation, it must be for the benefit of the public or a specified section of it. Private individuals including the employees of a firm are not part of the general public or of any section of the public. The principal deed of trust stated that the income from the fund should be applied for the benefit of any past, present and future officers and other employees of a certain company and its subsidiary concerns who in the uncontrolled discretion of the administrators should be deserving of consideration or help more especially on account

INCOME TAX ACT (1918), S. 4.

DIVIDEND TAX ACT (1936), S. 4.

INCOME-TAX ACT (1922), S. 7.

See 1941 Dig., Col. 666. COMMISSIONER OF INCOME-TAX, MADRAS *v.* ANNAMALAI CHETTIAR. **197 I.C. 707=1942 M.W.N. 107=14 R.M. 376=(1941) 2 M. L.J. 890 (F.B.).**

——**S. 7 (1)**—*Applicability—Deferred salary—Provident Fund not recognised under Act—Employer's contribution and interest thereon—Withdrawal of amount by employee in service—Income not assessable.*

The assessee, an employee in the Tata Iron and Steel Works Ltd., Jamshedpur, was drawing a salary of over Rs. 200 per mensem. The assessee was subscribing to the Provident Fund maintained by the company and the employer company also contributed a similar sum. These subscriptions together with 6 per cent. interest were placed to the credit of the assessee who in the year previous to the year of assessment withdrew a sum of Rs. 6,214, which consisted of the contributions made by the employer to the Provident Fund Rs.3,445 and the accumulated interest thereon Rs. 1,319. The assessee contended that these two amounting to Rs. 4,764 could not be assessed to income-tax as it was not received by him as his salary but as a capital voluntary payment. The Income-tax authorities contended that the amount was in the nature of a deferred salary. The Provident Fund was not a recognised fund under Ch. IX-A of the Income-tax Act. Under the rules of the Fund, the sums which are allotted by the company could not be withdrawn by the assessee at the end of each year, but only after he had served completely and satisfactorily for a period of 12 years.

Held, that the allotments made by the Fund in the name of the assessee were not in the nature of salary for current services, but were merely the measure of a sum or sums which the company volunteered to pay to him on the termination of his service upon a certain percentage basis if the service terminated after three years and more and upon another percentage when he had served 12 years satisfactorily. The sum in question was not therefore "income" assessable in the hands of the assessee under S. 7 (1) of the Act. (*Harries, C.J. and Manohar Lall, J.*) S. R. MITTRA, *In re.* **1942 I.T.R. 259.**

——**Ss. 7 (1) and 24-B**—*Death of person during accounting year without drawing commission earned by him prior to that year—Such commission paid to his widow during accounting year—Liability of widow to assessment thereon.*

One *C* who was the managing agent of a company and who was remunerated upon a commission basis died in May 1938, without drawing the commission earned by him prior to April 1st, 1938. After *C's* death, the company paid this commission to his widow as his legal representative during the financial year, 1938-39 without any deduction of income-tax. The Income tax Department assessed the widow under S. 24-B of the Income-tax Act for the year 1939-40 on the income of the deceased for the previous year 1938-39 and included in that income the total sum due to him for commission at the date of his death.

Held, that by virtue of S. 7 of the Income-tax Act as amended in 1939, the Commission earned by the deceased which remained undrawn down to the time of his death remained salary at all material times and that by reason of S. 24-B of the Act the widow as his legal representative was liable to pay the tax which would have been paid by the deceased on that salary if he had not died. (*Derbyshire, C.J. and Panckridge, J.*) SM. USHARANI ROY, *In the matter of.* **46 C.W.N. 489=1942 I.T.R. 199.**

——**S. 7 (1) (as amended in 1939)**—*Word 'due'—If limited to salary due in respect of accounting year.*

Per *Panckridge, J.*—The word 'due' in S. 7 (1) of the Income-tax Act as amended in 1939 is not limited to salary due in respect of the accounting year but includes also unpaid salary due in respect of previous years. (*Derbyshire, C.J. and Panckridge, J.*) SM. USHARANI ROY, *In the matter of.* **46 C.W.N. 489=1942 I.T.R. 199.**

INCOME-TAX ACT (1922), S. 10.

——**Ss. 8 and 12**—Income of an impartible estate—Nature of. *See* 1941 Dig., Col. 666. COMMISSIONER OF INCOME-TAX, PUNJAB *v.* DEWAN KRISHNA KISHORE. **I.L.R. (1941) Kar. (P.C.) 155=I.L.R. (1942) Lah. 1=1942 M.W.N. 4=74 C.L.J. 508=44 Bom.L.R. 196=1942 A.L.J. 159=44 P.L.R. 225=(1941) 2 M.L.J. 972 (P.C.).**

——**(as amended in 1939), S. 8, provisos 1 and 2**—*Co-operative Bank—Interest on tax-free securities—Interest on money borrowed for purchase of securities—Right to deduct—Debentures purchased in open market—Interest on—Exemption.*

The assessee, a Provincial Co-operative Bank, Limited, registered under the Co-operative Societies Act of 1912 and the Madras Co-operative Societies Act of 1932, received in the year of account, 1938-1939, the sum of Rs. 69,975 as interest on tax-free securities. The assessee was entitled under the second proviso to S. 8 of the Income-tax Act to deduct this sum when calculating the amount of income for purposes of income-tax. The assessee, however, claimed a further reduction of Rs. 26,729 being the interest which was paid in the year of account on moneys borrowed for the purpose of buying tax-free securities. The assessee had invested money in debentures issued by the Madras Co-operative Central Land Mortgage Bank and these debentures were bought by the assessee in the open market. The assessee claimed exemption from tax in respect of the interest paid on these debentures, on the plea that the debentures represented loans to the Madras Co-operative Central Land Mortgage Bank and therefore represented transactions which were part of the ordinary business of the assessee.

Held, (1) that the assessee was entitled to the benefit of the first proviso to S. 8 of the Income-tax Act (as amended in 1939), in respect of interest received from securities which were not tax-free and to the benefit of the second proviso in respect of tax-free securities, but was not entitled to a double exemption in respect of the tax free securities; the assessee therefore could not get exemption in respect of the amount of Rs. 26,729; (2) that the fact that the assessee went into the open market to purchase the securities (debentures of the Madras Co-operative Central Land Mortgage Bank) showed that the object was investment, and the interest paid on the debentures represented taxable income as interest on investments. (*Leach, C.J. and Lakshmana Rao, J.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* MADRAS PROVINCIAL CO-OPERATIVE BANK, LTD. **(1942) I.T.R. 490=A.I.R. 1943 Mad. 152=(1943) 1 M.L.J. 46.**

——**Ss. 9 (1) and 14**—'Property of which he is the owner' in S. 9 (1)—Meaning of—Income of impartible estate held by member of joint Hindu family—How chargeable. *See* 1941 Dig., Col. 667. COMMISSIONER OF INCOME-TAX, PUNJAB *v.* DEWAN KRISHNA KISHORE. **I.L.R. (1941) Kar. (P.C.) 155=I.L.R. (1942) Lah. 1=1942 A.L.J. 159=44 P.L.R. 225=1942 M.W.N. 4=74 C.L.J. 508=44 Bom.L.R. 196=(1941) 2 M.L.J. 972 (P.C.).**

——**Ss. 10, 12 and 26 (2)**—*Applicability.*

S. 26 (2) of the Income-tax Act is not confined to cases of succession *inter vivos*, but applies equally to the business of a deceased carried on by the heir-successors.

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But before a person can be assessed as a successor of a deceased money-lender, there must be evidence to show that the business of money-lending was actually carried on by the successor of the deceased money lender. *H*, a money-lender, died in November, 1936, leaving three sons and a widow. For the assessment year 1935 1936, the sons were assessed as an association of individuals under S. 3 of the Income-tax Act, and they did not object to that course. For the year 1937-1938, they objected to their assessment as an association of individuals and also to the assessment on income from business for the whole year under S. 26 (2) of the Act on the ground that they had not carried on the business on the death of their father. It was found that after the death of *H* his sons had retained joint management of his property, jointly received the rents in the form of property income, jointly recorded the same in the cash book for recording interest income, and that no fresh rent deeds were executed in the names of the sons severally after the death of *H*. It was also found that *H* had been lending out money on interest for many years before his death, that he had been assessed under S 10 and that he had large outstanding amounts when he died. The assessees had not dealt with those loans in any way and there was no evidence to show that they carried on the business of money-lending,

Held, (1) that there was evidence, though slight, on which the Income-tax authorities could find that the assessees were an association of individuals and therefore they were correctly assessed as such in respect of the rents realized jointly and recorded jointly in the books, (2) that in respect of the income derived from the money-lending business of *H*, the assessees could not be assessed under S. 10, but must be assessed under S. 12 of the Act, in which case S. 26 (2) would not apply. (*Almond, J.C. and Ahmad, J.*) HAJI GHULAM HUSSAIN *v.* COMMISSIONER OF INCOME-TAX, LAHORE. **1942 I.T.R. 405.**

——**Ss. 10 and 66 (2)**—Book debts taken over—Irrecoverability—Loss, if capital loss—Question if one of law. *See* 1941 Dig., Col. 668. COMMISSIONER OF INCOME TAX *v.* S. P. K. A. R. M. FAMILY. **197 I.C. 260=14 R R. 116.**

——**S. 10**—Right to deduction—Firm dissolved—Assets and liabilities divided up between asse-see and other partner—Assessee carrying on business himself—Certain debts falling to assessee's share of assets—Assessee accepting smaller sums and writing off balance as irrecoverable—Losses, if allowable against income, profits and gains of new firm. *See* 1941 Dig., Col. 668 CHIMANLAL *v.* COMMISSIONER OF INCOME-TAX, BENGAL. **199 I.C. 433=14 R.C. 551.**

——**S. 10 (1)**—Profit—Interest—Calculation—Money lending business—Mortgage—Decree on basis of—Assessee purchasing property in execution—Market value of property—Price paid at auction—If market value—Presumption. *See* 1941 Dig., Col. 668. BISHWANATH SINGH *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **200 I.C 108=14 R.P. 638=8 B.R. 651=A.I.R. 1942 Pat. 65.**

——**Ss. 10 (2) (vi) and 26 (2)**—Assessee succeeding to business in middle of previous year—Claim for depreciation—Basis of computation—Pre and post succession periods. *See* 1941 Dig., Col. 669. INDIAN IRON AND STEEL CO., LTD., *In the matter of*. **74 C. L J. 451=A.I.R. 1942 Cal 268.**

——**Ss. 10 (2) (vi), Proviso (b) and 26 (2)**—Accumulated unabsorbed depreciation allowance of owner of business—If available to successor. *See* 1941 Dig., Col. 670. INDIAN IRON AND STEEL CO., LTD., *In the matter of*, **74 C.L.J. 451=A.I.R. 1942 Cal.268.**

INCOME-TAX ACT (1922), S. 10.

——**S. 10 (2) (ix)**—Allowance under—Expenses incurred in defending suit—Suit filed against assessee for rent and royalty as assignee of original grantee of mining lease. *See* 1941 Dig., Col. 671. MAGNIRAM BANGORE & CO., *In re*. **200 I.C. 246=14 R C. 695 =A.I R. 1942 Cal 297.**

——**S. 10 (2) (ix)**—*Applicability—Assessee speculating in cotton incurring losses in forward contracts—Suit against assessee in respect of such losses—Litigation expenses incurred by assessee in suit—Suit ultimately ending in compromise decree—Right to claim deduction of litigation expenses.*

The assessee who carried on a money-lending business and dealt in groundnuts, and was running an oil mill, also speculated in cotton. In 1922, he entered into certain forward contracts for the purchase and sale of cotton. These resulted in losses which he could not meet. He was therefore sued in respect of these losses and ultimately a decree was passed against him on a compromise for Rs. 33,500 in May, 1935. The assessee paid the amount to the decree-holder in the Diwali year 1934-1935, *i.e.*, the next accounting year. In defending the suit, the assessee incurred legal expenses amounting to Rs. 2,382, which he claimed to deduct from his income as a business expenditure in the assessment year of 1935-1936.

Held, (1) that the expenditure incurred by the assessee in avoiding a business liability was an allowable expenditure under S. 10 (2) (*ix*) of the Income-tax Act in the year in which expenditure was actually incurred, and the legal expenses should therefore be allowed to be deducted under S. 10 (2) (*ix*); (2) that the Income-tax authorities should in law make allowance for "expenditure incurred" in the period 28—10—1933 to 7—11—1934, that being found to be the year in respect of which arose the income, profits and gains forming the basis of the assessment; what figure that amounted to was a matter of fact to be dealt with by the income-tax authorities. (*Stone, C. J. and Bose, J.*) COMMISSIONER OF INCOME-TAX, C. P. & U. P. *v.* MATHURADAS MANNALAL. **1942 I.T.R. 95.**

——**S. 10 (2) (ix)**—*Deduction—Expenses for completion of title—Mortgagee purchasing mortgaged property in satisfaction of mortgage debt.*

The expenses incurred by a mortgagee in completing his title and entering into possession after the execution sale had become absolute are not deductible by the mortgagee from his taxable profits in respect of the mortgage transaction. (*Collister and Baipai, JJ.*) LACHMANDAS BRIJ BALLABADAS *v.* COMMISSIONER OF INCOME-TAX, C. P. AND U. P. **1942 I.T.R. 186 =1942 A.L.W. 205=1942 O.W.N. 289.**

——**S. 10 (2) (ix)**—*Money-lending business—Deduction of money incurred in defending suit for breach of contract—Money-lender's right to.*

In computing the profits and gains of the business of an assessee as a money lender, the assessee is entitled to the deduction of money expended by him in defending a suit filed against him for damages for breach of contract in respect of a transaction which is not foreign to his money lending business. (*Lord Thankerton.*) COMMISSIONER OF INCOME TAX, B. & O. *v.* SIR KAMESHWAR SINGH. **69 I.A. 15=I.L.R. (1942) Kar.(P.C.) 17=199 I.C. 314=8 B.R. 545=1942 A.L.J 261=14 R.P.C 118=1942 I.T.R 214=23 Pat L. T 396=55 L.W. 329=46 C.W.N 750=1942 O.W. N 400=1942 A.L.W. 406=1942 P.W.N 157=1942 O.A. 330=1942 A.W.R (P.C.) 23=44 Bom. L.R. 778=A.I.R. 1942 P.C. 11=(1942) 2 M.L.J. 261 (P.C.).**

INCOME-TAX ACT (1922), S. 13.

——Ss. 13 and 66 (3)—*Assessee furnishing unreliable accounts—Estimation of income under S.* 13, *Proviso—Further scrutiny on appeal—Rejection of account books—Propriety—Application to High Court for order directing statement of case—Maintainability.*

The assessee who was carrying on money-lending business filed a return for 1935—1936, showing an income of Rs. 2,584 and produced a cash book and a ledger, which were admitted to have been written not daily but only fortnightly. The balances of the debtor's accounts and the names of the debtors were not brought forward from the previous year to the account year, and the accounts for year only showed such transactions as pertained to that year alone. The Income-tax Officer, holding that it was not possible to find out the correct income of the assessee from the accounts, took recourse to the proviso to S. 13 of the Income-tax Act, and made the assessment estimating the income at Rs. 1,50,000 as against Rs. 1,00,000 substituted by the assessee. The Assistant Commissioner, in appeal, further scrutinised the accounts and held that they had been rightly rejected by the Income-tax Officer. The Commissioner refused to state a case.

Held, (1) that the Income-tax Officer properly proceeded under S. 13 of the Income-tax Act, and his computation had been scrutinised; (2) that the material supplied by the assessee having been unreliable and there having been no arbitrary action on the part of the Income-tax authorities, no question of law arose in the case under S. 66 (3) of the Act. (*Stone, C.J. and Clarke, J.*) EKNATH BELAPPA LINGAVAT WANI *v.* COMMISSIONER OF INCOME-TAX, C. P. AND U. P. **1942 I.T.R. 110.**

——Ss. 13 and 66—*Opinion of Income-tax Officer—Question of law, if involved.*

Where the Income-tax Officer is of opinion that the assessee's books are not sufficiently well kept and he could not correctly assess the income of the assessee on the method of accounting followed by him, he is justified under S. 13 in making the assessment in such manner as he might determine. No question of law can be said to be involved in such a case. (*Almond, J. C.*) HUKAMCHAND DUNICHAND *v.* INCOME-TAX, COMMISSIONER, N.W.F.P. **201 I. C 485=15 R. Pesh. 23=1941 I T.R. 616=A.I R 1942 Pesh. 47 (1).**

——S. 13, Proviso—*Assessment made under—Interference by higher authorities, if prohibited.*

There is nothing in the Act to restrict, in respect to an assessment made under the proviso to S. 13 of Income-tax Act, the powers which the higher authorities of the Department have under Ss. 31 and 32 respectively. The basis and the manner of assessment adopted by the officer can be set aside in appeal by the Assistant Commissioner. (*Collister and Baipai, JJ.*) PEAREY LAL SHUKLA *v.* COMMISSIONER OF INCOME-TAX. **201 I,C. 18=15 R.A 43=1942 I.T.R. 239=1942 A L J. 388=1942 A.L.W. 385=1942 A.W.R. (H.C.) 113=A I.R. 1942 All. 307.**

——S. 14 (1)—*Applicability—"Receives as a member of a Hindu undivided family"—Hindu joint family—Death of coparcener—Widow suing for partition on ground of alleged separation of husband—Compromise—Widow admitting joint status and receiving maintenance from family and living apart—Amount received as maintenance—Exemption from taxation.*

The assessee's husband and his brother constituted a joint Hindu family. The assessee's husband died in 1922, leaving his widow, the assessee, and two daughters. The family property passed by survivorship to the brother of the assessee's husband and his sons. The assessee, claiming that her husband had separated from his brother before his death, brought a suit for partition and for recovery of a half-share in the family properties. The suit was ultimately compromised and a compromise decree was passed under which the widow (assessee) admitted that her husband died undivided and that she was entitled to claim maintenance at the rate of Rs. 1,500 per mensem until her death. There were other provisions for payment of further sums to the assessee and her daughters and for their residence. In the assessment year 1939-1940, the Income-tax authorities assessed the sum of Rs. 18,000 which the assessee received from the joint family as her maintenance for one year at the rate of Rs. 1,500 per mensem. The assessee claimed exemption under S. 14 (1) of the Income-tax Act on the ground that she received it in her capacity as a member of a joint Hindu family.

Held, that the assessee was still a member of the joint family, though she did not live with the other members of the family and that she received the maintenance amount of Rs. 18,000 as a member of the joint family within the meaning of S. 14 (1) and the amount was therefore exempt from taxation. The fact that she was living apart did not affect her position in law. (*Harries, C.J. and Manohar Lall, J.*) MT. RADHA KUER *v.* COMMISSIONER OF INCOME-TAX, B. & O. **21 Pat. 615=201 I C. 554=15 R.P. 53=8 B.R. 809=1942 I. T.R. 229=A.I.R. 1942 Pat. 458.**

INCOME-TAX ACT (1922) S. 16.

——S. 16 (1) (c) (as amended in 1939)—*Applicability—Income accrued before amendment from assets transferred under revocable trust and settlement deeds executed before Act—Assessability under S.* 16 (1) (*c*).

It is the law in force at the time of assessment which governs the assessment and not the law as it was during the year in which the income was earned. Hence the income of the year 1938-1939 accrued before the Amendment Act came into force, and derived from assets comprised in revocable instruments of trust and settlement deeds executed by the assessee in favour of his daughters in April, 1933, before the Amendment Act has to be deemed to be the income of the assessee under revocable transfers of assets as contemplated by S. 16 (1) (*c*) of the Income-tax Act as amended by Act VII of 1939 (*Leach, C.J., Wadsworth and Patanjali Sastri, JJ.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* MAHARAJAH OF PITHAPURAM. **I L.R. (1942) Mad. 91=199 I.C. 175=14 R.M. 550=1942 M.W N. 119=1942 I.T.R 1=55 L.W. 15=A.I.R. 1942 Mad. 191=(1942) 1 M.L.J. 16 (S.B.).**

——(as amended in 1937), S. 16 (3) (a) (ii)—Applicability—Hindu joint family—Father and sons and daughters—Partition—Shares of minor children made part of assets of partnership and minors admitted to benefits of partnership—Inclusion of minor children's income in father's total income—If justified. *See* 1941 Dig., Col, 675. COMMISSIONER OF INCOME-TAX, MADRAS *v.* LAKSHMANIER. **199 I.C. 393=14 R.M. 574=(1941) 2 M.L.J. 891 (S B.).**

——S. 16 (3) (a) (iii)—*Applicability—Money standing in account of assessee's wife in his books—Presumption—Interest on such amount—Assessability as husband's income.*

Where an assessee who is proceeded against under S. 16 (3) (*a*) (iii) of the Income-tax Act in respect of the income of his wife, makes no effort to prove that moneys appearing in his wife's account in his books, have come from other sources than himself, it is open to the Income-tax authorities to infer that the moneys were received by her from her husband otherwise than for adequate consideration and treat the interest thereon as part of the assessee's (husband's) income for purposes of S. 16 (3) (*a*) (iii). There is no natural presumption

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in the case of the assets of a married Hindu lady that they are transferred to her by her husband out of love or affection It is not an uncommon thing for a husband to put money in the name of his wife without ever intending to give it to her. (*Leach, C.J., Wadsworth and Patanjali Sastri, JJ.*) SINNASWAMI PILLAI *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **199 I.C. 211=14 R.M. 551=1942 M.W.N. 263=1942 I.T.R. 71=55 L.W. 75=A.I.R. 1942 Mad. 268=(1942) 1 M.L.J. 164 (F.B.).**

——**S. 16 (3) (iii) (as amended in 1937)**—*Applicability and scope—Retrospective operation—Property purchased by husband in wife's name in* 1922—*Wife settling property on trust—Husband appointed as agent of wife who was to be manager for life—Remuneration paid to husband and wife out of income—Amount paid to wife—Assessability.*

S. 16 (3) (*iii*) of the Income-tax Act, as amended in 1937, is not concerned with the date of the transfer; it is concerned with the income arising from the property and chargeable to income-tax for any year commencing on or after the 1st April, 1937. The section is wide enough to apply to income arising from transfers affected before the passing of the amending Act unless the income is chargeable for a year ending before 1st April, 1937. The assessee and his wife were associated with a school in Cawnpore. Two houses in Cawnpore were transferred by purchase from a third party to the assessee's wife by an instrument of transfer dated 27th February, 1922. The purchase price was paid by the assessee. Between 1922 and 1929, the wife started the school and carried it on in a room of the two houses, where the rest of the premises were let out on rent. By a trust deed of 30th September, 1929, executed by the wife, she settled the two houses on trust; she appointed six persons, including her husband, as trustees. She herself was to be a *Dharmakarta* (trustee) during her life and was to manage the affairs of the trust, while her husband the assessee, was to be her agent for collecting rents, filing suits, etc. For these services the assessee was to be paid out of the income of the trust property Rs. 100 per mensem; a subsequent clause provided that the wife was to be paid Rs. 50 per month. In the assessment year 1937-1938, the Income-tax authorities assessed to income-tax in the hands of the assessee the sum of Rs. 600 (which the wife got under the trust deed at Rs. 50 per mensem) under S. 16 (3) (*iii*) of the Income tax Act. The assessee claimed that it was salary for employment.

Held, that the amount of Rs. 600 was computable as part of the total income of the assessee (husband) under S. 16 (3) (*iii*) of the Income tax Act, and liable to tax, and was not salary arising out of employment.

Braund, J.—There is nothing harsh or unreasonable in the Legislature imposing for the future a tax on income, however its receipt may be manipulated, which under existing legislation is free from tax. A man has no common law right so to arrange his affairs that the income of his property is for ever to be immune from the charge of income-tax. (*Collister, Baijnath and Braund, JJ.*) GAYA PRASAD TEWARI *v.* COMMISSIONER OF INCOME-TAX, C.P. & U.P. **I.L.R. (1942) All. 455=202 I.C. 37=15 R.A. 87=1942 A.L.W. 437=1942 A.L.J. 404=1942 I.T.R. 308=1942 A.W.R. (H.C.) 179=A.I.R. 1942 All. 238 (F.B.).**

——**Ss. 22 (2) and (4), 23 (2) and (4) and 34**—*Applicability and scope—Notice under S. 34/22 (2)—Blank printed return signed and verified—Statement that no income escaped assessment—If valid return—Assessment under S. 23 (4)—Validity—Omnia ri*

INCOME-TAX ACT (1922), S. 22.

notice under S. 23 (2)—Effect—Failure to produce accounts.

The assessee was assessed for 1934—1935, on 28--5—1935 on a total income of Rs. 4,534. During the assessment for 1935—1936, the income-tax officer found thatthe assessee's income had partially escaped assessment during 1934—35 and issued a notice under S. 34 read with S. 22 (2) of the Income-tax Act. This was served on the assessee on 15—8 -1935. After some adjournments the assessee on 3—1—1936 filed a printed return duly signed and verified but he did not set forth the total income of the previous year 1934—1935. In the space provided for filling in the income from different sources, the assessee wrote "No income escaped assessment. Notice issued is barred by time." In the place meant for showing the total income he entered the word "nil." The Income-tax Officer did not treat this as a proper and valid return and did not issue a notice under S. 23 (2). On 27—1—1936, the assessee was assessed under S. 23 (4) for non-compliance with the notice under S. 34 read with S. 22 (2). It also appeared that a notice under S. 22 (4) was issued to the assessee requiring him to produce his accounts, but they were not produced on the plea that the accounts for the period were stolen.

Held, (1) that in the peculiar circumstances of the case the return submitted by the assessee was a valid return; (2) that in the circumstances a notice under S. 23 (2) was not necessary and the assessment under S. 23 (4) was not illegal as the assessee had failed to produce the accounts; (3) that since some income escaped assessment, S. 34 of the Act applied and a notice was therefore called for. The Income tax Act is a highly technical Act; the Income-tax authorities should, when sending a notice under S. 34 read with S. 22, emphasise the fact that a return duly setting forth the total income is required and a mere reference to the former income would not be treated as valid. (*Collister and Baijnath, JJ.*) PITAMBAR PRASAD, *In re.* **1942 I.T.R. 370.**

——**S. 22 (2)**—*Notice under—Form—Capacity in which assessee is to be charged, it should be indicated.*

A form is prescribed by statute for the return of income-tax but there is no statutory form for the notice which is issued under S. 22 (2) and there is nothing whatever in the Act to show that there is any obligation on the income-tax authorities to indicate in what capacity it is proposed to charge the potential assessee that tax. It is the duty of the person receiving the notice to score out the irrelevant capacities in the notice. (*Collister and Baijnath, JJ.*) RADHEY LAL BALMUKUND *v.* COMMISSIONER OF INCOME-TAX, C.P. AND U.P. **1942 I.T.R. 131=1942 O.W.N. 293=1942 A.L.W. 209.**

——**Ss. 22 (2) and (4) and 23 (2) and (4)**—*Notice under S. 34/22 (2) Blank printed return duly signed and verified stating that no income escaped assessment—Sufficiency—Notice under S. 22 (4)—Accounts produced—No default—Assessment under S. 23 (4)—Legality—Notice under S. 23 (2)—Necessity.*

Where in compliance with a notice under S. 34 read with S. 22 (2) of the Income-tax Act, the assessee files a return form blank with the observation that no income escaped assessment, duly signed and verified by him, the return is a valid return. When further in answer to a notice under S. 22 (4) the assessee produces his accounts and commits no default, and the assessee is assessed under S. 23 (4) without a notice under S. 23 (2) of the Income-tax Act, the assessment under S. 23 (4) is illegal though a notice under S. 23 (2) may not be necessary. (*Collister and Baijnath, JJ.*) BISHAMBAR NATH *In re.* **1942 I.T.R. 379.**

INCOME TAX ACT (1922), S. 23.

——**Ss. 23 and 33**—*Profits earned before year of account—Assessment—Power of income tax authorities—Procedure.*

The Income-tax authorities are not entitled in law to include in the assessment in respect of a particular year of accounts, profits, secret or otherwise, which had been earned before that year of account, even in assessing a firm under S. 26 (2). If they do, they are not acting in accordance with law. The proper way to assess such profits or income is to take action under S. 34 of the Income tax Act with a view to collect tax on income which had escaped assessments. (*Leach, C.J., Wadsworth and Patanjali Sastri, JJ.*) MAHOMED IBRAHIM *v.* COMMISSIONER OF INCOME-TAX, MADRAS. **199 I.C. 272=14 R.M. 555=1942 M.W.N. 199=1942 I T.R. 64=55 L.W. 87=A I.R. 1942 Mad. 266=(1942) 1 M.L.J 158.**

——**Ss 23 (2) and (4)**—Scope—Assessee producing account books in answer to notice under S. 22 (4)—Penal assessment without notice under S. 23 (2)—Legality. *See* INCOME-TAX ACT, SS. 22 (2) AND (4) AND 23 (2) AND (4). **1942 I.T.R. 379.**

——**S. 23 (2) and (4)**—Scope—Penal assessment—Notice under S. 23 (2) not given—Failure to produce accounts—Legality of assessment. *See* INCOME TAX ACT, SS. 22 (2) AND (4), 23 (2) AND (4) AND 34. **1942 I.T.R. 370.**

——**Ss. 23 (4) and 66 (2)**—Assessment under S. 23 (4)—Question of law that can arise—Materials on which Court can come to a finding. *See* 1941 Dig., Col. 678. CHATURBHUJ *v.* COMMISSIONER OF INCOME-TAX, U. P AND C.P. **16 Luck. 805=198 I.C. 192=14 R.O. 386.**

——**S. 25 (3)**—*Applicability—Income-tax Officer—If should be made aware of discontinuance of business, profession or vocation, etc.—Duty to give relief.*

The words "no tax shall be payable" in S. 25 (3) of the Income-tax Act impose a duty on the Income-tax Officer to give relief under S. 25 (3). He cannot refuse relief on the ground that he is not bound to exclude the income unless he is made aware of the discontinuance of the business, profession or vacation, etc. If the Income-tax Officer has before him material which should have put him on inquiry as to whether the assessee was entitled to relief under S. 25 (3), he is bound to give relief. (*Collister and Baipai, JJ.*) THE HON'BLE MR. JUSTICE IQBAL AHMAD, *In re.* **I.L.R. (1942) All. 377=201 I.C. 715=15 R.A. 73=1942 I.T.R. 152=1942 A.L.W. 343=1942 A.W.R. (H.C.) 227=1942 A.L.J. 454=A.I.R. 1942 All. 227.**

——**S. 25 (3) (as amended in 1939)**—"*Discontinued*"—*Meaning of—Disposal of business by transfer—If included.*

The word "discontinuance" in S. 25 (3) of the Income-tax Act covers discontinuance either by cessation or by disposal; it is wide enough to include the contingency of a transfer under the amended Act as it exists now. The assessee was carrying on business in coffee, butter, etc., which had been in existence whilst the Income-tax of 1918 was in force. On 1—1—1939, he assigned his business to a limited company, the amended Income-tax Act came into force on 1—4—1939. The assessee who had paid income-tax in respect of his business under the Act of 1918 claimed in the year 1939—1940, that he was entitled to the benefit of S. 25 (3) of the Income-tax, Act as amended in 1939.

Held, (1) that if the income of 1938 was to be deemed to be the income of a period which did not exist and in respect of which no tax was to be charged it was correct to say that the assessee was not liable for any tax; (2) that the word "discontinued" in S. 25 (3) covered a discontinuance by disposal; (3) that the assessee was entitled to the benefit of S. 25 (3) of the Income tax Act as amended in 1939; (4) that no tax was therefore payable by the assessee in respect of his income from his business for the calendar year 1938 liable to assessment in respect of the financial year 1939—1940 (*Beaumont, C.J. and Kania, J.*) POLSON, *In re.* **I.L.R. (1942) Bom. 216=198 I.C. 430=14 R.B. 300=1942 I T.R. 52=43 Bom L.R. 1034=A.I.R 1942 Bom. 50.**

INCOME-TAX ACT (1922) S. 25-A.

——**S. 25 (3)**—*If subject to departmental rule in Income-tax Manual—Claim belated—Rejection—Propriety.*

A departmental rule can in no way affect a legal claim; a claim to relief under S. 25 (3) of the Income-tax Act cannot be rejected on the ground that it is belated and made after the time specified in R. 96 of the Income-tax Manual. (*Collister and Baipai, JJ.*) THE HON'BLE MR. JUSTICE IQBAL AHMAD, *In re.* **I.L.R. (1942) All. 377=201 I.C. 715=15 R.A. 73=1942 I.T.R. 152=1942 A.L.W. 343=1942 A.W.R. (H.C.) 227=1942 A.L.J. 454=A.I.R. 1942 All. 227.**

——**S. 25 (3)**—*Oral claim for relief—Sufficiency.*

There is nothing in the Income-tax Act to justify the contention that a claim for relief under S. 25 (3) of the Act should be in writing. An oral application for relief would be sufficient. (*Collstier and Baipai, JJ.*) THE HON'BLE MR. JUSTICE IQBAL AHMAD, *In re.* **I.L.R. (1942) All. 377=201 I.C. 715=15 R.A. 73=1942 I.T.R. 152=1942 A.L.W. 343=1942 A.W.R. (H.C.) 227=1942 A.L.J. 454=A.I.R. 1942 All. 227.**

——**S. 25 (3) (as amended in 1939)**—*Scope—If retrospective—Claim for relief accrued before coming into force of Act—Oral claim made before—Formal application made after amendment—If barred.*

S. 25 (3) of the Income tax Act as amended in 1939 is not retrospective and does not apply when the claim for relief had accrued and when an oral claim had been made therefor before the amendment came into force, although a formal written application has been made only subsequent to the coming into force of the amended Act. A bar of limitation cannot be read into the provisions of S. 25 (3) as it stood before the amendment, and the claim for refund of tax wrongly assessed cannot be barred except by statute. (*Collister and Baipai, JJ.*) THE HON'BLE MR. JUSTICE IQBAL AHMED, *In re.* **I.L.R. (1942) All 377=201 I.C. 715=15 R.A. 73=1942 I T R 152=1942 A.L W. 343=1942 A.W.R. (H.C.) 227=1942 A.L.J. 454=A.I.R. 1942 All. 227.**

——**S. 25-A**—*Scope and applicability.*

S. 25-A of the Income-tax Act contains no warrant for any prohibition against members of undivided Hindu family entering into a partnership in respect of the joint property which they have partitioned among themselves. It has no reference at all to any case in which the Hindu undivided family remains in existence at the time of assessment. No difficulty whatever in the assessment of a Hindu undivided family is caused—or was ever thought to be caused—by the facts that in one year it has certain assets and certain income therefrom and that in the next year it is found to have parted with one asset and to be no longer in receipt of the same income. The same assessee has a different income in each year—that is all. It matters nothing whether the particular asset no longer possessed by the undivided family has become the separate property of a member or belongs to a stranger. S. 25-A is directed to the difficulty which arose when an undivided family had received income in the year of account but was no longer in existence as such at the time of assessment. The difficulty was the more acute by reason of the provision contained in

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S. 14 (1). S. 25-A deals with the difficulty in two ways which are explained by the rule applicable to families governed by the Mitakshara, that by a mere claim of partition a division of interest may be effected among coparceners so as to disrupt the family and put an end to all rights of succession by survivorship. S. 25-A provides that if it be found that the family property has been partitioned in definite portions, assessment may be made, notwithstanding S. 14 (1), on each individual or group in respect of his or its share of the profits made by the undivided family, while holding all the members jointly and severally liable for the total tax. If, however, though the joint Hindu family has come to an end it be found that its property has not been partitioned in definite portions then the family is to be deemed to continue—that is to be an existent Hindu family upon which assessment can be made on its gains of the previous year. (*Sir George Rankin.*) SUNDER SINGH MAJITHIA *v.* THE COMMISSIONER OF INCOME-TAX, UNITED AND CENTRAL PROVINCES. **202 I.C. 483=15 R.P.C. 41=1942 O.A. 594=1942 A.W.R. (P.C.) 49=45 Bom. L.R. 9=47 C.W.N. 60=9 B.R. 38=1942 A.L.W. 565=1942 A.L.J. 623=1942 I.T.R. 457=1942 O.W.N. 626=A.I.R. 1942 P.C. 57=(1942) 2 M.L.J. 761 (P.C.).**

——**S. 25-A (1) and (3)**—Presumption under Cl. (3) when arises—Rebuttal. *See* 1941 Dig., Col. 678. CHHEDI LAL NAND KISHORE *v.* COMMISSIONER OF INCOME-TAX, U. P. AND C. P. **17 Luck. 426=197 I.C. 478=14 R.O. 322=1942 I.T.R. 60=A.I.R. 1942 Oudh 108.**

——**S. 26-A**—*Applicability—Conditions—Registration of firm—Condition precedent to—Partnership—What amounts to—Agreement of partnership between a person and minors represented by that person as guardian—Validity and sufficiency of.*

The pre-requisites of a successful application under S. 26-A of the Income-tax Act are the existence of a firm and an instrument of partnership. The firm further must have been constituted under an instrument of partnership. There must therefore be a firm constituted under an instrument of partnership before an application under S. 26-A can succeed. The sharing of profits alone will not obviously result in a partnership; there must be an agreement between the persons concerned. There can be no agreement of partnership between a person and minors represented by that person as their guardian for purposes of S. 26-A. He cannot be allowed to have the dual capacity of entering into such relationship, that is, for himself and as guardian of the minors. (*Collister and Sulpni, JJ.*) MOHAN LAL SHYAM LAL, *In re.* (1942) **I.T.R. 219=1942 A.L.W. 301.**

——**S. 26-A**—*Application for registration—Competency—Deed of partnership giving right to legal representatives to come in as partners for unexpired period—Legal representative of deceased partner electing to continue as partners—Effect—Constitution of firm—If altered—Application for renewal of registration or for registration of original firm—If due.*

Where in a partnership constituted by a deed of partnership for a fixed period the legal representatives of a deceased partner who, by reason of a provision in the deed are entitled, but not bound, to come in as partners in place of the deceased partner for a period which may be the same as, or different from, the period fixed by the deed, elect to continue the partnership for the unexpired portion of the period, the constitution of the firm is altered; and therefore the new firm cannot apply for the renewal of the registration. Nor can the new firm in such a case apply for registration

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of the original partnership as, *ex hypothesi*, the applicants for registration are not parties to the deed of partnership. The only course open to the new partners, if they seek registration, is to execute a new deed of partnership and to apply for the registration of that deed. (*Dalip Singh and Mahomed Munir, JJ.*) MAKERWAL COLLIERY, *In re.* **1942 I.T.R. 422.**

——**S. 26-A and R. 2 (as amended in 1938)**—*Scope—If ultra vires—Application for renewal of registration not signed by all partners—Partnership deed not disclosing true state of affairs—Refusal of application—Legality—Reference to High Court—If can be directed.*

R. 2 of the Income-tax Rules framed under S. 26-A of the Income-tax Act is not *ultra vires*. An income-tax officer does not act illegally in rejecting an application for renewal of registration of a firm on the ground that it is not signed by all the partners of the firm as required by R. 2. An income-tax officer is also entitled to refuse renewal of registration on the ground that the partnership deed does not disclose the correct state of affairs. No question of law is involved so as to justify the High Court in interfering under S. 66 (3) of the Act and directing a reference. (*Davis, C.J. and Weston, J.*) KALACHAND DEVMAL *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **I.L.R. (1942) Kar. 582=(1942) I.T.R. 501.**

——**S. 26-A**—*Scope—Partnership—Death of partner—Widow of partner taken in as partner—Six minor children also admitted to benefits of partnership as a body—Application for registration—Competency.*

S. 26-A of the Income-tax Act only contemplates the registration of a firm which is constituted under an instrument of partnership which with clearness states what the individual shares of the partners are. Where on the death of a partner his widow is taken in as a partner and his minor children, three sons and three daughters, are admitted to the benefits of the partnership as a body and not as individuals, and an application is made under S. 26-A of the Act for registration of the new firm, stating that the widow is entitled to a six annas share, though under the deed her share is really only two annas, the remaining four annas being intended for the benefit of the minor children who are admitted to the benefits of the partnership in a body, it cannot be said that the shares of the minors are specified with certainty so as to comply with S. 26-A of the Act. (*Leach C.J., Wadsworth and Patanjali Sastri, JJ.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* ABDULLA SAHIB. **I.L.R. (1942) Mad. 281=199 I.C. 761=14 R.M. 628=1942 I.T.R. 7=55 L.W. 15=1942 M.W.N. 195=A.I.R. 1942 Mad. 177=(1942) 1 M.L.J. 15 (S.B.).**

——**S. 27**—*Sufficient "cause"—What amounts to—Question as to—If one of law—S. 66 and 66 (3).*

It is clear that in the majority of cases the question whether the assessee was prevented by sufficient cause from appearing or from complying with the terms of a notice issued under the Act would be a question of fact; in some cases it is possible to say that if the reasons issued is an illegal notice or an invalid notice, the assessee can very well refuse to comply with that notice and can subsequently say that he was prevented by sufficient cause from complying with the notice. The assessee was served with a notice under S. 22 (2) and filed a return. The case was subsequently transferred to another Income-tax Officer who issued a second notice under S. 22 (2), and a return was filed before him. The case was again re-transferred to the Income-tax Officer who originally dealt with the case, and he started proceedings on the return which was filed before him and

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which had been subsequently filed before the officer to whom it was transferred. The assessee did not raise any objection to the effect that a fresh notice should have been issued to him under S 22 (2) after the re-transfer, and he was assessed under S 23 (*a*).

Held, that the assessee had not "sufficient cause" within the meaning of S. 27 of the Act, that he was not prejudiced in any way, and he could not call in question the validity of the proceedings on the ground of the absence of a fresh notice after the re transfer. No question of law arose in the case under S. 66 (2).

Held, further, that no question arose under S. 64 of the Act (*Collister and Baipai, JJ.*) L. HIRA LAL *v.* COMMISSIONER OF INCOME-TAX, U. P 1942 I.T. R. 148=1942 A.L.W. 305=1942 O.A. 300.

——S. 28—*Penalty —Imposition of—Quantum of evidence—Circumstantial evidence—Sufficiency of.*

There is no reason why any distinction should be drawn between the quantum of evidence required to support an assessment and the quantum required to justify the imposition of a penalty under S. 28 of the Income-tax Act for concealment and deliberate furnishing of inaccurate particulars. Circumstantial evidence would be sufficient. (*Bennett and Madeley, JJ.*) ISTIFA KHAN *v.* COMMISSIONER, C.P. AND U.P. 1942 I.T.R. 435

——Ss 30. proviso and 66 (2) and (3)—*Assessment under S.* 23 (4)—*Appeal– Reference to High Court—Competency—Question of law.*

Where an assessment has been made, not in form only but in fact, not ostensibly but actually and in good faith, under S. 23 (4) of the Income-tax Act, and where the Assistant Commissioner, upon consideration of the facts, has found that the assessment was properly so made, the proviso to S. 30 of the Act bars an appeal and the order of the Assistant Commissioner rejecting the appeal is not an order under S. 31 inasmuch as he has not "disposed of" the appeal, and therefore there can be no question of law referable to the High Court under S. 66 (2) or under S. 66 (3) of the Act. (*Collister and Baipai, JJ*) L. HIRA LAL *v.* COMMISSIONER OF INCOME-TAX, U. P 1942 I.T.R. 148 =1942 A.L.W. 305=1942 O.A. 300.

——S. 33—*Discretion—Exercise of—If subject to control by departmental order of Central Board of Revenue.*

Although a Commissioner of Income-tax has no option but to obey departmental orders of the Central Board of Revenue, it cannot be said that his discretion under S. 33 of the Income-tax Act can be "legally" controlled by the Central Board of Revenue, because the discretion is vested in him by statute and there is no statutory control of such discretion. A Court or an official functioning as a Court must exercise its discretion judicially; that is the only form of control known to the law. (*Collister and Baipai, JJ.*) THE HON'BLE MR. JUSTICE IQBAL AHMAD, *In re*, I.L.R. (1942) All. 377=201 I.C 715=15 R.A. 73=1942 I.T.R. 152=1942 A.L.W. 343=1942 A.W.R. (H.C.) 227= 1942 A.L.J. 454=A.I.R. 1942 All. 227.

——S. 33 (as now amended)—*Limitation of sixty days for preferring appeal to Appellate Tribunal—Computation—Deposit of Rs.* 100 *by assessee for making reference under S.* 66 (*i*) *of the Act—If refundable.*

An assessee desired to appeal to the Income-tax Appellate Tribunal against an order of the Appellate Assistant Commissioner, dated the 24th November, 1940. The Income-tax Appellate Tribunal was constituted as from the 25th January, 1941, by notification published in the Gazette of India of that date. S. 33 of the Income-tax Act as now amended requires that an appeal to the Appellate Tribunal shall be presented

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within sixty days from the date on which the appellant was served with the notice of the order. Rules regulating procedure had not been framed and were not in fact notified until the 1st February, 1941. Rule 14 of the Rules provides that an appeal to the Tribunal shall be presented in person or by a representative to the Registrar at New Delhi or some other officer authorised in this behalf by the Registrar and a proviso follows to the effect that an appeal which is received in the office of the Registrar by post within the prescribed period of limitation shall be deemed to have been validly presented. Forms indicating the location of the office of the Tribunal were published on the 25th January, 1941, in New Delhi and therefore were not available to the appellant who was in a village in the Ramnad District. Having no information with regard to the procedure the assessee drafted a petition of appeal and posted it to the office of the Commissioner of Income-tax, Madras, with the request that it should be forwarded to the Tribunal. The petition was received by the Commissioner of Income-tax, Madras, on the 31st January, 1941 and posted by him to the Tribunal three days later, which was still in time. The period of sixty days expired on the 2nd February. That day being a Sunday the period was extended to 3rd February. The petition was received in the office of the Tribunal only on the 10th February. The Tribunal held that the petition was barred by limitation. On the reference, *held*, (*i*) The appeal was filed within the period of limitation in the only office which was then open to the assessee and in the circumstances the appeal should have been heard on its merits. (*ii*) There is nothing in the Income-tax Act which would entitle the assessee to a refund of the deposit of Rs. 100 if the plea of limitation raised by the Income-tax authorities were sound. (*Leach, C.J. and Lakshmana Rao, J.*) SUBBIAH PILLAI AND SONS *v.* COMMISSIONER OF INCOME-TAX, MADRAS. 1942 I.T.R. 467=(1942) 2 M.L.J. 653.

——S. 34—*Applicability—"Escaped assessment"—Wrong allowance of inadmissible personal expenses in original assessment—Re-assessment under S.* 34—*Legality.*

The wrong allowance of inadmissible personal expenses of the assessee in computing the taxable income in the original assessment constitutes escapement of income, profits or gains liable to assessment within the meaning of S. 34 of the Income-tax Act. (*Collister and Baipai, JJ.*) BISHAMBAR NATH, *In re.* 1942 I.T.R. 379.

——S. 34—Applicability—Notice under S. 34/22 (2) —When called for—Duty of Income-tax Officer when issuing. *See* INCOME-TAX ACT, SS. 22 (2) AND (4), 23 (2) AND (4) AND 34. 1942 I.T.R. 370.

——S. 34—*Assessee served with two notices one in personal capacity and another as guardian of minor son—Return on first notice only—Assessment on such notice only without any action on second notice—If* ultra vires.

Where an assessee is served with two notices under S. 34 of the Income-tax Act in different capacities, one to him personally and the other to him as guardian of his minor son, and the assessee makes a return on the first notice without taking any action on the second, it is open to the Income-tax authorities to decide to take no further action on the second notice, and to proceed against the assessee on the first only. The assessment of the assessee on the first notice alone in his personal capacity is not under the circumstances *ultra vires*. (*Bennett and Madeley, JJ.*) ISTIFA KHAN *v.* COMMISSIONER OF INCOME-TAX, C. P. AND U. P. 1942 I.T.R. 435.

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——**S. 34**—*Contents of notice—Specification of income which is believed to have escaped assessment—Necessity.*

It is not necessary that a notice under S. 34 of the Income-tax Act should contain particulars of the income which was suspected of having escaped assessment or the sources of such income. The Income-tax Officer is not obliged by any provision of law to specify the income which was believed to have escaped assessment. (*Bennett and Madeley, JJ.*) ISTIFA KHAN *v.* COMMISSIONER OF INCOME-TAX, C.P. AND U.P. **1942 I.T.R. 435.**

——**S. 34**—*'Escaped assessment'—Prior proceedings starting with notice under S. 22 (2) declared void—Fresh notice under S. 34—Validity.*

Where proceedings started with the issue of a notice under S. 22 (2) of the Income-tax Act on a non-resident principal and on his objection it was declared that the whole proceedings ending with assessment on that notice was wholly void and illegal, the income of the non-resident principal has 'escaped assessment' and a notice issued on his agent as required by S. 42 of a notice under S. 34 of the Act is quite valid in law. (*Collister and Baipai, JJ.*) BISHWANATH SINGH *v.* COMMISSIONER OF INCOME TAX, C.P. & U.P. **I.L.R. (1942) All. 398=201 I.C. 209=15 R.A. 48=1942 A.L.J. 543=(1942) F.L.J. (H.C.) 167=1942 A.W.R. (H.C.) 354=1942 I.T.R. 322=1942 A.L.W. 351=A.I.R. 1942 All. 295.**

——**S. 34**—*Notice under—Conditions for issue of—Notice after assessment becomes final in appeal—Legality—Proof of income having escaped assessment—If condition precedent to issue of notice.*

The Income-tax Officer can issue a notice under S. 34 of the Income tax Act even after an assessment has become final in appeal before the Assistant Commissioner of Income tax. A notice under the section can be issued without proving by admissible evidence before the issue of such notice that such and such income and such sources have escaped assessment. All that is necessary is that the Income-tax Officer must have reason to believe that income has escaped assessment. (*Collister and Baipai, JJ.*) B. P. HALDER & SONS, *In re.* **1942 I.T.R. 79.**

——**S. 41 (1)**—*Trust for benefit of creditors running debtors' business—Income—Proper mode of assessment—S. 10 (2) (vi)—Depreciation—Not allowable in respect of business which had ceased to exist before year of account.*

The partners of a firm conveyed their properties to trustees for the benefit of their creditors. The trustees sold in the firm's financial year a cinema business and a general business of the debtors but carried on a Saw Mill business which proved to be a profitable concern. The profits made from the Saw Mill were sufficient to pay in full all the creditors.

Held, (*i*) the income received by the trustees was received on behalf of the general body of creditors and not of the partners and income tax should accordingly be levied on the trustees as trustees for the general body of creditors only; (*ii*) the assessees have no right to deduct an allowance for depreciation in the general and cinema business discontinued prior to the year of account as a set off against the income of the Saw Mill business. (*Leach, C.J and Lakshmana Rao, J.*) COMMISSIONER OF INCOME-TAX, MADRAS *v.* THE DUTTS' TRUST, CALICUT **1942 I.T.R. 477=55 L.W. 788=(1942) 2 M.L.J. 651.**

——**S. 46**—Recovery of tax—Remedy of Crown—Right of suit—Limitation. *See* 1941 Dig., Col. 682. INDER CHAND *v.* SECRETARY OF STATE. **A.I.R. 1942 Pat. 87.**

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——**S. 49-A**—Right of set off—If limited to amount of tax legally recoverable. *See* 1941 Dig., Col. 682. INDER CHAND *v.* SECRETARY OF STATE. **A.I.R. 1942 Pat. 87.**

——**S. 52**—"Person"—Agent of firm sending false statement of income—Liability of. *See* 1941 Dig., Col. 682. INSPECTING ASSISTANT COMMISSIONER OF INCOME TAX *v.* C. JAVERBHAI. **I.L.R. (1942) Mad. 328=197 I.C. 717=43 Cr.L.J. 250=14 R.M. 379=(1941) 2 M.L.J. 475.**

——**S. 54**—"*Public servant*"—*Meaning of.*

It is clear that the "public servant" referred to in S. 54 of the Income-tax Act is a public servant, to whom disclosure has been made under the Income-tax Act, and not any public servant. (*Beaumont, C.J. and Sen, J.*) EMPEROR *v.* OSMAN CHOTANI. **203 I.C. 365=44 Bom. L.R. 618=44 Cr.L.J. 7=1942 I.T.R. 429=A.I.R. 1942 Bom. 289.**

——**S. 54**—*Scope and effect of—Prohibition against production of documents—If absolute and extends to officers other than income-tax officers—Documents seized by police officer—Admissibility in evidence.*

S. 54 of the Income tax Act does not in so many words say that the public officer is prohibited from producing any such document as is specified, but as the production is made punishable as an offence, there is an implied prohibition against its production by a public servant. There is nothing in S. 54 to justify the extreme view that all the documents referred to in that section are made inadmissible in evidence. The section provides, first of all, that the documents specified shall be treated as confidential, and, secondly that no Court shall require a public servant to produce them. The Legislature only meant that they are to be treated as confidential by the income-tax authorities and not that the documents are confidential in whosoever's hands they may be. The main operative part of the section is that the Court cannot require any public servant to produce these documents. There is no justification for extending the operation of the words beyond their natural and proper meaning. If a document can be given in evidence, without requiring a public servant to produce it, there is nothing in the section to preclude that from being done. There is nothing to prevent a police officer from producing a document lawfully seized from the income-tax authorities which those authorities themselves would not be able to produce. (*Beaumont, C.J. and Sen J.*) EMPEROR *v.* OSMAN CHOTANI. **203 I.C. 365=44 Bom.L.R. 618=44 Cr.L.J. 7=1942 I.T.R. 429=A.I.R. 1942 Bom. 289.**

——**S. 54 (1)**—Scope—Mandatory character—Application in Court calling upon Income-tax Officer to produce books of firm deposited with him in income-tax proceedings—Maintainability. *See* 1941 Dig., Col. 683. RANGASWAMI NAICKER *v.* RAJU NAICKER. **200 I.C. 743=15 R.M. 124=1942 M.W.N. 197=55 L.W. 16=A.I.R. 1942 Mad. 276 (1)=(1942) 1 M.L.J. 36.**

——**S. 59**—Income tax Rules, R. 35—Assessment under—When permissible. *See* 1941 Dig., Col. 683. ROYAL INSURANCE CO., LTD., *In re.* **200 I.C. 136=14 R.C. 671=A.I.R. 1942 Cal. 170.**

——**S. 60 and Government of India Act (1935), S. 311 (1)**—*Status of Maharaja of Benares—Exemption from income-tax.*

His Highness the late Maharaja of Benares was a Ruler as defined in sub-S. (1) of S. 311 of the Government of India Act, 1935. He is not exempt from taxation under the Income-tax Act. (*Collister and Baipai, JJ.*) BISHWANATH SINGH *v.* COMMISSIONER OF INCOME-TAX, C.P. & U.P. **I.L.R. (1942) All. 398=201 I.C. 209=15 R.A. 48=1942 I.T.R. 322=1942**

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A.L.W. 351=1942 A.L.J. 543=(1942) F.L.J. (H.C.) 167=1942 A.W.R. (H.C.) 354=A.I.R. 1942 All. 295.

——**S. 64**—Applicability—Notice by Income-tax Officer and filing of return—Subsequent transfer—Fresh notice and fresh return—Re-transfer to original officer—Proceedings started on original return without fresh notice—Validity—Assessment under S. 23 (4)—If justified on assessee's failure to file accounts. *See* INCOME-TAX ACT, S. 27. **1942 I.T.R. 148.**

——**S. 64**—Scope—If excludes application of S. 66, Bombay City Police Act. *See* BOMBAY CITY POLICE ACT, S. 66. **44 Bom.L.R. 618.**

——**S. 64 (1) and (3)**—*Jurisdiction—Income-tax Officers having concurrent jurisdiction—Notice by one under S. 34/22 (2)—Objection by assessee that he was being assessed by another officer—Transfer of file to latter—Notice by latter under S. 22 (4) and subsequent assessment under S. 23 (4)—Legality—Fresh notice under S. 34/22 (2)—Necessity.*

The assessee, a contractor for the supply of materials to Government departments, maintained a workshop for that purpose at Cawnpore and payments in respect of these contracts were made to him generally through the Indian Stores Department of the Government of India. In 1936 the Income-tax Officer, Delhi, got information from the Income-tax Officer, Nagpur, that the assessee whose address was given as being in Delhi, had received a commission of Rs. 6,168-12-3 during the year ending 31—3—1935 from a Mill at Nagpur for goods supplied on his account to the Indian stores department. After some inquiries, the Income-tax Officer, Delhi, issued a notice to the assessee on 23—1—1937 under S. 34 read with S. 22 (2) of the Income tax Act, asking him to file a return in the prescribed form of his income from all sources liable to assessment in 1935-36. The assessee on 17—2—1937, replied stating that he was being already assessed by the Income-tax Officer of Cawnpore where he had a factory. The Income-tax Officer, Delhi, thereupon transferred the file of the assessee to the Income-tax Officer, Cawnpore for necessary action in respect of 1935-36. The latter, on receipt of the file, found that no return had been filed by the assessee in compliance with the notice under S. 33 read with S. 22 (2) dated 23—1—1937, issued by the Income-tax Officer, Delhi, and asked the assessee by a notice under S. 22 (4) to produce all his books of account, and on default, made an assessment under S. 23 (4).

Held, (1) that the Income-tax Officer, Delhi, had jurisdiction to issue a notice to the assessee under S. 34 read with S. 22 (2) for assessing his income for the year, 1935—1936; (2) that the transfer of the file of the assessee by the Income-tax Officer, Delhi, to the Income-tax Officer, Cawnpore, was in accordance with law; and (3) that the assessment made by the Income-tax Officer, Cawnpore, under S. 23 (4), on the basis of the notice issued by the Delhi Officer, without a fresh notice by himself under S. 34/22 (2) was in law, a valid assessment. (*Collister and Baipai, JJ.*) BISHESHWAR NATH AND CO., *In re*. **1942 I.T.R. 103.**

——**S. 64 (1) and (4)**—*Scope and effect of—Concurrent jurisdiction—Notice issued by one Income-tax Officer—Transfer of case to another—Fresh notice by other—Necessity.*

The combined effect of S. 64 (1) and (4) of the Income-tax Act is that where two or more Income tax Officers have territorial jurisdiction in respect of the same income, they exercise concurrent jurisdiction in the matter of issuing notices to the assessee, and where notices have been issued by one officer it is unnecessary for the other officer to issue the same notices again after the case has been transferred to him by the former.

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(*Collister and Baipai, JJ.*) BISHESHWAR NATH AND CO., *In re*. **1942 I.T.R. 103.**

——**S. 64 (3)**—*Applicability—No question raised either by assessee or Income-tax Officers as to proper place of assessment—Reference to Commissioner—Necessity.*

S. 64 (3) of the Income-tax Act comes into play only when any "question" of dispute arises as to the place of assessment where neither the assessee nor the Income-tax officer concerned raises any question as to the proper place of assessment, no question as to the place of assessment arises within the meaning of S. 64 (3), and there is therefore no occasion for such a question being submitted to the commissioner for determination. (*Collister and Baipai JJ.*) BISHESHWAR NATH AND CO., *In re*. **1942 I.T.R. 103.**

——**Ss. 66 and 13**—Decision of Income-tax Officer—Question of law if involved. *See* 1941 Dig., Col. 687. MAKHAN MAL RAM CHAND *v.* COMMISSIONER OF INCOME-TAX, PUNJAB. **202 I.C. 279=15 R.Pesh. 41=A.I.R. 1942 Pesh. 48.**

——**S. 66**—Question of fact or law—Question whether person is member of partnership firm. *See* 1941 Dig., Col. 687. HUKAM CHAND *v.* INCOME-TAX COMMISSIONER, N.W.F.P. **201 I.C. 485=15 R. Pesh. 23=1941 I.T.R. 616=A.I.R. 1942 Pesh. 47 (1).**

——**S. 66 (2)**—*Application to direct Commissioner to state case—Costs—Rule.*

The ultimate decision on the point of law, whether for or against the Commissioner, can have no bearing on the question whether there was a point of law upon which a case should have been stated, and, therefore, the costs of an application to direct the Commissioner to state a case, ought, in the absence of special circumstances to follow the event. (*Davis, C.J. and Weston, J.*) DHANRAJMAL CHATANDAS *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **I.L.R. (1942) Kar. 22=201 I.C. 264=15 R.S. 7=1942 I.T.R. 384=A.I.R. 1942 Sind 74.**

——**S. 66 (2)**—*Application under—If complete without deposit of fee of Rs. 100—Delay in presentation—No power to condone.*

An application under S. 66 (2) of the Income-tax Act, is not complete till it is accompanied by the fee of Rs. 100. Where though the application was presented in time the fee of Rs. 100 was not received by the Commissioner till two days after the expiry of the period of limitation, the Commissioner could not have recourse to S. 5 of the Limitation Act to condone the delay as there was no saving clause in S. 66 (2) which could enable the High Court or Commissioner to condone the delay. (*Collister and Baipai, JJ.*) GANESH PRASAD *v.* COMMISSIONER OF INCOME-TAX. **I.L.R. (1942) All 470=201 I.C. 800=15 R.A. 86=1942 A.L.J. 327=1942 A.L.W. 432=1942 I.T.R. 286=1942 A.W.R. (H.C.) 168=A.I.R. 1942 All. 251 (2).**

——**S. 66 (2)**—Application under—Pleader filing vakalat for all purposes and all sections—Withdrawal of application by pleader on getting taxable amount reduced in revision—Repudiation by client and application for statement of case—Maintainability. *See* 1940 Dig., Col. 719. HASHEN BANU BIBI *v.* COMMISSIONER OF INCOME-TAX, BENGAL. **199 I.C. 649=14 R.C. 614.**

——**S. 66 (2)**—*"Otherwise prejudicial"—Meaning of—Order of assessment—Assessee over charged—Application for review—Dismissal—If prejudicial order—Reference to High Court—If lies.*

The words "otherwise prejudicial" in S. 66 (2) of the Income-tax Act contemplate a prejudicial order. If an

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order passed by the Income-tax officer is prejudicial, an order which confirms it or refuses to review or revise it is also prejudicial. Where an assessee has been over-charged and assessed at a figure which is far more than the figure which ought to have been taken as the proper or correct figure, and he has a good case on the merits, an order refusing to review the order of assessment is an order "otherwise prejudicial" to the assessee within the meaning af S. 66 (2) of the Act and a reference to the High Court is therefore competent. (*Collister and Bajpai, JJ.*) THE HON'BLE MR JUSTICE IQBAL AHMAD, *In re*. I.L.R. (1942) All 377=201 I.C. 715=15 R.A. 73=1942 I.T.R. 102=1942 A.L.W. 343=1942 A.W.R. (H.C.) 227=1942 A.L.J. 454=A.I.R. 1942 All. 227.

——S. 66 (2)—*Question of law—Applicability of particular section—Decision of Bombay High Court—If conclusive in Sind court.*

The question whether a particular section of the Income-tax Act is to be applied when making an assessment is a question of law. When there is no decision on that question by the Sind Chief Court the assessee cannot be debarred from seeking a decision of the Sind Chief Court by reason of the fact that there exists a decision of the Bombay High Court. (*Davis, C. J. and Weston, J.*) DHANRAJMAL CHATANDAS *v* COMMISSIONER OF INCOME-TAX, BOMBAY. I.L.R. (1942) Kar. 22=201 I.C. 264=15 R.S. 7=1942 I.T.R. 384=A.I.R. 1942 Sind 74.

——Ss. 66 (2) and (3)—Question of law—Assessment under S. 23 (4)—Assessment found to be properly made—Reference to High Court—If lies. *See* INCOME-TAX ACT, SS. 30, PROVISO AND 66 (2) AND (3). (1942) I.T.R. 148.

——Ss. 66 (2) and 26-A—*Question of law—Existence of evidence to support finding as to genuineness of document presented under S. 26-A for registration of firm.*

When a document purporting to be an instrument of partnership is tendered under S. 26 A of the Income-tax Act on behalf of a firm and application is made for registration of the firm as constituted under such instrument, to decide that such an instrument is not genuine in the sense that it has been executed by way of pretence in order to escape liability for tax and without intention that its provisions should in truth have effect as defining the right of the parties *inter se*, is to come to finding of fact: Whether there was evidence upon which it was open to the Income-tax authority to come to such a decision is a question of law. (*Sir George Rankin.*) SUNDER SINGH MAJITHIA *v*. THE COMMISSIONER OF INCOME-TAX, UNITED AND CENTRAL PROVINCES. 15 R.P.C. 41=1942 O.A. 594=1942 A.W.R. (P.C.) 49=45 Bom. L.R. 9=47 C.W.N. 60=9 B.R. 38=202 I.C. 483=1942 A.L.W. 565=1942 A.L.J. 623=1942 O.W.N. 626=1942 I.T.R. 457=A.I.R. 1942 P.C. 57=(1942) 2 M.L.J. 761 (P.C.).

——S. 66 (2)—*Question of law—Registration of instrument of partnership—Estoppel against holding persons mentioned in instrument as partners to be members of joint Hindu family—Interference.*

The question whether the Income-tax Officer, having ordered registration of the instrument of partnership is estopped from holding persons mentioned therein as partners to be members of a joint Hindu family and from assessing them together, involves a question of law and the assessee is entitled to the decision of the Chief Court on that question. (*Davis, C. J. and Weston, J.*) DHANRAJMAL CHATANDAS *v*. COMMISSIONER OF INCOME-TAX, BOMBAY. I.L.R. (1942) Kar. 22=201 I.C. 264=15 R.S. 7=1942 I.T.R. 384=A.I.R. 1942 Sind 74.

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——S. 66 (2) and (3)—*Refusal to state a case as question of law was a settled one—Application under sub-S. (3), if lies.*

Where the Commissioner on an application to him under S. 66 (2) refuses to state a case as the question involved was a settled question of law it amounts to saying that no question of law arises within the meaning of sub Cl. (3) of S. 66 and the High Court may if it is not satisfied as to the correctness of the decision of the Commissioner require him to state the case and refer it. (*Bennett and Madeley, JJ.*) SINGAR SINGH *v*. COMMISSIONER OF INCOME-TAX, C.P. & U.P. 204 I.C. 195=1942 I.T.R. 441=1942 A.W.R. (C.C.) 311=1942 O.W.N. 477=1942 O.A. 386.

——S. 66 (2), first proviso—*Scope and effect of—Right of assessee to ask for reference—Order of Commissioner confirming order of Assistant Commissioner—If "prejudicial" to assessee.*

It is clear from the first proviso to S. 66 (2) of the Income-tax Act that the assessee will have a right to ask for the opinion of the High Court only upon a question of law which arises out of that order itself but not on a question of law which arises out of a previous order under S. 31. A question of law which is common to both the Assistant Commissioner's and Commissioner's order is not a proper subject-matter of a reference unless the question of law is raised on a reference from the decision of the Assistant Commissioner.

Quaere: Whether an order passed by the Commissioner under S. 33 which merely affirms the order passed by the subordinate Income-tax authorities is an order otherwise prejudicial to the assessee. (*Harries, C.J. and Manohar Lall, J.*) EAST KHAS JHARIA COLLIERY CO., LTD. *v*. COMMISSIONER OF INCOME-TAX, B. & O. 21 Pat. 653=203 I.C. 40=15 R.P. 148=1942 I.T.R. 296=9 B.R. 46=1943 P.W.N. 13=A.I.R. 1943 Pat. 41.

——S. 66 (3)—*Costs—Application dismissed with costs—Right of applicant to claim that costs should come out of deposit of Rs. 100 under S. 66 (2).*

When an application under S. 66 (3) of the Income-tax Act is dismissed as having no substance in it, the applicant is not entitled to ask that the costs of the reference which he is ordered to bear must come out of the deposit of Rs. 100 made by him under S. 66 (2). (*Davis, C.J. and Weston, J.*) BALCHAND JIWANDAS *v*. COMMISSIONER OF INCOME-TAX, BOMBAY. 1942 I.T.R. 507.

——S. 66 (3)—*Deposit under S. 66 (2) withdrawn by assessee—Application under S. 66 (3)—Competency.*

Under the second proviso in S. 66 (2) of the Income-tax Act it is clear that a refund of the fee of Rs. 100 will only be made if the application is withdrawn, and when the assessee applies for refund of the money, the only logical inference is that he intends to withdraw his application. Where an applicant has withdrawn his deposit of Rs. 100, it must be held that an application under S. 66 (3) is incompetent. (*Collister and Bajpai, JJ.*) RAM DAYAL AGARWALA, *In re*. 1942 I.T.R. 93.

——S. 66 (3)—*Ground for application under—Refusal to review order permitting withdrawal of application under S. 66 (2).*

The only ground upon which an application under S. 66 (3) of the Income-tax Act lies is where the Commissioner refuses to state a case on the ground that no question of law arose. But where the Commissioner only dismisses an application in effect for the review of a prior order of his permitting the applicant to with

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draw his application under S. 66 (2) of the Act, it is not a refusal to state a case as contemplated by Cl. (3) of S. 66 and as such an application under that clause would be incompetent. (*Collister, Bajpai and Braund, JJ.*) GHULAM DIN & CO *v.* INCOME TAX COMMISSIONER, U. P. & C. P. **I.L.R. (1942) All. 349=199 I.C. 224=14 R.A. 357=1942 I.T.R. 89=1942 O. A. (Supp.) 112=1942 A.W.R (H.C.) 66=1942 A.L. W. 109=1942 O.W.N. 98=1942 A.L.J. 105=A.I.R. 1942 All. 134 (F.B.)**

——**S. 66 (3)**—*Powers of High Court—Questions of law based on incorrect assumption and not really arising out of orders—Application for reference—Competency.*

Although there may be some questions of law, if such questions are based on incorrect assumption and do not really arise out of the orders passed by the Income-tax authorities, the High Court will not direct the Commissioner to state a case under S. 66 (3) of the Income-tax Act at the request of the assessee. (*Bennett and Madeley, JJ.*) ISTIFA KHAN *v.* COMMISSIONER OF INCOME-TAX, C.P. AND U. P. **1942 I.T.R. 435.**

——**S. 66 (3) and (5)**—*Powers of High Court—Power to direct reference on question which the Commissioner was not asked to refer—Finding of fact—Conclusive character of.*

The jurisdiction of the High Court in income-tax matters is very limited. The High Court can call upon the Commissioner under S. 66 (3) of the Income-tax Act to state a case upon a particular question if the latter has refused to do. But where the Commissioner has never been asked to state a case upon any question and has not refused to do so, the High Court cannot call upon him to state such a case. Where there is no question before the High Court relating to a particular point, the High Court has no power to deal with that point; it can only deal with the question which was framed upon which the case has been stated. The High Court is bound by the findings of the Income-tax authorities on questions of fact, *viz.*, whether there was any loss in business during a particular period. (*Harries, C.J. and Manohar Lall, J.*) NOPERAM RAM GOPAL *v.* COMMISSIONER OF INCOME TAX, B. & O. **1942 I.T.R. 288=A.I.R. 1943 Pat. 39.**

——**S. 66 (3)**—*Question of fact—Question whether assessee had another set of accounts than those produced before Income-tax Officer—Reference to High Court—Competency.*

The question whether the assessee had another set of account books, than those produced before the Income-tax Officer, which he did not produce before the Income-tax Officer is a pure question of fact, and no case can be referred to the High Court under S. 66 (3) of the the Income-tax Act. The matter is pre-eminently one within the discretion of the Income-tax Officer. (*Collister and Bajpai, JJ.*) RAHOMAL KANNAMAL *v.* COMMISSIONER OF INCOME-TAX, U. P. **1942 I.T.R. 386.**

——**S. 66 (3)**—*Question of fact—Remittance from foreign business—Presumption of remittance out of profits—Sufficiency of evidence to rebut—High Court—Power to direct reference.*

The presumption that a remittance made to an assessee in British India from his foreign business is a remittance out of foreign profits is rebuttable. But whether the evidence on record is sufficient to rebut that presumption is a question of fact and not of law. The High Court will not therefore direct the Income-tax Commissioner under S. 66 (3) of the Income-tax Act to make a reference or to state a case on such question. (*Grille and Pollock, JJ.*) HUKUMCHAND CHAMPALAL, *In re.* **1942 I.T.R. 109.**

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——**S. 66 (3)**—Question of law—Accounts of assessee rejected as unreliable—Income estimated under proviso to S. 13—Application for reference—Competency. *See* INCOME-TAX ACT, SS. 13 AND 66 (3). **1942 I.T. R. 110.**

——**Ss. 66 (3) and 13, Proviso**—*Question of law—Application of flat rates—High rates of profits—If a ground for asking case to be stated.*

S. 13 Proviso of the Income-tax Act is very wide in its scope and it cannot be said that any point of law arises where flat rate is applied with sufficient reason. The amount of rate is entirely in the discretion of the Income-tax Officer and the mere fact that a high rate of profits has been applied will not by itself warrant the High Court directing the Commissioner to state the case. (*Bennett and Madeley, JJ.*) SINGAR SINGH *v.* COMMISSIONER OF INCOME-TAX, C.P AND U.P. **204 I.C. 195=1942 I.T.R. 441=1942 A.W.R. (C.C.) 311 =1942 O.W.N. 477=1942 O.A. 386.**

——**S. 66 (3)**—Question of law—Deposits entered in accounts, if income, or profits or capital. *See* 1941 Dig., Col. 687. CHATURBHUJ *v.* COMMISSIONER OF INCOME-TAX, U. P. AND C.P. **16 Luck. 805=198 I. C. 192=14 R.O. 386.**

——**Ss. 66 (3) and 10 (2) (ix)**—*Question of law—Money spent in taking leases for brick kilns—If a capital expenditure or one for earning profits.*

The question whether money spent in taking leases for brick kilns is capital expenditure or incurred for purpose of earning profits is a question of law and the commissioner can under S. 66 (3) be directed to state the case and refer it. (*Bennett and Madeley, JJ.*) SINGAR SINGH *v.* COMMISSIONER OF INCOME-TAX, CENTRAL AND UNITED PROVINCES. **204 I.C. 195=1942 I.T. R. 441=1942 A.W.R. (C.C.) 311=1942 O.W.N. 477 =1942 O.A. 386.**

——**S. 66 (3)**—*Question of law—Production of account books—Working out of profits from total sales and purchases—Flat rate not adopted—Reference if possible.*

Where the account books produced by an assessee were gone through and profits were worked out from the total sales and purchases and the flat rate adopted in previous years was not adopted, nor was the profits shown in the books accepted, it was held that it was impossible to say that as a question of law the flat rate adopted in previous years should be adopted and that it was not also possible to say that any question of law arose out of the fact that the books of account were produced and the Income-tax Officer was bound to accept the profits as shown from the books. (*Collister and Bajpai, JJ.*) PYARE LAL SHUKLA *v.* COMMISSIONER OF INCOME-TAX, C P. & U.P. **I.L.R. (1942) All. 445=1942 I.T.R. 416=1942 A.L.W. 374.**

——**S. 66 (3)**—*Question of law—Question of estoppel—Discretion of High Court—Order for reference—When to be made.*

Although a question of estoppel may be said to be a question of law, yet when it is a point of law to which the answers appear to be quite evident, the High Court would properly exercise the discretion granted to it under S. 66 (3) of the Income-tax Act, by declining to direct the Commissioner to make a reference on the point. *B* was a partner in a firm *H. B.* with a share of nine annas in the rupee and this firm was registered by the Income-tax Officer on an application for registration. The partners were, however, ordered to be separately assessed, when investigating the case of *B*, the Income-tax Officer found that although *B* was a partner in the firm *H. B.*, he was so by reason of his utilization of capital belonging to the joint family of which *B* was a

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member, The Income-tax Officer did not therefore assess *B* but assessed the joint Hindu family of which *B* was a member on the shares of profits received in the business of *H.B.* It was contended that by registering the firm of *H. B.*, the Income-tax authorities were estopped from any further inquiry into the identity of the persons who actually received the profits in the share of *B* or from taxing the joint family which actually received the profits of the firm.

Held, that the answer to the point of law suggested was so evident that the High Court should decline to direct a reference on it. (*Davis, C.J. and Weston, J.*) KIRPALDAS MOTANDAS *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **I.L.R. (1943) Kar. 541=(1942) I.T.R. 505=A.I.R. 1943 Sind 64.**

——**S. 66 (3)**—*Question of law—Receipt for foreign remittance—Presumption—Rebuttal—Assessee producing no evidence—Effect—Reference—Order for—If can be made.*

Although the income of each year has to be considered separately when assessing an assessee for a particular year, the Income-tax Officers are entitled to take note of properties or businesses which the assessments of previous years show have been owned by the assessee and which have furnished him with income on which tax has previously been assessed. There is no obligation on the Income-tax authorities to trace with meticulous accuracy a remittance of foreign income, found proved to have been received, to its precise source. Where the assessee produces no evidence there could be no question of any rebuttal by the assessee of the presumption that a receipt of a sum of money is income and not a capital receipt. The question whether in such circumstances the assessee has not rebutted the presumption is not a question of law which can be made the subject of a reference under S. 66 (3) of the Income-tax Act. (*Davies, C. J. and Weston, J.*) BALCHAND JIWANDAS *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **(1942) I.T.R. 507.**

——**S. 66 (3)**—Question of law—Refusal of application to renew registration under S. 26-A on ground that application was not signed by all partners and that deed of partnership did not disclose correct state of affairs—Power of High Court to direct reference. *See* INCOME-TAX ACT, S. 26-A AND R. 2. **(1942) I.T.R. 501.**

——**S. 66 (3)**—*Question of law—Refusal of renewal of registration of firm—Finding that previous registration wrong as one of the partners was a minor and that partnership deed did not disclose true state of affairs—Effect of—Order for reference.*

In an order rejecting an application for renewal of a firm under S. 26-A, of the Income-tax Act the Income-tax authorities held that the previous registration allowed to the firm was improper as one of the partners shown was then a minor and as the books of the firm showed that the distributions of income were not made in accordance with the shares shown in the partnership deeds and therefore the partnership deeds did not represent the true state of affairs.

Held, there was no question of law upon which a reference could be ordered under S. 66 (3) of the Income-tax Act. (*Davis, C.J. and Weston, J.*) KALACHAND DEVMAL *v.* COMMISSIONER OF INCOME-TAX, BOMBAY. **I.L.R. (1942) Kar. 582=(1942) I.T.R. 501.**

——**S. 66 (3)**—Question of law—"Sufficient cause" under S. 27—Question as to—Reference to High Court—Competency. *See* INCOME-TAX ACT, S. 27. **1942 I.T.R. 148.**

——**S. 66 (3)**—*Question of law—Whether assessee carries on business in British India—If one of fact or law.*

Whether an assessee does or does not carry on business in British India is in the main a question of fact but on the other hand questions of law may arise. It may well be a question of law as to whether the proof of certain facts is sufficient to establish that actual business is being conducted which would make the assessee liable to assessment to tax. (*Harries, C.J. and Faul Ali, J.*) HARDEO BENGAL SALT CO. *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA. **202 I.C. 304=15 R.P. 110=8 B.R. 871=1942 I.T.R. 13=A.I.R. 1942 Pat. 313.**

——**S. 66-A**—*Amount awarded on acquisition, if by way of interest or damages—If a question of law entitling leave being granted.*

Where the question sought to be raised before His Majesty in Council is whether or not a particular amount awarded by an improvement trust on the acquisition of a property was by way of interest or damages, it is strictly speaking not a pure question of law, but is a mixed question of fact or law, and certainly not, a substantial question of law. Nor is it one of such general importance as to justify a leave to appeal being granted on that ground. (*Iqbal Ahmad, C.J. and Collister, J.*) COMMISSIONER OF INCOME-TAX, C. & U. P. *v.* BHARILAL BHARGAVA. **202 I.C. 164=15 R.A. 101=1942 A.W.R. (H.C.) 176=1942 A.L.J. 332=1942 A.L.W. 434=A.I.R. 1942 All. 258 (F.B.).**

——**S. 67**—Jurisdiction of Civil Court—Question if claim for refund was validly discharged. *See* 1941 Dig., Col. 688. INDERCHAND *v.* SECRETARY OF STATE. **A.I.R. 1942 Pat. 87.**

INDIAN SOLDIERS (LITIGATION) ACT (1925), Ss. 6 and 8—*Continuation of proceedings—Collector not certifying necessity for postponement on expiry of three months after notice under S. 6.*

Where on the expiry of three months after the issue of notice under S. 6 of the Indian Soldiers (Litigation) Act the Collector has not certified that postponement is necessary, the proceedings will continue under S. 8 of the Act. (*Shirreff, S. M. and Sathe, J.M.*) UMANATH BUX SINGH *v.* JASKARAN SINGH. **1942 O.W.N. (B.R.) 369 (2)=1942 R.D. 458 (2)=1942 A.W.R. (Rev.) 266 (2)=1942 O.A. (Supp.) 292 (2).**

INDIAN AND COLONIAL DIVORCE JURISDICTION ACT (1926), S. 1—*Declaration of nullity of marriage—Grant of—Jurisdiction of High Court.*

The Divorce Act recognises the distinction between decrees for dissolution and decrees for nullity and the words "decrees for dissolution" in the Indian and Colonial Divorce Jurisdiction Act must be confined to "decrees for dissolution" as defined by the Divorce Act. The High Court has, therefore, no jurisdiction under the Indian and Colonial Divorce Jurisdiction Act to grant a declaration of nullity of marriage on the ground of impotence. (*Monroe, J.*) H.F.M. HUNTER *v.* M.B. HUNTER. **203 I.C. 496=44 P.L.R. 468=A.I.R. 1942 Lah. 302.**

INJUNCTION.

See also (1) C. P. CODE, O. 39.
(2) SPECIFIC RELIEF ACT, SS. 42 AND 54.

——Injunction interfering with working of Government departments—If can be granted. *See* 1941 Dig., Cal. 689. MAZAFFAR HUSAIN *v.* ADMINISTRATOR OF THE LAHORE MUNICIPALITY. **198 I.C. 773=14 R.L. 362**

——*Jurisdiction of High Court—Party to proceedings for letters of administration before it not resident within its jurisdiction—Injunction restraining him from prosecuting his prior similar application in another Court—Power to issue.*

INSOLVENCY.

The High Court, upon a proper case being made out, has the power to restrain by injunction a person who is a party to proceedings for letters of administration pending before it from prosecuting an application for letters of administration previously filed by him in another Court, although he is not resident within the jurisdiction of the High Court. It will exercise such power where that party has submitted to its jurisdiction by entering caveat and filing an affidavit in its support and has also made a substantive application in the proceedings for letters of administration for a stay thereof under S. 10, C. P. Code, which was refused. (*Sen, J.*) LILIAN SINGH, *In the goods of*. I.L.R. (1942) 2 Cal. 203=A.I.R. 1943 Cal. 19.

INSOLVENCY.

See (1) PRESIDENCY TOWNS INSOLVENCY ACT.
(2) PROVINCIAL INSOLVENCY ACT.

———Official Assignee or Official Receiver—Position of—Liability for costs of proceedings in Civil Court—Personal liability—Costs as between him and the estate represented by him—Direction as to—Jurisdiction of Civil Court to make. *See* 1941 Dig., Col. 690. RAMASWAMI CHETTY, *In the matter of*. 198 I.C. 573=14 R.M. 460=(1941) 2 M.L.J. 110.

INSURANCE—*Construction of policy—Reference to conditions outside the policy.*

Where a life insurance policy, including the conditions and benefits, has no reference to the prospectus of the company or to its rules and which has hence got to be interpreted as a whole, in interpreting it any conditions outside the policy which run counter to the terms of the policy itself cannot be considered. (*Grille J.*) ANNAPURNABAI *v.* HINDUSTAN CO-OPERATIVE INSURANCE CO., LTD. 203 I.C. 193=15 R.N. 113=1942 N.L.J. 380=A.I.R. 1943 Nag. 9.

———*Life Policy—Untrue statement made by assured in proposal—Insurer's right to avoid policy—Waiver of such right—What constitutes.*

According to a term of a policy of life insurance, the proposal and declaration made by the assured were to form the basis of the policy and any untrue statement wilfully made in the proposal was to render the policy void and of no effect. The assured wilfully made an untrue statement in the proposal that no proposal for an insurance on his life had ever been declined by any Insurance Company. It was argued on behalf of the representatives of the assured that the insurer had, at the time the policy was issued, the knowledge or, at any rate the means of knowledge that the assured had made the untrue statement in question, and since in spite of that the insurer went on accepting the premiums till the time the assured died it must be taken to have waived its right to avoid the policy.

Held, that if the plea of waiver was to succeed in the case it must be shown that the premiums were taken intentionally with knowledge of the untrue statement in the proposal and that mere possession of the means of knowledge would not be sufficient to constitute waiver by the insurer. (*Derbyshire, C. J. and Edgley, J.*) WESTERN INDIA LIFE INSURANCE CO. LTD. *v.* ASIMA SARKAR. I.L.R. (1942) 1 Cal. 100=203 I.C. 548=46 C.W.N. 759=A.I.R. 1942 Cal. 412.

———Marine—Loss by perils of seas—Ventilators of ship closed to prevent incursion of sea water—Closing of ventilators causing rice cargo to heat and ferment and thus damaging it—Damage if recoverable. *See* 1941 Dig., Col 691. CANADA RICE MILLS, LTD. *v.* UNION MARINE AND GENERAL INSURANCE CO., LTD. 197 I.C. 267=14 R.P.C. 89=8 B.R. 212.

———Policy of insurance—Construction—Clause that receipt by agent for payment of premia was only interim receipt and that formal receipt to be issued by company only—Assured to intimate to Head office in case of non-receipt of formal receipt within 30 days—If disclaimer of agent. *See* 1941 Dig., Col. 692. HUNDRAJ TOLOMAL *v.* LAXMI INSURANCE CO., LTD. 197 I.C. 893=14 R.S. 123.

———Policy of insurance—Non-forfeiture clause—Construction—Surrender value exhausted by adjustment towards premia due—Subsequent premia—Days of grace—If available. *See* 1941 Dig., Col. 692. HUNDRAJ TOLOMAL *v.* LAXMI INSURANCE CO., LTD. 197 I.C. 893=14 R.S. 123.

INSURANCE ACT (1938), S. 33.

INSURANCE ACT (IV OF 1938) S. 9—*Order for refund in respect of discontinued business—Condition precedent.*

No order for refund can be made under S. 9 of the Insurance Act in respect of a discontinued business unless all the liabilities in respect of the same have been fully satisfied or otherwise provided for. (*Mukherjea and Sen, JJ.*) NAVAJIBAN INSURANCE CO., LTD. *v.* SUPERINTENDENT OF INSURANCE. I.L.R. (1942) 1 Cal. 481=201 I.C. 20=15 R.C. 116=74 C.L.J. 491=46 C.W.N. 284=A.I.R. 1942 Cal. 294.

———**Ss. 9 and 7**—*Insurer carrying on combined business depositing only portion of amount—Right to obtain refund on discontinuing one class of business.*

It is not necessary that an insurer should deposit the full amount as is required under S. 7 (1) of the Insurance Act before he can present an application for refund under S. 9 of the Act in respect of a certain class of insurance business that has been discontinued by him. Under S. 7 (1) of the Act, the amount to be deposited by an insurer is rupees two lacs, if the business carried on by him is purely life insurance business. If on the other hand, miscellaneous insurance business is combined by him with life insurance, the deposit is increased to rupees three lacs, out of which rupees two lacs should be regarded as deposit for life insurance business. Under sub-S. (3) of the section the insurer has the right to deposit this amount in certain instalments. As the entire deposit of rupees three lacs as required under S. 7 (1) is to be divided into two parts the instalments permitted under sub-S. (3) are susceptible of similar division and it would be quite proper to allocate one-third of such instalments to the miscellaneous insurance business and the remaining two-thirds to the Life Insurance. If the insurer discontinues the former class of business, he can under S. 9 of the Act obtain refund of so much of the instalments of deposit as do not relate to the life insurance which he continues to carry on. It would be extremely unreasonable to hold that although he has discontinued one class of business, he will still be bound to make deposits in respect of both classes of business and unless and until the full amount is deposited no separation of funds is permissible. (*Mukherjea and Sen, JJ.*) NAVAJIBAN INSURANCE CO., LTD. *v.* SUPERINTENDENT OF INSURANCE. I.L.R. (1942) 1 Cal. 481=201 I.C. 20=15 R.C. 116=74 C.L.J. 491=46 C.W.N. 284=A.I.R. 1942 Cal. 294.

———**S. 33 (2)**—*Disposal of application—Duty of Court.*

Before an application under S. 33 (2) of the Insurance Act can be dismissed there must at least be some serious attempts to see whether the party affected by the order of the Superintendent of Insurance has good reasons for opposing the investigation, even though it may be not possible to do more than conduct a summary enquiry. Merely to allow a party to put documents on the record without any means of proving their contents to be correct, when this is denied by the other

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side, does not amount to the taking of evidence in any true sense of the word and does not afford a basis for judicial determination. The final order should at least give some indication of the matters substantially in dispute between the parties and the reasons for dismissing the application. (*Tek Chand and Beckett, JJ.*) TROPICAL INSURANCE CO. LTD., NEW DELHI *v.* SUPERINTENDENT OF INSURANCE. **203 I.C. 395=44 P.L.R 288=A.I.R. 1942 Lah. 267.**

———**S. 33 (2)**—*Order of District Judge—Revision—Power of High Court—Scope of enquiry.*

The High Court has power to interfere in revision with an order passed by a District Judge under S. 33 (2) of the Insurance Act. The fact that the power given to the District Judge of issuing prohibitory order under S. 33 (2) is discretionary does not exclude the power of revision when there has been an irregularity in the exercise of jurisdiction. The party affected by an order of the District Judge is not limited to showing that the order was not issued without good reason in the first instance, but is entitled to show that the reasons have disappeared and that there is no longer any necessity for an investigation from outside. (*Tek Chand and Beckett, JJ.*) TROPICAL INSURANCE CO. LTD., NEW DELHI *v.* SUPERINTENDENT OF INSURANCE. **203 I.C. 395=44 P.L.R. 288=A.I.R. 1942 Lah. 267.**

———**Ss. 91 (1) (b), (2) and 90 (1)**—*Voluntary liquidator of provident society—Power to make calls himself—Making of call if amounts to determination of contribution.*

When a liquidator is appointed in respect of a provident fund by the Superintendent of Insurance under S. 90 (1) of the Insurance Act, he has no powers under S. 91 (2) of the Act of 'realising the amount of contribution' except such powers as an official liquidator has in a winding up order of the Court. He cannot by himself make a call. The making of a call cannot be said to be merely the determination of the contribution to be made by the members within the meaning of S. 91 (1) (*b*) of the Act. (*Braund, J.*) THE PUBLIC BENEFIT PROVIDENT INSURANCE SOCIETY LTD., *In the matter of.* **I.L.R. (1942) All. 26=199 I.C. 663=14 R.A 397=1942 A.L.J. 47=1942 O.A. (Supp) 61 (2)=1942 A.L.W. 17=1942 A.W.R. (H.C.) 4=A.I.R. 1942 All. 136.**

INTEREST.

See also (1) C. P. CODE, S 34.
(2) CONTRACT ACT, SS. 73 AND 74.
(3) INTEREST ACT.
(4) USURIOUS LOANS ACT.

———*Goods sold on credit—Vendor whether can claim interest.*

Ordinarily, interest should not be allowed on the price of goods sold unless there is either a contract or an usage of the trade or there is a written demand that interest will be charged if the amount is not paid. (*R. M. Toshniwal, J.*) INDERMAL *v.* HEERACHAND INDERMAL. **1942 M.L.R. 114 (Civ.).**

———Liability of purchaser to pay on getting possession without payment of price—Applicability of principle to compulsory purchases. *See* 1941 Dig. Col. 693. INTERNATIONAL RAILWAY CO. *v.* NIAGARA PARKS COMMISSION. **8 B.R. 197=14 R.P.C. 83.**

———Renewal of old debt—Promissory note and receipts—Inadmissibility of promissory note—Calculation of interest—Basis *See* LIMITATION ACT, S. 19. **1942 O.W.N. 343=1942 O.A. 243.**

———*Right to—Award as damages for moneys wrongfully detained—When can be made.*

Interest cannot be awarded as damages for wrongful detention of money due in the absence of any usage, or contract, express or implied, to pay interest or of a right given by any substantive law. (*Davis, C.J. and Weston, J.*) DISTRICT LOCAL BOARD, NAWABSHAH *v.* BULCHAND. **I. L. R. (1942) Kar. 346=204 I. C. 136=15 R.S. 82=A.I.R. 1942 Sind. 165.**

INTERNATIONAL LAW.

———*Right to—Execution sale—Amount in Court—Injunction against payment out at instance of auction-purchaser—Liability of judgment-debtor for interest on decree amount from date of confirmation of sale—Principles.*

The date upon which an execution sale is confirmed is the date upon which the money due by the judgment-debtor under the decree is paid by him and realized by the judgment-creditor through the Court. If there is no subsequent action on the part of the judgment-debtor, during the period between the receipt of the money into Court and the actual payment by the Court of the money to the judgment-creditor, which prevents or postpones that payment, no question arises of any further liability resting upon the judgment-debtor under the decree either for interest or otherwise. When no blame attaches to the judgment-debtor, he cannot be compelled to pay interest for any further period beyond the date when payment was made into Court in satisfaction of the decree. Merely because an injunction is issued at the instance of the auction-purchaser and delay is caused in payment out, the judgment-creditor cannot claim further interest from the judgment-debtor on the ground that the judgment-creditor has not been to blame for the delay. (*King and Byers, JJ.*) PALAMALAI CHETTIAR *v.* RAMANATHAN CHETTIAR. **202 I.C 475=15 R. M. 505=1942 M. W. N. 283=55 L W 212=A.I.R. 1942 Mad. 442=(1942) 1 M.L.J. 439.**

INTEREST ACT (XXXII OF 1839), S. 1 and Proviso—*Applicability—Partition deed—Share carrying liability to pay amount to sharer taking another share—Date of payment not fixed—When becomes payable—Right to interest.*

A deed of partition dated 14—3—1930, divided the immovable properties of the family of the parties to the deed into two lots A and B; and in order to equalise their value provided that lot A was to carry with it a liability to pay a sum of Rs. 14,000 to the sharer taking lot B. The deed further provided that after 1—7—1929 each sharer was entitled to the income derived from his share of the properties. The sharers went into possession but the amount of Rs. 14,000 remained unpaid. In a suit by the sharer who took lot B against the one who took lot A for recovery of the amount and interest,

Held, that in the circumstances interest could be awarded from 14—3—1940, under the proviso to S. 1 of the Interest Act on the principle of equity.

Per *Abdur Rahman, J.*—That the payment of Rs. 14,000, not being contingent on events which might never happen, the time when the payment was to be made was "certain", though no date was specified in the partition deed, and the sum must be held payable on 14—3—1930, by virtue of the deed, within the meaning of S. 1 of the Interest Act. (*Venkataramana Rao and Abdur Rahman, JJ.*) RAVALAMMA *v.* BUTCHIRAMAYYA. **I.L.R. (1942) Mad. 464=201 I.C. 595=15 R.M. 361=A.I.R. 1942 Mad. 429=(1942) 1 M.L.J. 250.**

INTERNATIONAL LAW—*Contract of deposit in French Cochin China—Payment of deposit under judgment of Court of that country operating as discharge of liability—Suit in British India on contract—Maintainability.*

In the case of a contract of deposit made in French Cochin China, the contract and the rights and liabilities of the parties thereto are governed by the French law;

and if a payment made in that country under a judgment of the Court of that country operates as a valid discharge of the liability in respect of the deposit, such payment also operates as valid in British India, and a suit in British India, for recovery of the deposit must fail. (*Leach, C.J. and Kuppuswami Ayyar, J.*) RAMASWAMI AYYANGAR *v.* ARUNACHALAM CHETTIAR. 202 I.C. 526=15 R.M. 518=1942 M.W.N. 313=55 L W 207=(1942) 1 M.L J 430.

INTERPRETATION OF STATUTES—Acts ousting jurisdiction—Strict consruction. *See* 1941 Dig., Col. 693. MANAGER, COURT OF WARDS *v.* MOOLCHAND. 200 I.C. 715=15 R N. 18.

———*Act restricting Civil Court's jurisdiction.*

An enactment which restricts the jurisdiction of Civil Courts ought to be construed strictly. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. 202 I.C. 497=15 R.L.133=44 P.L.R. 488=A.I.R. 1942 Lah. 217 (F.B.).

———*Adverb of time.*

Per *Braund, J.*—It is a proper principle of construction that, in the absence of some compelling indication to the contrary, an adverb of time has reference to the present and, in relation to a statute, to the time from which the statute speaks. (*Iqbal Ahmad, C.J., Braund and Dar, JJ.*) SHRI NATH *v* PURAN MAL. I.L.R. (1942) All. 45=198 I.C. 690=14 R.A. 299=1942 A.L.J. 55=1941 O A. (Supp.) 925 (1)=1941 A.W.R. (Rev.) 1175 (2)=A.I.R. 1942 All. 19. (F.B.).

———*Alternative constructions—Choice between.*

It is a settled rule of interpretation that where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate and that alternative is to be rejected which will introduce absurdity, uncertainty, friction or confusion in the working of the system. (*Tek Chand, Dalip Singh and Blacker, JJ.*) SOHAN SINGH *v.* JAGIR SINGH. I L R. (1942) Lah. 364=200 I. C. 131=14 R. L. 444=44 P.L.R. 178=A I.R. 1942 Lah 114 (F B.)

———*Amending Act—Retrospective operation.*

While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be technically inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. (*Tek Chand, Monroe and Din Mohammad, JJ.*) SHAM SINGH *v.* VIR BHAN. I.L.R. (1942) Lah. 349=200 I.C. 302=14 R.L. 462=44 P.L.R. 126=A.I.R. 1942 Lah. 102 (F.B.).

———Construction of section as whole—Straining language—Impropriety. *See* 1941 Dig., Col. 691. MUNICIPAL COMMITTEE, BILASPUR *v.* WAMANRAO. I.L R. (1942) Nag. 269=197 I.C. 300=14 R.N. 157.

———*Debates in Legislature during passage of bill—Relevancy—Duty of Court.*

Per *Davis C.J.*—The Court is not, concerned with the debates in the Legislature during the passage of a bill through the Assembly or Council. It is concerned only with the intention of the Legislature as expressed in the bill as finally passed into law, and will construe the words used in their ordinary grammatical meaning. (*Davis, C. J., Weston and Tyabji, JJ.*) NEW SIND, *In re.* I.L R. (1942) Kar. 127=202 I C 405=15 R S. 40=43 Cr.L J. 838= A.I.R. 1942 Sind 65 (S.B.).

——— Decision under English Act—Relevancy of. *See* 1941 Dig., Col. 694. BAI KOKILABAI *v.* KESHAVLAL MANGALDAS. I.L R. (1942) Bom. 139=198 I.C. 163=14 R.B. 285=43 Cr.L.J. 315=A.I.R. 1942 Bom. 18 (F.B.).

———*Duty of Court—Assumption that Legislature has made a mistake—Permissability.*

It is not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. A Court of law is bound to proceed upon the assumption that the legislature is an ideal person that does not make mistakes. It must be assumed that it has intended what it has said. (*Tek Chand and Din Mahomed, JJ.*) MADHO SINGH *v.* JAMES R. R. SKINNER. 203 I.C. 404=44 P.L.R. 382=1942 F.L J. (H C.) 201=A.I.R. 1942 Lah. 243.

———*Duty of Court—General and special expression in different clauses of section—Construction of.*

A Court is bound to follow the general rule that special expressions take from things general. Where there are general words in a later clause capable of reasonable application without being extended to the subject specially dealt with by an earlier clause, in the absence of any indication of any particular intention to that effect, the presumption is that the legislature did not intend by the use of the general expression to repeal or reduce the effect of the earlier and special clause or qualify it in any sense by taking away a particular privilege of a particular class of persons. (*Wassoodew, J.*) KULKARNI *v.* GANPAT HIRAJI TELI. I L.R. (1942) Bom. 287=44 Bom.L.R. 264=202 I.C.157=15 R.B 133=A.I.R. 1942 Bom. 191.

———Duty of Court—Language of act to be taken as it is—Construction to fit in with pre-conceived idea as to intention of Legislature—If justified—Intention to be gathered from Act as a whole. *See* 1941 Dig., Col. 695. EMPEROR *v.* MAHOMED KASSAM PANWALLA. I.L.R. (1942) Bom. 107=198 I.C 226=43 Cr.L.J. 321=14 R.B. 295=A.I.R. 1942 Bom. 39.

———*Duty of Court—Words of section plain—Extraneous consideration—If can be used as a guide.*

When the Court finds that the words of a section in an Act are quite plain, it should refuse to be guided by any extraneous consideration, such as the wording or effect of another section. (*Harries, C.J. and Manohar Lall, J.*) KAMESHWAR SINGH BAHADUR *v.* DHUNMAN GOPE. 21 Pat. 794=1942 P.W.N. 208=A.I R. 1943 Pat 73.

———Duty of Court to give effect to grammatical meaning of words—Remedying of lacuna. *See* 1941 Dig., Col. 695. SURYANARAYANAMURTHI *v.* CHAIRMAN, MUNICIPAL COUNCIL, COCANADA. 199 I.C. 472=14 R.M. 583=(1941) 2 M.L.J. 338.

———English decisions—Resort to—Matter expressly provided in the Evidence Act. *See* 1941 Dig., Col. 695. PARBHOO *v.* EMPEROR. I.L.R. (1941) All. 843=197 I.C. 525=14 R.A. 209=43 Cr.L.J. 177.

——— General and Special Acts—Earlier special enactment—Later general enactment—Implied repeal of former—Presumption. *See* 1941 Dig., Col. 696. GHULAM MAHOMED *v.* RAJESWAR. I.L R (1942) Lah 199=197 I.C. 353=14 R.L. 230.

———General words following specific words—Object of the Act, if can affect rule of interpretation. *See* 1941 Dig., Col. 696. U. P. GOVERNMENT *v*, MANMOHAN DAS. I L.R. (1941) All. 691.

———*Hardship—Question of—Relevancy— Duty of Court.*

The Court has to administer the law as found in the Act of the Legislature, and hard cases cannot make a different law. (*Beaumont, C.J. and Kania, J.*) LOKAMANYA TILAK JUBLEE NATIONAL TRUST FUND, BOMBAY, *In re*, 198 I.C. 544=14 R.B. 313=

INTERPRETATION OF STATUTES.

1942 I.T.R. 26=43 Bom.L.R. 1027=A.I.R. 1942 Bom. 61.

———*Harmonious construction—Duty of Court.*

Per *Manohar Lall, J.*—Each part of a statute should be construed so as to result in a harmonious working of all the parts. Where the language of the statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJ PATI NARAYAN DEO. **21 Pat. 1=198 I.C 353=14 R.P. 420=8 B.R. 361=8 Cut. L.T. 53=A.I.R. 1942 Pat. 1 (F.B.).**

———Intention of legislature—Ascertainment—Rule—Reference to scheme of Act—When justified. *See* 1941 Dig., Col. 697. CHANDU *v.* SANKARAN. **198 I.C. 422=14 R.M. 433=(1941) 1 M.L.J. 573.**

———*Intention of legislature—How judged—Duty of Court.*

A Court can only judge of the intention of the legislature from the language of the text of the Act (*Beaumont, C. J.*) MURARRAO NARSINGRAO *v.* GOVIND SANTU. **44 Bom.L.R. 847=A.I.R. 1943 Bom 26.**

———*Intention of legislature—Reference to proceedings of Select Committees—Permissibility.*

The proceedings or reports of Select Committees cannot be referred to interpret the plain words of a statute (*Tek Chand and Din Mahomed, JJ.*) MADHO SINGH *v.* JAMES R. R. SKINNER. **203 I.C. 404=1942 F.L.J. (H.C.) 201=44 P.L.R. 382=A.I.R. 1942 Lah. 243.**

———Jurisdiction of Civil Court—Bar of—Special remedy provided by Act—Effect of—Bar of civil suit. *See* SEA CUSTOMS ACT, SS. 188 AND 191. **(1942) 2 M.L.J. 193.**

———*Language—Duty of Court.*

The primary test for the interpretation of a statute is the language used therein. When the words used in a statute are plain and unambiguous and admit of but one meaning, a Court is not at liberty to speculate on the intention of the Legislature and to construe them according to its own notions of what ought to have been enacted. To depart from the plain language used on account of such notions is in reality not to interpret the law but to alter it. (*Tek Chand, Din Mahomed and Bhide, JJ.*) GURMUKH SINGH *v.* INTAZAMIA COMMITTEE, GURDWARABHAI SEWA SINGH. **I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah 19 (F.B.).**

———Mandatory or directory—Use of "shall". *See* 1941 Dig., Col. 698. MAHOMED IKHTIYAR *v.* KHANA. **I.L.R. (1942) Lah. 275.**

———Marginal notes—Reference to. *See* 1940 Dig., Col. 732. BRIJ MOHAN SINGH *v.* TULSIRAM. **I.L.R. (1942) Nag. 53.**

———Meaning of same words used. *See* 1941 Dig., Col. 698. CAWASHAH BOMANJI *v.* PRAFULLA NATH. **197 I.C. 570=14 R.N. 175.**

———Meaning of words clear—Duty of Court to give effect to—Hardship or injustice—Relevancy. *See* 1941 Dig., Col. 698. JAMIVATRAM GAURISHANKAR *v.* UMIAJA SHANKAR PRANSHANKAR JOSHI. **I.L.R. (1941) Bom. 544.**

———*Meaning of words—Different, though analogous, expressions used in different places—Intention of legislature—Presumption.*

INTERPRETATION OF STATUTES.

The legislature must always be presumed to aim a precision and in so doing would naturally follow the safe rule of always calling the same thing by the same name. If it has used two different expressions, though analogous in nature, in different parts of the same clause, it must be assumed that they were intended to be used in a different sense. (*Wassoodew, J.*) KULKARNI *v.* GANPAT HIRAJI TELI **I.L.R. (1942) Bom. 28=202 I.C. 157=15 R.B. 133=44 Bom.L.R. 264=A.I.R. 1942 Bom 191.**

———*Meaning of words—Duty of Court.*

It is the duty of the Court to interpret a statute according to the ordinary meaning of the words used, unless this would lead to a manifest absurdity. (*Leach, C.J., Mockett and Krishnaswami Ayyangar, JJ.*) KRISHNAMURTHI AYYAR, *In re.* **I.L.R. (1942) Mad. 9=203 I.C. 498=55 L.W 844 (2)=A.I.R. 1942 Mad. 690=(1942) 2 M.L.J. 509 (S.B.).**

———*Meaning of words—Same word in same section—If can be interpreted differently.*

It is an established rule of construction that the same word should not be interpreted in two different ways in the same section (*Mukherjea and Sen, JJ.*) MONOHAR KAIBARTA *v.* JAGADISHCHANDRA. **202 I.C. 398=15 R.C. 330=46 C.W.N. 298=A.I.R. 1942 Cal. 357.**

———*Objects and reasons—Reference to—Permissibility.*

In interpreting a statute it is not permissible to refer to the statement of objects and reasons as throwing light on the interpretation. (*Lobo J.*) HORMUSJI JAMSHEDJI, *In re.* **I.L.R (1942) Kar. 237.**

———*Parliamentary history of enactment—Reference to ascertain meaning.*

Courts cannot consider the parliamentary history of an enactment for the purpose of ascertaining its meanings. (*Bennett and Agarwal, JJ.*) QAMAR JAHAN BEGAM *v.* BANSI DHAR. **17 Luck. 530=199 I.C. 35=14 R.O. 455=1942 A.W.R. (C.C.) 42=1941 O.W.N. 1395=1941 O.A. 1050=A.I.R. 1942 Oudh 231.**

———*Penal statute.*

One of the canons of the construction of a penal statute is that where two meanings are possible, that which is more favourable to the subject is to be taken. (*Bhide and Blacker, JJ.*) BHAI LAL CHAND *v.* EMPEROR. **202 I.C. 452=15 R.L. 148=43 Cr.L.J. 849=44 P.L.R. 429=A.I.R. 1942 Lah. 253.**

——— Plain meaning. *See* U. P. DEBT REDEMPTION ACT, S. 4 (3), THIRD PROVISO. **1942 A.L.J. 554=1942 O.W.N. (B.R.) 607 (F.B.).**

———*Preamble—Reference to—Permissibility.*

Per *Ram Lall, J.*—If a word has more than one meaning and it is a matter of doubt which of these meanings is used in the body of an Act, it is permissible to look at the preamble of that Act to decide which of several meanings attaching to the word was intended by the legislature. (*Tek Chand and Sale, JJ.*) MANOHAR LAL *v.* EMPEROR. **202 I.C. 735=43 Cr.L.J. 897=15 R.L. 171=44 P.L.R. 524=A.I.R. 1943 Lah. 1.**

———*Preamble — Reference to—Permissibility—Preamble retrospectively inserted in Act passed earlier.*

If any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble. But it is very doubtful whether a preamble retrospectively inserted in 1940 in an Act passed 25 years before can be looked at by the Court for the purpose of discovering what the true intention of the Legislature was at the earlier date. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD

INTERPRETATION OF STATUTES.

v. EMPEROR, 21 Pat 587=44 P.L.R. 261=43 Cr. L.J 481=1942 M.W.N. 378=46 C.W.N. (F.R.) 32 =1942 O.W.N. 411=1942 A. Cr. C. 122=14 R. F.C. 19=1942 A.L.W. 469=I.L.R. (1942) Kar. (F.C.) 21=199 I C. 322=1942 AW R. (F C.) 10=1942 O. A. 144=23 Pat.L.T. 253=1942 P.W.N. 129=8 B.R. 555= (1942) 5 F.L.J. 17=A.I.R. 1942 (F.C.) 17 =(1942) 2 M.L.J. 6 (F.C.).

———Preamble—Relevancy. *See* 1941 Dig., Col. 699. EMPEROR *v.* DHOLARAM HOLARAM. 199 I.C. 101= 14 R.S. 167=43 Cr.L J. 468.

——— *Preamble—Use of.*

Per (*Davis, C.J.*)—An Act is not controlled by its Preamble. (*Davis, C. J., Weston and Tyabji, JJ.*) "NEW SIND", *In re.* I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I.R. 1942 Sind 65 (S.B.).

———*Proceedings in council—Reference to—Permissibility.*

The sections of an Act must be construed on the basis of the plain words of the sections themselves and not with reference to what was said or done in the Council before the Act was passed. (*Fazl Ali, J.*) HARI MAHTON *v.* JAMAL HOSSAIN. 199 I.C. 24=8 B.R. 482=14 R.P. 525=23 P.L.T. 571=A.I.R. 1942 Pat. 304 (2).

———Proceedings of Legislature—Reference—Permissibility. *See* 1941 Dig, Col. 699. MAHALAKSHMI RAKHIT *v.* SHAMRANGINI ROY. 197 I.C. 853=14 R.C. 397.

———*Punctuation.*

Legislative enactments should be interpreted in their plain natural meaning and the technique of punctuation should not be allowed to defeat that meaning. (*Rachhpal Singh, C.J. and Hasan, J.*) INDER PRAKASH *v.* TIRLOK CHAND. 44 P.L.R. J. & K. 58.

———Reference to proceedings of legislature—Grammatical construction—When to be departed from. *See* 1941 Dig., Col. 700. HIRALAL *v.* PARASRAMSAO. 198 I.C. 155=14 R.N. 206=A.I.R. 1942 Nag. 5.

———Retrospective operation. *See* C. P. TENANCY ACT, S. 11. 1942 N.L.J. 72.

———*Retrospective operation—Change in form of procedure—Effect.*

Alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be. Where, however, during the pendency of judicial proceedings changes of procedure are introduced such as to give or to take away the right of appeal, the proceedings will be carried to their conclusion under the same procedure under which they were initiated. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTO. 23 Pat.L.T. 684=1942 P.W.N. 219.

———*Rules—If control statute.*

Per *Davis, C. J.*—The rules framed under a statute cannot govern or control the words of the statute (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND". *In re.* I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I.R. 1942 Sind 65 (S.B.).

———*Similar enactments—Uniformity of interpretation.*

It is a settled rule of interpretation that where there are different statutes *in pari materia*, though made at different times, they ought to receive a uniform construction. (*Tekchand, Monroe and Din Mohammad JJ.*) SHAM SINGH *v.* VIR BHAN. I L.R. (1942) Lah. 349=200 I C. 302=14 R.L. 462=44 P.L.R. 126=A.I.R. 1942 Lah. 102 (F.B.).

IRRIGATION RIGHTS.

———Special remedy provided by statute—Separate suit—Maintainability. *See* 1941 Dig., Col. 702. RAMI NAIDU *v.* SECRETARY OF STATE. 201 I.C. 126=15 R.M. 228=A.I.R. 1942 Mad. 127=(1941) 2 M.L. J. 577.

———*Statutes having similar objects—Words used same or exactly similar—Construction.*

Where the same or exactly, similar words are used in statutory provisions which have a similar object, they are to be interpreted in the same way. (*Davis, C.J. and Weston, J.*) NABI BAKHSH *v.* EMPEROR. I.L.R. (1941) Kar. 557=199 I.C. 198=14 R.S. 172=43 Cr. L.J. 514=A.I.R. 1942 Sind 45.

———*Vested rights—Interference with—Presumption—Absence of provision for compensation—Inference from.*

Where a statute is ambiguous, the presumption that a Legislature does not intend to interfere with vested rights is reinforced by the absence of provisions for compensation; but where the language is clear and there is no ambiguity, there is no room for the argument based on the absence of a provision for compensation. (*Gwyer, C. J., Varadachariar and Zafrulla Khan, JJ.*) BHOLA PRASAD *v.* EMPEROR. 21 Pat. 587= 44 P.L.R. 261=43 Cr.L.J. 481=1942 M.W.N. 378= 46 C.W.N. (F.R.) 32=1942 O.W.N. 411=1942 A. Cr.C. 122=14 R.F.C. 19=1942 A.L.W. 469=I.L. R. (1942) Kar. (F.C.) 21=199 I.C 322=1942 A.W. R. (F.C.) 10=1942 O. A. 144=23 Pat.L.T. 253= 1942 P.W.N 129=8 B R 555=(1942) 5 F.L.J. 17= A.I.R. 1942 F.C. 17=(1942) 2 M.L.J. 6 (F.C.).

———*Words—Meaning—"May"—If means shall.*

"May" when used to describe the duty of a public officer in a statutory provision must ordinarily be interpreted as requiring him to do what the provision provides in the circumstances to which it applies, not as leaving him any arbitrary choice in the matter, nor, unless it is otherwise indicated, any discretion in the matter. (*Reilly, C.J. and Subramania Aiyar, J.*). SIVANANJE GOWDA *v.* KAPANIAH. 20 Mys.L.J. 331.

———Words—Meaning of—Same meaning to be given to words in Act or section, wherever they appear. *See* 1941 Dig., Col. 703. GANPAT KINUSHET *v.* VITHAL BHIKAN. I.L.R. (1942) Bom. 94=14 R.B. 324=198 I.C. 575=A.I.R. 1942 Bom. 57.

———Words to be taken in their context. *See* 1941 Dig., Col. 703. EMPEROR *v.* DHOLARAM HOLARAM. 199 I.C. 101=14 R.S. 167=43 Cr.L.J. 468.

IRRIGATION RIGHTS—Interfererence with. *See* TORTS—IRRIGATION RIGHTS. (1942) 1 M.L.J. 116.

———*Tank irrigating lands from time immemorial—Lands remaining submerged for several weeks in the year when tank reached full capacity—Tenants of such lands putting up bunds to prevent submersion—Right of ayacutdars to restrain putting up of bunds.*

Where as the result of the construction of a tank generations ago, the ryots of the ayacut have become entitled to have their lands irrigated from it, any one who interferes with their customary supply of water interferes with rights recognised by law and is therefore subject to the injunction of the Court. The appellants were tenants of lands which from time immemorial had been submerged for several weeks in the year after the tank had filled as the result of the rains. The appellants had accepted tenancies knowing that the lands would be completely submerged for part of the year. The appellants erected bunds to prevent submersion, which caused some of the water in the tank to escape over the weir and lessened the supply which the ryots in the ayacut, including the respondents, were accustomed to receive. It was found that the respondents suffered material

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diminution in their customary supply of water in consequence of the action of the appellants.

Held, that since it could not be denied that if the appellant were allowed to prevent the tank reaching its full capacity during the rains, the respondents and other ryots in the ayacut would suffer because the water which would otherwise spread over the appellant's lands would be forced over the weir and lost so far as the ayacut was concerned, the action of the appellants in reality amounted to interference with the bed of the tank and the respondents were therefore entitled to restrain the appellants from interfering with the spread of the water in the tank and to a mandatory injunction requiring the appellants to remove the bunds they had erected. The plea that the appellants in erecting these bunds were merely protecting their own property could not be accepted. (*Leach, C.J. and Hoppell, J.*) NALLAMUTHU PILLAI *v.* THIRUMALAI AYYANGAR. **I.L.R. (1942) Mad. 431=201 I.C. 167=15 R.M. 257 =1942 M.W.N. 306=54 L.W. 751=A.I.R. 1942 Mad. 258=(1942) 1 M.L.J. 49.**

JAMMU AND KASHMIR CIVIL PROCEDURE CODE S 60 (1) (c)—*Houses belonging to agriculturist—Exemption.*

Under S. 60 (1) (*c*), C. P. Code, "the residential house" whether used for agricultural purposes or not will be exempt in the first instance and the other houses will be exempt only if they were being used for agricultural purposes. Houses belonging to an agriculturist which are neither "the residential house" nor are used for agricultural purposes will not be exempt from attachment. (*Kachhpal Singh, C J and Hasan, J.*) INDER PRAKASH *v* TIRLOK CHAND. **44 P.L.R.J & K. 58.**

JAMMU AND KASHMIR COMPANIES ACT, Ss 184 and 38—*Rectification of register of shareholders—Power of Court.*

The Court has power in proceedings under S. 184 of the Companies Act to decide any question relating to the title of any aggrieved person to have his name omitted from the Register of shareholders. (*Hasan, J.*) MUSLIM BANK OF INDIA, *In the matter of*. **44 P.L.R J. & K. 23.**

JAMMU AND KASHMIR CRIMINAL PROCEDURE CODE, S. 145—*Proceedings under—Duty of Magistrate.*

Proceedings under S 145, Cr. P. Code, are not taken in the interests of private parties but for the preservation of the public peace, and if the Magistrate is satisfied that there is no likelihood of breach of peace, it is his duty to drop the proceedings under S. 145 and not to interfere with the rights of the parties in the property. (*Janki Nath Wazir, J.*) WADHAWA *v.* ILAHI BUX. **44 P L R. J. & K. 55.**

——**S. 145**—*Proceedings under—When may be taken.*

The procedure under S. 145, Cr P. Code, is intended to deal with conditions in which the parties responsible for law and order have an existing fear that unless steps under the section are taken, breach of the peace will occur, before they can prevent it. There must be a present fear that it is probable that there will be a breach of the peace owing to the dispute. Proceedings under the section are not taken in the interests of private parties but for the preservation of the public peace and if the Magistrate is satisfied that there is no likelihood of a breach of the peace, it is his duty to drop the proceedings and not to interfere with the rights of the parties in the property. (*Janki Nath Wazir, J.*) WADHAWA *v.* ILAHI BUX. **44 P.L.R. J & K. 55.**

——**S. 162**—*Use of police diary*

The best use that the trial Courts can make of the Police diary is to have it before them when the investi-

J & K. LIM. ACT Art. 134.

gating officer is examined on the statements recorded by him under S. 162, Cr. P. Code. This will give the Court a true picture of what the witnesses said then and whether there has been any subsequent addition made as the case developed ultimately. (*Kachhpal Singh, C. J. and Masud Hasan, J.*) MASSU *v.* STATE. **44 P.L. R. J. & K. 11.**

——**S. 164**—*Confession recorded at Magistrate's residence—Admissibility.*

No doubt the proper course for a Magistrate is to record the confession in Court. But the mere fact that it was recorded at the Magistrate's residence does not make it inadmissible in evidence. (*Abdul Qayoom, C.J. and Kichlu J.*) BASHIR AHMAD *v.* STATE. **44 P.L. R. J. & K. 47.**

JAMMU AND KASHMIR EVIDENCE ACT, S. 13—*Judgment not* inter parties—*Admissibility.*

In order that a Judgment not *inter parties* should be admissible under S. 13 of the Evidence Act to show that the plaintiff was the adopted son of a certain person, it is necessary for the party relying upon the judgment to show that the judgment was passed in a case which was instituted and decided long before the litigation arose between the parties. (*Janki Nath Wazir, Offg. C.J.*) PARSHAD BAYOO *v.* VISH NATH. **43 P.L.R. J. & K. 297.**

——**S. 154**—*Hostile witness—Who is.*

A witness cannot be treated as hostile when there is no note to that effect in the evidence of the witness to show that the party calling him considered him as such and no permission of the Court was sought to cross-examine him. (*Abdul Qayoom, C.J. and Kichlu, J.*) GULAB DIN *v.* STATE. **44 P L.R. J. & K. 44.**

JAMMU AND KASHMIR INCOME TAX ACT, S. 25 A—*Order made after enquiry—If can be re-opened.*

If the Income-tax Officer finds after enquiry under S. 25 A of the Income-tax Act that the separation of the members of the family has taken place and that the joint family property has been partitioned, that family should not be assessed as undivided family but the members of that family should be assessed separately. The Income-tax Officer after recording the order under S. 25-A cannot enquire into the same question over again unless he has reason to believe that re-union among the members has taken place. The burden will be upon the Income-tax authorities to prove that re-union. (*Wazir, J.*) KASHMIRIMAL, *In re*. **44 P L. R. J. & K. 37**

JAMMU AND KASHMIR LIMITATION ACT, S. 5—*Discretion of Court—Exercise of—True guide.*

The true guide for a Court in the exercise of the discretionary power of admission of an appeal presented after time is whether the appellant has acted with reasonable diligence in prosecuting his appeal. (*Wazir and Hasan, JJ.*) KANWAR LAL KATHJOO *v.* BOMBAY PUNJAB SYNDICATE, LTD., LAHORE. **43 P.L.R.J. & K. 308.**

——**S. 12**—*Time allowed for obtaining copies—Mode of computation.*

According to R. 7 of the General Rules, the time allowed for obtaining copies is computed from the date when the copying charges are deposited to the date the copies are ready for delivery. (*Wazir and Hasan, JJ.*) KANWAR LAL KATHJOO *v.* BOMBAY PUNJAB SYNDICATE, LTD., LAHORE **43 P.L.R.J & K. 308.**

——**Art. 134**—*Unregistered mortgage deed—Suit by mortgagee for possession—Limitation—Starting point.*

Under Art. 134 of the Jammu and Kashmir Limitation Act, a suit by the mortgagee for possession must be brought within 12 years from the date on which the

mortgagor's right to possession determines. Where the mortgagor himself is in possession at the time of the execution of the mortgage-deed, his right to possession determines as soon as he executes the mortgage-deed under the terms of which he says that possession has been given to the mortgagee though, as a matter of fact, actual possession has not been delivered. In the absence of an agreement to the contrary, a mortgagee is entitled to possession (as against the mortgagor) immediately upon the execution of the mortgage-deed although the deed is not registered, and time will, therefore, run from the date of the execution of the deed and not from the date of its registration. Having regard to the provisions of the article, the Court has no necessity to consider the question as to whether or not there has been a valid transfer made by the mortgagor. The mortgage may not be enforcible on account of the non-registration of the deed for some time but that has absolutely nothing to do with the point in issue. (*Rachhpal Singh, C.J.*) ANANT RAM *v.* SANT RAM. 44 P.L.R. J. & K. 5.

JAMMU AND KASHMIR RIGHT OF PRIOR PURCHASE ACT, S. 4—*Oral sale—Suit for pre-emption—If maintainable.*

A suit for pre-emption is maintainable although the sale is an oral one. (*Wazir, Offg, C.J. and Hasan, J.*) GHULAM HASAN *v.* MAHOMED BAT. 43 P.L.R.J. & K. 305.

JAMMU AND KASHMIR SRI PRATAP LAWS CONSOLIDATION ACT, S. 4—*Personal law and custom—Applicability—Presumption.*

Where the parties are Mahomedans, the Mahomedan Law should be primarily applied in questions regarding succession, inheritance, etc., and it is not necessary that it should be pleaded. But the same presumption cannot be extended to the application of the custom. A custom, before it is allowed to abrogate the personal law, should be specifically pleaded. (*Hasan, J.*) KHATUNI *v.* AZAM. 43 P.L.R.J. & K. 301.

JUDICIAL OFFICERS PROTECTION ACT (XVIII OF 1850), S. 1—*Availability of protection under—Addition of false statement to order, after officer became* functus officio.

Where, after becoming *functus officio* a Judicial Officer adds a false statement to his order which is designed to help one of the parties, it will be a sufficient answer to a contention based upon the Judicial Officers Protection Act, S. 1 to say that it is impossible to believe that the defendant thought that he had jurisdiction to do the act complained of. (*Yorke, J.*) BISHESHWAR PRASAD PANDEY *v.* LACHMAN PRASAD. 1942 A.L.W. 63.

JURISDICTION. *See* PRACTICE—JURISDICTION.

KACHIN HILL TRIBES REGULATION (1895), Ss. 1 (3), 2 (1) and 31—Political Department Notification No. 49 of 1935—Hill tribe—Extent of applicability of notification—Kachin found in possession of opium—Offence—Jurisdiction. *See* 1941 Dig., Col. 714. THE KING *v.* N'HKUM NAW. 14 R.R. 186=197 I.C. 848 =43 Cr.L.J. 289.

LAMBARDAR—*Succession — Adopted son versus natural heir according to primogeniture.*

The nearest natural heir according to the rule of primogeniture is entitled to succeed to the office of lambardar in preference to a more distant natural heir who had been adopted by the deceased lambardar. (*Mitchell, F.C.*) MEHAR SINGH *v.* LACHHMAN SINGH. 21 Lah.L.T. 1

LAND ACQUISITION ACT (I OF 1894), S. 16—*"Encumbrances"—If include easements.*

The word "encumbrances" in S. 16 of the Land Acquisition Act has been understood to include easements. (*Akram and Pal, JJ.*) RASHID ALLIDINA *v.* JIWANDAS KHEMJI. I.L.R. (1942) 1 Cal. 488=46 C.W.N. 136=A.I.R. 1943 Cal. 35.

——**Ss. 18 & 30**—Application for reference received after prescribed time—Collector forwarding reference—Presumption. *See* 1941 Dig., Col. 716. NANAK CHAND *v.* PIRAN DITTA. I.L.R. (1942) Lah. 50=198 I.C. 132=14 R.L. 306.

——**Ss. 18 and 30**—Distinction between. *See* 1941 Dig., Col. 716. NANAK CHAND *v.* PIRAN DITTA. I.L.R. (1942) Lah. 50=198 I.C. 132=14 R.L. 306.

——**Ss. 18 and 31**—Jurisdiction—Reference to Court—Scope of Inquiry—Amount of compensation due to party not applying for reference—Jurisdiction of Court to deal with or increase. *See* 1941 Dig., Col. 717. NARAYANA GAJAPATI RAJU *v.* ANNAPURNAMMA. 198 I.C. 732=14 R.M. 485=(1941) 1 M.L.J. 527.

——**S. 18 proviso**—Reference barred under. *See* 1941 Dig., Col. 717. NANAK CHAND *v.* PIRAN DITTA. I.L.R. (1942) Lah. 50=198 I.C. 132=14 R. L. 306.

——**Ss. 19 and 31**—*Tenants not made parties to reference—Matter how to be dealt with.*

Where the Collector fails to name all persons interested in the land when he makes the reference, it is only a mere irregularity and it does not vitiate the reference. Where the tenants are not made parties to a reference, in their absence the matter would have to be dealt with as one between *malguzar* and the Collector. If the Collector has paid the *malguzar* too little he must make good the difference and the fact that he has possibly over paid the tenants must be ignored so far as the reference proceedings are concerned. (*Bose, J.*) SADASHEORAO KRISHNA RAO BUTI *v.* COLLECTOR, NAGPUR. I.L.R. (1942) Nag. 740=201 I.C. 754=15 R.N. 57=1942 N.L.J. 303=A.I.R. 1942 Nag. 86.

——**S. 23**—*Freehold and leasehold land—Distinction—Restrictive covenants—Effect of on valuation.*

The difference between a freehold piece of land and a piece of land leased for 999 years at a nominal rent and with no restrictive covenants would be purely sentimental. But where there are restrictive covenants, as time passes and the land changes hands, it becomes difficult to enforce the covenants between freeholders, while it is not difficult to enforce covenants against lessees. Covenants are more detrimental in the case of leaseholds than in the case of freeholds. (*Beaumont, C.J. and Sen, J.*) GOVERNMENT OF BOMBAY *v.* CENTURY SPINNING AND MANUFACTURING CO. I.L.R. (1942) Bom. 403 =200 I.C. 661=15 R.B. 16=44 Bom. L.R. 57= A.I.R. 1942 Bom. 105.

——**S. 23**—*Land held on cantonment tenure—Buildings on—Assessment of compensation—Principles.*

In respect of land held by a person on cantonment tenure the Government retain the power of resumption at any time on giving one month's notice. If they give that notice they are required to pay the value of such buildings as may have been authorised to be erected. The correct principle that should be applied in valuing under the Land Acquisition Act such a building apart from the site is to ascertain the costs of reproducing the buildings at the time of the compulsory acquisition allowing for depreciation in consideration of the age and condition of the buildings, and for the cost of necessary repairs, and there is no room for assessing, upon an assumed rental basis, the compensation for the value of the buildings as materials standing upon a site, but liable to be removed at any moment. (*Sir Madhavan Nair.*) SECRETARY OF STATE *v.* SRI NARAIN KHANNA. I.

LAND ACQUISITION ACT (1894), S. 23.

L.R (1942) All. 601=1942 A.L.W. 538=1942 O. W N. 602=44 Bom.L.R. 788=1942 P.W.N. 210= 201 I.C. 193=1942 A W.R. (P.C.) 13=1942 O.A. 322=55 L.W. 472=1942 A.L J. 380=44 P.L.R. 432=8 B.R. 793=46 C.W.N. 921=15 R.P C. 10=A. I.R. 1942 P C. 35=(1942) 2 M.L.J. 289 (P.C.).

——S. 23—*Land subject to easement—Valuation—Valuation of easement or restrictive covenant.*

Where Government is seeking to acquire land which is subject to an easement, it has got to pay compensation to the landowner, *i.e.*, the owner of the servient tenement, and also to the owner of the easement; it is obvious that the value of the easement bears no relation to the value of the servient tenement. It cannot be assumed that the value of an easement or restrictive covenant to the person entitled thereto is the same as the amount by which the existence of that easement or covenant depreciates the value of the land subject thereto. (*Beaumont, C. J. and Sen, J.*) GOVERNMENT OF BOMBAY *v.* CENTURY SPINNING AND MANUFACTURING CO. **I.L.R. (1942) Bom 403= 200 I.C. 661=15 R.B. 16=44 Bom. L.R. 57=A.I. R. 1942 Bom. 105.**

——S. 23– Land with building—Assessment of valuation—Principles of calculating profits. *See* 1941 Dig., Col. 717. LAND ACQUISITION OFFICER, CALICUT *v.* SUBBA RAO. **197 I.C. 402=14 R.M. 359=(1941) 2 M.L.J. 75**

——S. 23—*Market value—Ascertainment—Basis of rule.*

The function of the Court in awarding compensation under the Land Acquisition Act is to ascertain the market value of the land at date of the notification under S. 4 (1). The number of years' purchase which should be adopted in a given case must vary with individual cases and must be decided upon the material placed before the Court. Where definite material is not forthcoming either in the shape of sales of neighbouring land at or about the date of the notification or otherwise and the Court can only proceed to do the best it can under the circumstance. In the absence of evidence, the twenty years' purchase should be adopted as the basis for fixing the market value and that is the rule ordinarily adopted in practice. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SUB-COLLECTOR, RAJAHMUNDRY *v.* PARTHASARATHI NAIDU. **55 L.W. 763=A.I.R. 1942 Mad. 739=(1942) 2 M.L.J. 512.**

——S. 23—*Post notification sale-deed of land in vicinity in pursuance of agreement of sale entered into before—Relevancy—Value of in assessing market value.*

In a land acquisition proceeding the owner of the land acquired is entitled to rely on a sale deed relating to land in the vicinity of his land executed a day after the notification in the Gazette, when it is proved that the deed was executed in pursuance of an agreement entered into before the notification and that earnest money was paid by the vendee in pursuance of the agreement to sell. Such a deed is not only relevant but is good evidence of the market value of the land on the date on which the notification was issued. (*Abdur Rahman and Somayya, JJ.*) AHMED KASIM SAHIB *v.* LAND ACQUISITION OFFICER. **203 I.C. 567=55 L.W. 460= 1942 M W.N. 456=A.I.R 1942 Mad 665=(1945) 2 M.L.J. 137.**

——S. 23—*Market value—Lessee's interest—Lessee under lease for 99 years from Government with prospect of becoming ryotwari pattadar—Valuation—Basis of.*

Where at the time of the issue of a notification under S. 4 of the Land Acquisition Act, a person has a lessee's

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interest in the land sought to be acquired (he being a lessee under a lease from Government for 99 years), together with the prospect of having the land converted into a ryotwari tenure at the end of the period of the lease, and there is no reason to believe that the Government would not grant the lessee a ryotwari tenure at the end of his period or during it if he applied therefor, the market value of his interest, for the purpose of assessing compensation should be based on all the rights which the lessee has and on his potential rights. If the holding of the land under a ryotwari tenure had a value that value must increase the market value of the lessee's interest and that factor must therefore be considered in fixing the value of the lessee's right in the land. (*Leach, C.J. and Byers, J.*) PARASURAM BYAS *v.* SUB-COLLECTOR, RAJAHMUNDRY. **I.L.R. (1942) Mad 831=203 I.C. 544=1942 M.W.N. 457=A.I.R. 1942 Mad. 596=55 L.W. 468=(1942) 2 M.L.J. 218.**

——S. 23—*Market value—Meaning of.*

The market value referred to in S. 23 of the Land Acquisition Act means the market value of the concrete piece of land to which the notification under S. 4 of the Act applies and not separate interests in it. The normal method is to take the market value of the land and then to apportion that amongst the different interests; but the Act does not lay down any hard and fast rule and in special cases it may be desirable to adopt a different method by valuing separately each interest in the land. (*Beaumont, C. J. and Sen, J.*) GOVERNMENT OF BOMBAY *v.* CENTURY SPINNING AND MANUFACTURING CO. **I.L.R. (1942) Bom. 403 =200 I.C. 661=15 R.B.16=44 Bom L.R. 57=A I. R. 1942 Bom. 105.**

——S. 23—*Scope—If exhaustive—Power of Court to take into consideration matters not enumerated—Land subject to easement or restrictive covenants—Procedure.*

S. 23 of the Land Acquisition Act is not exhaustive. It does not direct that no other matters than those specified in the section may be taken into account. In special cases the Court may take other matters into consideration. If the owner of an easement claims compensation for the acquisition of the easement, he is clearly entitled to compensation under the Act and the compensation is the value of the easement to him. If it happens that the easement is of no great value, then Government may acquire both the servient tenement and the easement at a price which is less than the market value of the land free from the easement. The value of the whole is greater than the combined value of the parts, and the increased value arising from the union of interests necessarily belongs to Government in whose hands the union takes place. Easements or restrictive covenants must prejudicially affect the value of the land, and it is impossible to say that the existence of those covenants though they may be of no benefit to the person entitled to enforce them, depreciates the land by only a nominal sum. There is nothing in the Act to suggest that any person interested is to be paid for anything except the interest which he possesses. (*Beaumont C. J. and Sen, J.*) GOVERNMENT OF BOMBAY *v.* CENTURY SPINNING AND MANUFACTURING CO. **I. L.R. (1942) Bom. 403=44 Bom.L R. 57=200 I.C. 661=15 R.B· 16=A.I.R. 1942 Bom. 105.**

——S. 23—Tenant and Landlord—Principles governing apportionment of compensation between. *See* 1941 Dig., Col. 718. LAXMANRAO *v.* JAGANNATH. **199 I.C. 327=14 R.N. 278=A I.R. 1942 Nag. 32.**

——S. 23 (1) **and Works of Defence Act (1903), S. 23**—Compensation—Market-value—Relevant date—Earlier and later notifications. *See* 1941 Dig., Col. 718.

LAND ACQUISITION ACT (1894), S. 27.

COLLECTOR, HANTHAWADDY *v.* SULAIMAN ADAMJEE. 197 I.C. 595=14 R R. 138.

——S. 27—*Costs—Principle governing—Refusal on sentimental grounds—Legality.*

A claimant for compensation in a land acquisition matter is in the position of a plaintiff who has instituted a suit to recover a sum of money and when it is found that he is not ntitled to success under the provisions of the law relating to the subject, there is no ground upon which the tribunal hearing the claim could deprive the opposite party, the Secretary of State, of the costs to which he would be entitled under the ordinary provisions of the law. There is no justification for refusing such costs on sentimental grounds. (*Verma and Yorke, JJ.*) DEBI DIN *v.* SECRETARY OF STATE. 200 I.C. 634=15 R.A. 20=1942 O.W.N 131=1942 A.W R. (H C.) 79=1942 A L.W. 148=1942 A.L.J. 141=A.I.R. 1942 All 186.

——S. 30—Jurisdiction of Court—Addition of party—Person not party before Collector raising questions not covered by reference—If can be added as party. *See* 1941 Dig., Col 719. INDUMATI DEBI *v.* TULSI THAKWANI. 198 I.C. 279=14 R.C. 444=A.I.R. 1942 Cal. 53.

——S. 30—*Order of Land Acquisition Officer directing claimant to approach Civil Court to get compensation money—If amounts to reference to District Judge.*

An order of the Land Acquisition Officer directing a claimant to approach the Civil Court within a fixed period to get the compensation money or share in it does not amount to a reference to the District Judge and hence the District Judge has no jurisdiction to entertain an application for compensation by the claimant. No appeal also lies from an order of the District Judge rejecting that application. (*Almond, J.C. and Mahomed Ibrahim, J.*) SIKANDER SHAH *v.* CHAN BIBI. 202 I.C. 155=15 R. Pesh. 36=A I R 1942 Pesh 60.

——S. 30—*Parties—Person interested—Right to come in as party to reference.*

In the case of a reference by the Collector under S. 30 a "person interested" within the meaning of S. 3 (*b*) of the Act can apply to the Court to be joined as a party to the reference made by the Collector, although his name does not appear in the reference made, provided the question raised by him is in essence the dispute referred. (*Weston, J.*) SPECIAL LAND ACQUISITION OFFICER *v.* UMED LALLOO. I.L.R. (1942) Kar 157=201 I. C. 639=15 R.S. 15=A I R 1942 Sind 82.

——S 31—*Proper mode of apportionment—Landlord and tenants.*

The proper procedure in every case of apportionment of compensation is, first to determine the market value of the land and then to apportion that among the various persons interested, having regard to the interest each possesses. The landlord is to be paid 1/4 of the sum ascertained as market value and the 3/4 has to be paid to the tenant. (*Bose J.*) SADASHEORAO KRISHNA RAO BUTI *v.* COLLECTOR, NAGPUR. I.L. R. (1942) Nag. 740=201 I.C. 754=15 R.N. 57=1942 N L J 303=A,I.R. 1942 Nag. 86.

——S. 31 (2)—Acquisition of joint property—One co-sharer receiving entire compensation money—Suit by others for their share—Nature of. *See* 1941 Dig., Col. 719. HEMANTA KUMAR *v.* SATISH CHANDRA. 198 I.C. 348=14 R.C. 458=46 C.W.N. 212.

——S. 31 (2) last proviso—If creates a right. *See* 1941 Dig., Col. 719. HEMANTA KUMAR *v.* SATISH CHANDRA. 198 I.C. 348=14 R.C. 458=46 C.W.N. 212.

——S. 32 (1) (b) (ii)—Applicability. *See* 1941 Dig., Col. 719. HEMANTA KUMAR *v.* SATISH CHANDRA. 198 I.C. 348=14 R.C. 458=46 C.W.N. 212.

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——S. 49—Right under—When available. *See* 1941 Dig., Col. 720. PROVINCE OF BENGAL *v.* MAHES MISSIR. 197 I.C. 365=14 R.C. 344.

——S. 49 (1)—"Owner"—Meaning of. *See* 1941 Dig., Col. 720. PROVINCE OF BENGAL *v.* MAHES MISSIR. 197 I.C. 365=14 R.C. 344.

——S. 54—Decision on reference under S. 31 (2)—Appeal, if lies. *See* 1941 Dig., Col. 720. MAHABIR PRASAD *v.* MST. DHARMA. 17 Luck. 506=198 I.C. 388=14 R.O. 395=A.I.R. 1942 Oudh 141.

LAND IMPROVEMENTS LOANS ACT (XIX OF 1883), S 7 (1) (a)—"*Borrower*"—*Meaning of—Discharge of original borrower and substitution of assignee in his place—Effect.*

"Borrower" in S. 7 (1) (*a*) of the Land Improvements Loans Act means the borrower for the time being, that is, the original borrower as long as he remains in that position; if the contract with the original borrower is discharged and a new borrower is substituted, *e.g.*, under an assignment of his property and obligation by the original borrower and an acceptance of such assignee by the Government, the provision applies to the new borrower. The original borrower who has been discharged is no longer liable and his goods cannot be attached or sold. (*Beaumont, C.J. and Sen, J.*) SHIVRAO SHESGIRI *v.* SECRETARY OF STATE. 203 I.C. 611=44 Bom.L.R. 668=A.I.R. 1942 Bom. 300.

LANDLORD AND TENANT—*Acquisition of tenancy rights—Giving of land in lieu of interest.*

Even if land is given in lieu of interst the transferee begins to acquire tenancy rights if a definite rent is fixed at the time of the transfer. (*Shirreff S. M. and Sathe, J. M.*) RAM JATAN RAM *v.* BHAGWAN PRASAD. 1942 A.W.R. (Rev) 428=1942 O A. (Supp.) 454=1942 O.W.N (B R.) 625.

——*Admission to tenancy—Acceptance of amount decreed in ejectment suit.*

The acceptance by the landholder of the decretal amount in the case in which ejectment took place, does not amount to an admission to tenancy. Nor does the realisation of rent from one after his ejectment prove that he was holding as tenant. (*Shirreff, S.M. and Sathe, J.M.*) RAM KISHAN *v.* SHANKAR LAL. 1942 A. W R. (Rev.) 127=1942 R.D. 263=1942 O.W.N. (B. R.) 197=1942 O A. (Supp.) 144.

——*Admission to tenancy—Acceptance of rent, if constitues.*

Mere acceptance of rent does not constitute settlement of land. This along with the oath of the person admitted as tenant would justify a finding of admission to tenancy. (*Sathe, J.M.*) AMBIKESHWAR PRATAP SINGH *v.* MAHESH PANDEY. 1942 O.W N. (B.R.) 182 (1)=1942 R.D 248 (1)=1942 A.W.R. (Rev.) 168 (2)=1942 O.A. (Supp.) 188 (2)

——*Admission to tenancy—Acceptance of rent under mistake.*

Mere acceptance of rent especially one under a wrong belief cannot constitute a settlement of land. (*Harper, S.M and Sathe, J M.*) DUNIA PRASAD SINGH *v.* SHER MOHAMMAD KHAN. 1941 A.W.R. (Rev.) 1128 (1)=1941 O.A (Supp) 909 (1).

——*Admission to tenancy—Competency of elder brother to admit while younger was a minor.*

Where two brothers, a major and a minor, are living together, it is competent for the elder brother in the capacity of the karta of the family to settle the land with a tenant. (*Sathe, J.M.*) BHAIRO PRASAD *v.* JAIN. 1942 R.D. 395=1942 O.A. (Supp.) 171 (1)=

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1942 O.W.N. (B.R.) 306=1942 A.W.R. (Rev.) 151 (1)

———*Admission to tenancy—Oral testimony—Sufficiency.*

Though there was only oral evidence for the admission of a person as the tenant in chief of particular plots, when it was believed by the two lower Courts, it was held to be sufficient to prove the contract of tenancy (*Shirreff, S.M.*) HABIBUZZAMAN KHAN *v.* PARSHADI. **1942 O.W.N. (B.R.) 62=1942 O.A. (Supp.) 54=1942 A.W.R. (Rev.) 54=1942 R.D. 94.**

———*Admission to tenancy—Proof—Interference with finding in second appeal.*

As regards proof of admission to tenancy, each case must be decided on its own merits. A concurrent finding of two Courts as to holding by consent would not be set aside in second appeal merely on the ground that the evidence in support of the finding consists of only one statement. (*Shirreff, J.M. and Sathe, A.M.*) BHAGWATI DEBI *v.* ATTA HUSAIN. **1942 O.W.N. (B.R.) 43=1942 A.W.R. (Rev.) 77 (2)=1942 O.A. (Supp.) 83 (2)=1942 R.D. 75.**

———*Adverse possession—Requisites.*

Mere possession for over 12 years is not enough to make a suit time barred as against the person in possession. It must be shown that the possession was unlawful to the knowledge of the zamindar. (*Sathe, J.M.*) RAM SAROOP *v.* MAHENDRA SINGH. **1942 O.W.N. (B.R.) 14=1942 O.A. (Supp.) 20 (1)=1942 A.W.R. (Rev.) 20 (1)=1942 R.D. 14.**

———*Contract of tenancy—Stipulation to pay fee on transfer—Validity—Such stipulation binding on representatives of parties also—Mortgage by conditional sale executed by transferee from tenant—Mortgagee obtaining decree for foreclosure—If liable to pay transfer fee.*

A kabuliyat contained a stipulation that if the tenant made a gift or sale or otherwise transferred the lands, he and the transferee would be bound to pay to the landlord as *chouth* one-fourth of the price, and if that was not paid the transfer would not be valid and the landlord would be entitled to take *Khas* possession of the lands. A clause in the Kabuliyat laid down that all its terms and incidents would hold good as between the parties themselves and their respective heirs, successors and representatives.

Held, (1) that the stipulation was perfectly valid and legal and was binding on all persons deriving title through or from any of the original parties; (2) that a mortgage by conditional sale executed by a transferee from the tenant, followed by a decree for foreclosure obtained by the mortgagee and the taking of possession thereunder by him, constituted such a transfer as was contemplated by the Kabuliyat, and the mortgagee could not escape liability for payment of the *chouth* which accrued on the date the foreclosure decree was made. (*Biswas and Akram, JJ.*) CHANDI CHARAN CHATTERJEE *v.* TARANATH DUTTA. **202 I.C. 477=15 R.C. 344=46 C.W.N. 686=A.I.R. 1942 Cal 452 (2).**

———Co-tenants—Adverse possession as between—Law as to. *See* LIMITATION ACT. S. 28—ADVERSE POSSESSION—CO-TENANT. **1942 N.L.J. 261.**

———*Co-tenants—Decree for ejectment against one—If affects others.*

A decree for ejectment obtained against one co-tenant alone would not extinguish the rights of other recorded co-tenants against whom no legal proceedings had been taken. Where on the death of a tenant leaving three sons a suit for arrears due from their father was filed against one alone being the head of the family and the others had knowledge of the proceedings

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it was *held* by Shirreff, J.M. that the others were bound by the proceedings and by Sathe, A.M. that they were not. (*Shirreff, J.M. and Sathe, A.M.*) LAUTAN KURMI *v.* SAMI KHAN. **1941 O.A. (Supp.) 917=1941 A.W.R (Rev.) 1136=1941 A.L.J. (Supp.) 149.**

———*Co-tenants—Ejectment of recorded tenants for arrears of rent—Effect on position of unrecorded tenant.*

Where on failure to pay the decree for arrears of rent, the recorded tenants are ejected, the order of ejectment is binding on the unrecorded tenant when it is shown that the latter had full knowledge of all the proceedings in respect of the ejectment. (*Sathe, A.M.*) BHAGWANI *v.* BABU LAL. **1941 O.A. (Supp.) 944=1941 A.W.R. (Rev.) 1175 (1).**

———*Co-tenants—Mutual transfer of each other's interests in the different properties—If should be in writing.*

An arrangement between co-sharers in tenancy involving mutual transfer of interests in different properties does not require the zamindar's consent, nor is it required to be in writing. (*Sathe, J.M.*) GUDAR *v.* FARZAND ALI. **1942 R.D. 710=1942 O.W.N. (B.R.) 582=1942 A.W.R. (Rev.) 439 (2)=1942 O.A. (Supp.) 465 (2).**

———*Co-tenants—Nature of possession of—Modes by which right of one could come to an end—Absence of entry of name of one for long time—If can extinguish such rights.*

The general principle in the case of co-tenants is that possession of one is the possession of all. In the absence of evidence of transfer or surrender or adverse possession in respect of the rights of a co-tenant the general principle would prevail. Hence the mere fact of the name of a co-tenant not being entered in the papers for a long time cannot have the effect of extinguishing his rights. (*Shirreff, S.M and Sathe, J.M.*) BALBHADDAR *v.* BHAGWANDIN. **1942 A.W.R. (Rev.) 206=1942 O.A. (Supp.) 232=1942 O.W.N. (B.R.) 359=1942 R.D. 448.**

———*Co-tenants—Patwari papers not containing name of one for long—If and when can extinguish rights.*

When a person is shown to have acquired some title to a holding the fact that his name has not been shown in the patwari papers for a long number of years can be held to have extinguished his rights only if it is shown (1) that the party has relinquished his rights or (2) that he has lost them by separation or (3) that he has lost them by adverse possession. Where there is no evidence of separation or of relinquishment or ouster the co-tenant cannot be said to have lost his rights. (*Shirreff, S.M. and Sathe, J.M.*) SAIDAN *v.* ABDUL RAHMAN KHAN. **1942 O.W.N. (B.R.) 422=1942 A.W.R. (Rev.) 286=1942 O.A. (Supp.) 312=1942 R.D. 512.**

———*Co-tenants—Rights* inter se—*Some holding adversely to others—Effect.*

Per *Sathe, J.M.*—Though the possession of one co-tenant is the possession of all co-tenants and the rights of one are not extinguished as long as he is able to show that he has all along remained in either constructive or physical possession with the others, yet where it is found that some of them have been holding the property adversely to some others for a period over 12 years, then the rights of the latter must be deemed to have been extinguished by limitation. (*Shireff, S.M. and Sathe, J.M.*) MEHDI ALI KHAN *v.* ASAD ALI KHAN. **1942 A.W.R. (Rev.) 369=1942 O.W.N. (B.R.) 489=1942 O.A. (Supp.) 395.**

———*Creation of tenancy—Sale of a share in a village with the exception of a field to be retained free of rent—Exception and letting—Distinction.*

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Where there is a sale of a share in a village with the exception of a particular field which was to be retained by the vendor free of rent, there is no creation of any tenancy. It is only a case of excepting a certain field from sale. There is no letting. (*Stone. C.J.*) CHHOTE-LAL *v.* SUDDIBAI. 1942 N.L.J. 403

———*Ejectment—Proceedings against Hindu father of joint family—If and when binds son.*

Where on the sale of a proprietary estate forming the joint family property of a father and son the latter become tenants of the *sir* and the father alone is sued for arrears of rent and ejected eventually in execution as he alone was recorded as the tenant the proceedings in the suit and ejectment bind the son also and hence a suit by the son to set aside the ejectment on the ground of not being represented cannot succeed. (*Pollock, J.*) MOHANLAL *v.* MAKHANLAL. 1942 N.L.J. 96.

———*Ejectment—Tenant at-will—Right to compensation for buildings erected without landlord objecting.*

Where a tenant-at-will has constructed expensive buildings on the site and the landlord has been keeping quiet for a long time and did not take any steps to stop such building being constructed, it is equitable that the tenant should be compensated for the building before he is evicted. (*Almond, J.C. and Mir Ahmad J.*) ABDUL GHAFUR KHAN *v.* JETA MAL. 202 I.C. 627=15 R. Pesh. 45=A.I.R 1942 Pesh. 74.

———Forfeiture—Right of re-entry given to lessor in default of payment of rent—Determination of tenancy—Law in Punjab—Limitation Act, Arts. 110, 139 and 143. *See* 1941 Dig., Col. 724. PANNA LAL *v.* UTTAM CHAND. I.L.R. (1942) Lah. 252.

———*Gair mazrua-am land—Rights of landlord.*

A landlord has no right to settle gair mazrua-am land even though the settlement does not interfere with the rights of the villagers. He has lost control in such land and is in no better position than other villagers. Therefore, to entitle him to maintain a suit for damages and for a declaration that the villagers are not entitled to take fish from a ditch in such land, he will have to show that he has an exclusive right to the fishery. He is in no better position in regard to *ferae naturae* than with regard to other rights. (*Harries, C.J. and Fazl Ali, J.*) BIBI SAFIA *v.* SAHDEO SINGH. 8 B.R. 110=197 I.C. 181=A.I.R. 1942 Pat. 286.

———*Holding in the name of a member of a joint family—Suit for ejectment after death of that member—Onus of proving that holding was settled with the family.*

Where the holding is entered in the name of a member of a joint family and on his death a suit for ejectment is filed, the onus is on the other members to show by positive evidence that in fact the holding was really settled with the family though it was entered in the name of one of them. (*Sathe, J.M.*) VIBHUTI NARAIN SINGH *v.* CHHAKURI SINGH. 1942 O.W.N. (B.R.) 155=1942 O.A. (Supp.) 125=1942 R.D. 221=1942 A.W.R. (Rev.) 108.

———*Houses—Right of occupants to transfer—Mauza Safdarganj.*

The occupants of houses in Safdarganj have a right to transfer the right of occupation. (*Bennett and Agarwal, JJ.*) IQBAL HUSAIN *v.* SHANKAR DAYAL. 200 I.C. 744=15 R.O. 43=1942 R.D. 548=1942 O.W.N. 351=1942 A.W.R. (C.C.) 234=1942 O.A. 255=A.I.R. 1942 Oudh 427.

———Inam village—*Urlam case*—Application of. *See* 1941 Dig., Col. 733. DISTRICT BOARD, WEST TANJORE *v.* SECRETARY OF STATE. 200 I.C. 810=15 R.M. 128=(1941) 1 M.L.J. 378.

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——— Interest of permanent tenant—Acquisition of—Non-permanent tenancy created before Transfer of Property Act transferred to landlord's knowledge—Transferee in possession for over 12 years. *See* 1941 Dig., Col. 12. JOGENDRAKRISHNA BANERJI *v.* SUBASINI DASSI. 197 I.C. 376=14 R.C. 351.

———*Khudkasht land*—Batai *contract—If a partnership or creates a lease.*

The answer to the question whether *batai* contract is merely a contract of partnership or created a lease, depends upon whether the landlord had any share in the cultivation, such as supply of seed, grain, bullocks or agricultural implements. If the landlord does not supply working capital the *batai* cannot be construed into mere cultivating partnership. (*Niyogi, J.*) FATTE CHAND *v.* BUDHU. 1942 N.L.J. 299.

———Khudkhasht—Permanent lease of, by Hindu widow—Reversioner, if bound. *See* 1941 Dig., Col 724. GHASIRAM MILAP *v.* GIRDHARI. I.L.R. (1942) Nag. 680.

———Lease—Admission of new tenant over sitting tenant. *See* SECOND APPEAL—FINDING OF FACT. 1941 A.W.R. (Rev.) 1213 (2).

———*Lease—Avoidance of—Fact of settlement of land towards close of partition proceedings—If a ground in the absence of fraud.*

The mere fact that the settlement of land was made towards the close of partition proceedings is not enough to render the settlement of land invalid. If the letting is to be discarded it must be further shown that the settlement was made with a dishonest motive. (*Sathe, A.M.*) HARIYA *v.* MALKHAN 1941 A.W.R. (Rev.) 1131=1941 O.A. (Supp.) 912.

———Lease—Construction—Lease for building—Provision that lessee to be paid market-value of building before surrender of possession—Market value—Ascertainment—Deduction for depreciation—If to be allowed—Mesne profits—Right of lessor. *See* 1941 Dig., Col. 725. ETHIRAJALU NAIDU *v.* RANGANATHAM CHETTY. 201 I.C. 74=15 R.M. 199=A.I.R. 1942 Mad. 156=(1941) 2 M.L.J. 711.

———Lease — Construction—Reclamation lease. *See* 1941 Dig., Col. 726. SRIKANTA MRIDHA *v.* PRAFULLA CHANDRA GHOSE. 200 I.C. 235=14 R.C. 692=A.I.R. 1942 Cal. 133.

——— *Lease—Covenant of title—Right of lessee to recover premium when lessee is obstructed.*

The question of transferor's title is as material in a lease as in a sale. It may be that when the lessee sues for recovering his premium from the lessor on the ground of obstruction, the burden of proving the lessor's defective title lies on the lessee. (*Stone, C.J. and Nivogi, J.*) VINAYAKRAO DAMODHAR RAO KOLTE *v.* BHONDU. I.L.R. (1942) Nag. 349=202 I.C. 9=15 R.N. 70=1942 N.L.J. 316=A.I.R. 1942 Nag. 103.

———*Lease—Creation of*—Kabuliat *without corresponding patta—If sufficient.*

The execution of a *kabuliat* without the execution of a corresponding patta is not by itself sufficient to create a valid lease. (*Harries, C.J. and Fazl Ali, J.*) JAGDISH CHANDRA DEO *v.* BISESWAR LAL. 199 I.C. 341=14 R.P. 582=23 P.L.T. 673=8 B.R. 547=A.I.R. 1942 Pat. 323.

———*Lease—Joint lessors—Lessee, whether may deliver possession to one of them.*

If there are several lessors and partition has not been effected between them, it is sufficient that vacant possession should be given to one of them. (*Ranjitmal, J.*) KESRIMAL *v.* PARTAPMAL. 1942 M.L.R. 66 (Civ.).

———*Lease—Lease on terms and separate agreement as to set off of rent—Transfer of interest by lessor—Transferee how far bound.*

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Where a lease with permanent and heritable rights are granted on payment of a nazarana and it also is agreed between the parties that the rent due should be set off as against interest on money to be deposited with the lessor and the lessor transfers his interest in the land the transferee is bound by the terms of the lease given by the former proprietor but he is not by the separate agreement as to set off of rent. The latter is in the nature of civil liability and could not be passed on to the successors in proprietary and tenancy interest. (*Shirreff, S.M. and Sathe, J.M.*) BALDEO DAS BIRLA *v.* BALWANT RAO NAIK KATIA. **1942 O.W.N. (B.R.) 687=1942 A.W.R. (Rev.) 393=1942 O.A. (Supp.) 419**

———*Permanent lease — Inference—Buildings erected on land by grantee—If justifies inference of permanent grant.*

The mere fact that there are buildings erected on land by a grantee or a lessee thereof would not necessarily show that the grant must have been of a permanent nature. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. **I.L.R. (1942) Bom. 357=201 I.C 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.**

———*Subsoil rights—Right of tenant in tenure—Presumption—Digging of earth for making bricks for purposes other than agricultural or domestic purposes of tenant.*

Subsoil rights in a tenure would be assumed not to have passed to the tenant or grantee unless an express grant, is made. The right of a tenant to make bricks for his own domestic or agricultural purposes, *i.e.*, for his own use on the tenure or holding cannot be questioned, though it cannot be held that the making of bricks is a use of the surface to which the tenant is ordinarily entitled unless the right is expressly excluded. A right of quarrying can of course be acquired by adverse possession. But unless the tenant has acquired by grant or by adverse possession a right of ownership in the subsoil, the digging of earth for making bricks to be taken away from the area of the tenure and to be disposed of to stranger is an appropriation of the corpus of the grant which a tenant in India is not entitled to make. (*Rowland and Manohar Lal, JJ.*) PURNENDU NARAIN SINGH *v.* NARENDRA NATH CHAKRAVARTY. **203 I. C. 442=15 R.P 179=9 B R, 83=23 P.L.T. 662= A I.R. 1943 Pat. 31.**

———*Suit for ground rent based on* takasimnama *—Document found inadmissible in appeal—Relief in second appeal on basis of use and occupation.*

Where a suit for ground rent based on *takasimnama* though decreed in the trial Court is dismissed in appeal on the ground that the document was inadmissible for want of registration, a decree on the basis of use and occupation cannot be given in second appeal because the claim to damages on that basis is quite foreign to a suit based on a lease. To allow such a claim in second appeal may result in the opposite party being deprived of defences which he could have raised and proved in the trial Court. (*Agarwal and Madeley, JJ.*) MAHABIR PRASAD *v.* PATESHWARI PRASAD. **202 I.C. 548 =15 R.O 133=1942 O.W.N. 546=1942 A.W.R. (C.C.) 332=1942 O.A. 459=A I.R. 1942 Oudh 506.**

———*Lease—Validity—Land in possession of trespasser.*

A valid lease of the rights of tenants in Chief can be given even if the actual possession of land is with trespassers or sub-tenants. (*Sathe, J. M.*) BHOLA NATH UPADHYA *v.* BHIBUTI NARAIN SINGH. **1942 R.D. 505=1942 O.W.N. (B.R.) 415=1942 A. W.R. (Rev.) 287=1942 O.A. (Supp.) 313**

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———*Lessee erecting permanent structure—Knowledge of landlord—Acquiescence—Test—Acquiescence while erection in progress and submission after erection—Distinction—Relative effect.*

Mere erection by the tenant of a permanent structure upon the land let to him within the knowledge of the lessor would not be sufficient to raise an equitable estoppel against lessor precluding him from suing for ejectment. The principle underlying the above statement is that when a party pleading acquiescence is himself aware of his limited rights it is not enough for him to show abstinence from interference by the lessor but that he should snow something more, *viz.*, that by implication the lessor granted the superior right claimed by the lessee. In order to create an estoppel there must be a duty owing by the person estopped to speak or to act which he has failed to perform. There is a distinction between acquiescence in an act which is still in progress and submission to it when it has been completed. In the first case it may operate as an estoppel if it could have induced action infringing a right. In the second case, submission could not change the past. Once the right of action has accrued it cannot be lost unless the acquiescence persists beyond the period of limitation. (*Niyogi, J.*) NANDKISHORE *v.* DAMODAR BALAJI. **I.L.R. (1942) Nag. 232=199 I.C. 731=14 R.N. 297 =1942 N.L J. 154=A.I.R. 1942 Nag. 59.**

———*Merger—Acquisition of mortgage rights by tenant—Effect—Tenancy right when may not revive.*

If a tenant acquires mortgage rights his possession becomes that of a mortgagee khudkasht holder only temporarily during the period of the existence of the mortgage. A temporary merger like this cannot extinguish for ever prior tenancy rights which must be held to revive when the mortgage is extinguished. But where the identity of the holding has disappeared and the mortgagee tenant acquiesces in the creation of a new nominal tenancy in favour of his son, with actual possession in his own hands, he cannot escape the consequences of his own acts on the extinguishment of the mortgage. The old tenancy is at an end and so there is no tenancy to revive after extinguishment of the mortgage. (*Shirreff, S.M. and Sathe, J.M.*) LAKSHMI PRASAD *v.* HARI DAS **1942 A W.R. (B.R.) 69=1942 O.A. (Supp.) 75=1942 O.W.N. (B.R.) 109=1942 R.D. 141.**

——— Merger—Landlord acquiring occupancy rights—Punjab Tenancy Act, S. 53. *See* 1941 Dig., Col 726. MADHO SINGH *v.* JAMES R. R. SKINNER. **I.L.R. (1942) Lah. 155=197 I.C. 227=14 R.L. 207.**

———Muafi tenure—Nature of. *See* 1941 Dig., Col. 733. AZIZ AHMADKHAN *v.* INAYAT KHAN. **17 Luck 215=A I.R. 1942 Oudh 25.**

———*Nature of tenancy—Tenant not having power to alienate right of residence without permission of owner of site selling it—Owner taking rent from such purchaser.*

Where a tenant who has no right to alienate his right of residence without the permission of the owner of the site, sells it without such permission and the owner of the site takes rent from such purchaser and there is no written document to witness the new tenancy, the purchaser is a tenant-at-will. (*Almond, J.C. and Mir Ahmad, J.*) ABDUL GHAFUR KHAN *v.* JETA MAL. **202 I.C. 627=15 R. Pesh. 45=A.I.R 1942 Pesh. 74.**

———*Nature of tenancy—Tenancy at-sufferance and at will—What is.*

A tenancy-at-sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It, therefore, cannot be created by contract and arises only

by implication of law when a person who has been in possession under a lawful title continues in possession after that title has determined without the consent of the person entitled. A tenany-at-will again arises by implication of law in cases of permissive occupation. (*Akram and Pal, JJ.*) MOZAM SHAIKH *v.* ANNADA PRASAD. 200 I.C. 660=15 R.C. 62=75 C.L.J. 444=46 C.W.N. 366=A.I.R. 1942 Cal. 341.

———*Non-occupancy land—Presumption as to continuity of possession in spite of 17 years gap.*

Per *Sathe, A.M.*—A presumption as to continuity of possession cannot be drawn in respect of non-occupancy land when the gap between the present possession and the old possession is as much as 12 years. (*Shirreff, J. M. and Sathe, A.M.*) LAL JAGDISH BAHADUR SINGH *v.* ALOPI DIN. 1941 A.W.R. (Rev.) 1127=1941 O.A. (Supp.) 908.

———*Notice to quit—Sufficiency—Onus.*

In a suit for ejectment of a tenant after notice to quit, it is for the plaintiff to prove that the notice served by him on the tenant was really sufficient to determine the tenancy. In order to prove this, he must prove the date of the commencement of the tenancy. (*Akram and Pal, JJ.*) MOZAM SHAIKH *v.* ANNADA PRASAD. 200 I.C. 660=15 R.C. 62=75 C.L.J. 444=46 C.W.N. 366=A.I.R. 1942 Cal. 341.

———*Occupancy holding—Person having proprietary share in holding—If can be occupancy tenant.*

There is nothing to prevent the proprietor of a share in a holding from being an occupancy tenant of the holding. (*Shirreff, S.M. and Sathe, J.M.*) GAJRAJ SINGH *v.* MANGU. 1942 A.W.R. (Rev.) 264 (1)=1942 O.A. (Supp.) 29 (1)=1942 O.W.N. (B.R.) 296=1942 R.D. 385.

———*Occupancy rights—Building on another's land for third person's occupation.*

If *A* constructs a building such as a study hall on land belonging to, and which he knows belongs to, *B* in the expectation that the building will be occupied by *C* (for the purpose of delivering lectures to students) that does not give *C* a permanent right of occupancy over the land as against *B*, unless it can be proved that before its construction *B* agreed with *A* that *C* should have such a permanent right. (*Roberts, C.J. and Dunkley, J.*) U DHAMMATHENA *v.* U NYNOKETARA. 198 I.C. 678=14 R.R. 218=A.I.R. 1942 Rang. 11.

———Patni kabuliyat—Interest on arrears of rent—Rate of—Stipulation to pay "according to law"—Meaning—Bengal Tenancy Act, S. 67. *See* 1941 Dig., Col. 727. OFFICIAL TRUSTEE OF BENGAL *v.* BEJOY CHAND MAHATAB. 199 I.C. 788=14 R.C. 674=A.I.R. 1942 Cal. 222.

———Patni—River beds included in patni tenure becoming culturable land—Government resuming aforesaid land and assessing it to revenue—Zamindars accepting settlement of land—Rights and liabilities of patnidar. *See* 1941 Dig., Col. 734. SUKHODA PRASAD *v.* GAGENDRA NATH. 199 I.C. 618=14 R.C. 595.

———*Permanent lease—Lease amount fixed—Right to enhance not reserved—Enhancement of land revenue—Power of Court to give relief to lessor on equitable grounds.*

Where under the terms of a permanent lease the original thekadars and his heirs were liable to pay only a definite sum and no right was reserved for the lessor to enhance the lease money in any circumstances, the lessor cannot compel the lessee when there is an enhancement of land revenue, to pay a sum equal to the enhanced land revenue in addition to the lease money fixed by the contract. Nor is it open to the Court to ignore the contract and give relief to the lessor on equitable considerations. (*Niyogi, J.*) TEKCHAND KAPURCHAND *v.* BIRZABAI. I.L.R. (1942) Nag. 721=202 I.C. 317=15 R.N. 77=1942 N.L.J. 423=A.I.R. 1942 Nag. 119.

———*Permanent tenancy—Inference—When justified—Facts proved consistent equally with permanent and precarious tenancy—Lease granted after Transfer of Property Act—Tenancy for residential purpose granted to non-agriculturist—Building of pucca house by tenant—Possession of grantee and widow extending to about 35 years—Subsequent transfer by widow—Low uniform rent paid by original tenant and widow—Inference of permanency—If justified.*

An inference of permanent tenancy can be drawn only where the facts proved point irresistably to such a conclusion; where the facts are equally consistent with permanency or a tenancy at will, then permanency cannot be inferred. Where the facts found are (1) that the original tenant (a non-agriculturist) took a settlement of the land for building purposes about 45 years ago, built a pucca house upon it, and remained in possession till his death, and was succeeded by his widow who continued to live in the house built by her husband till it fell down and then in 1930 sold the land to one G., the ancestor of the present tenants, (2) that the rent was five annas six pies per annum which was the rent paid both by the original tenant and his widow after him, (3) that the possession of the original tenant and his widow extended to about 35 years and the ejectment suit was brought in the year 1935 and there was no registered lease,

Held, that the facts found were quite insufficient in the case of the tenancy admittedly created after the T. P. Act, to give rise to the inference that the tenancy was a permanent one and therefore heritable and transferable. (*Harries, C.J. and Dhavle, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* RAMJIWAN RAM. 200 I.C. 769=8 B.R. 727=15 R.P. 11=23 Pat.L.T. 294=A.I.R. 1942 Pat. 397.

———Permanent tenancy—Proof—Inference from circumstances—Circumstances justifying. *See* 1941 Dig., Col, 728. JOGENDRÁ KRISHNA BANERJI *v.* SUBASHINI DASSI. 197 I.C 376=14 R.C. 351.

———*Permanent tenancy—When can be inferred.*

The inference of permanence is an inference which it is difficult to make and which requires the presence of circumstances explicable, when taken as a whole, only on the hypothesis of permanence. (*Akram and Pal, JJ.*) HARENDRA NATH SAHA *v.* BENOYENDRA NATH SHAHA ROY. 75 C.L.J. 431.

———*Perpetual and heritable lease for purposes of cultivation—Right of lessee to trees of spontaneous growth.*

Where the rights created in favour of a lessee under a perpetual and heritable lease granted for purposes of cultivation do not carry with it the rights of ownership in the soil which remained in the lessor notwithstanding the execution of the lease, the lessee cannot claim ownership in respect of trees which grew spontaneously upon the land after the lease in his favour. (*Bennett and Ghulam Hasan, JJ.*) GUR PRASAD SINGH *v.* MEHDI HUSAIN. 201 I.C. 728=15 R.O. 106=1942 O.W.N. 435=1942 O.A. 294=1942 A.W.R. (C.C.) 266=A.I.R. 1942 Oudh 460

———*Perpetual lease—Mere assertion of underproprietary right by lessee—Mention in the khewat also as under-proprietor—If sufficient to convert perpetual lessee into an under-proprietor.*

The mere assertion of a perpetual lessee that he is an under-proprietor and the mention of his name in the khewat as under-proprietor could not convert the title of the perpetual lessee into that of an under-proprietor.

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(*Thomas C.J. and Agarwal, J.*) BHAIRA SINGH *v.* LAL AMBIKA BAKSH SINGH. **199 I.C. 776=14 R.O. 538=1942 O.A. 168=1942 O.W.N 225=A.I.R. 1942 Oudh 374.**

———*Perpetual lease at low rent—Fraudulent intention—If confers any right on lessee.*

Where a perpetual lease is executed for a low rent and with the object of diminishing the value of the property which was liable to attachment and sale in execution of the decree of another it is a fraudulent one and is void. The lease being void, there is no question of its conferring any ordinary tenancy rights as distinct from perpetual tenancy. (*Shirreff, J.M. and Sathe, A.M.*) KHEM KARAN *v.* BRIJ KISHORE. **1941 A.W.R. (Rev.) 1126=1941 O.A. (Supp) 907.**

———Relationship—Assignee of rents of holding—If becomes landlord in relation to tenant. *See* 1941 Dig., Col. 728. RAMSEWAK KURMI *v.* THAKURJI MAHARAJ. **A I.R. 1942 Pat. 41.**

———Relationship—Construction of documents—Use of term "Bhag settlement". *See* 1941 Dig., Col. 728. SUDHINDRA CHANDRA SINGHA *v.* JADAV MARAK. **199 I.C. 745=14 R C. 627**

———*Relationship—Order in resumption proceedings—Effect of—Grant subsequent to* 1790.

A decree in resumption proceedings in a case of a grant subsequent to 1790 declaring the zemindar's right to assess rent does not establish the relationship of landlord and tenant. (*Mukherjea and Biswas, JJ*) JOGESH CHANDRA KOMAR *v.* CHANDI CHARAN DATTA. **75 C.L.J 440.**

———Relationship—Proof. *See* 1941 Dig., Col. 729. BIRAJA SUNDARI *v.* MAHAMAYA SEN. **199 I.C 722=14 R.C. 623.**

———Relationship— Recognition as tenant—Person paying rent described in rent receipt as marfatdar or sorborahkar or gujratdar. *See* 1941 Dig., Col. 729. JOGENDRA KRISHNA BANERJI *v.* SUBASHINI DASSI. **197 I.C. 376=14 R.C. 351.**

———*Remedy of landlord—Tenant in possession of more than the area of the holding let.*

Where a tenant is found in possession of more than the area of the holding let to him, the remedy of the landlord would depend upon the question whether the extra area was an encroachment or an alluvial accretion. In the former case he would be entitled to ejectment and in the latter case probably to enhancement of rent. (*Shirreff, S.M.*) SUKHRAM DUBE *v* RAM SUCHIT. **1942 O.W.N. (B.R.) 40 (2)=1942 A.W.R. (Rev) 86 (2)=1942 O.A. (Supp.) 99 (2)=1942 R.D 56 (2).**

———*Rent—Abatement—Deposit of sand or diluvion—Power of Court to grant relief by way of abatement—Burden of proof as to extent of diluvion and of cultivable land.*

In India, apart from any special custom or statutory provision, it has long been held that Courts are entitled to relieve a tenant of agricultural land in respect of rent for so much of his holding as has been rendered unculturable in any year by deposit of sand or by diluvion. The onus is on the defendant-tenant to prove the extent of the diluvion and how much of the holding was culturable in the year or years for which the rent is claimed and the corresponding abatement of rent which he may claim. (*Agarwala, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* APRUP TEWARI. **201 I.C 504=15 R.P. 68=8 B.R. 820=23 Pat.L.T 345=A.I.R. 1942 Pat. 466.**

———*Rent decree—What is—Holding belonging to Hindu joint family of father and sons—Father alone recorded in landlord's* sharista*—Suit against father and sons—Decree against father alone as* karta*—Suit dismissed against sons as being unnecessary parties—Decree—Execution—Entire holding—If can be sold—Hindu Law—Joint family.*

There may be several tenants of a particular holding, but if they allow the holding to be represented by one of themselves in the landlord's *sharista*, the landlord would be entitled to bring a suit for rent only against that tenant who represents the holding, and the decree obtained by him in such a suit would be a rent decree and not a money decree. Where the father in a joint Hindu family of himself and his sons is alone recorded in the landlord's *sharista* as the tenant of a holding belonging to the family, if a suit is brought against him and his sons but a decree is passed against him alone as *karta* of the family, the decree must be held to be a rent decree and not a money decree, although the suit as against the sons is dismissed on the ground that they are not necessary parties to the suit. The father represents the holding and hence the decree which is a rent decree is capable of execution against the entire holding and the whole holding can therefore be sold under the decree.

Fazl Ali, J. (*Obiter*):—It would be difficult to hold that such a decree will not be binding upon the sons under the Hindu law, in so far as their shares in the family property are concerned. (*Harries, C.J. and Fazl Ali, J.*) MANRUP MANDAL *v* BADRI SAO. **202 I.C 62=15 R P. 81=8 B.R. 845=23 Pat.L.T. 403=A.I.R. 1942 Pat. 383.**

———*Rent free grant—Burden of proof—Entry of land in record of rights as 'belagan'.*

The word 'belagan' does not necessarily denote a rent free grant, but may merely mean that rent has not yet been agreed upon or assessed. The presumption of correctness attaching to an entry of land as 'belagan' in the record-of-rights is, therefore, insufficient for the purpose of proving that the landlord has no right to have rent assessed on that land which he has proved to be within his *zemindari*. The onus is on those who so claim to show that they have been relieved of the obligation to pay rent and to establish their right to a rent-free grant. (*Agarwala, J.*) JANAK DULARI KUER *v.* MEGHAN TELI. **199 I.C. 177=14 R.P. 538=8 B.R. 516=23 P.L T 704=A.I.R. 1942 Pat. 310.**

———*Rent—Liability for—Onus of proof—Claim of Revenue-free and rent-free title—Distinction between.*

The claim of a revenue free title is obviously different from a claim that the lands are held rent-free. For one thing, it will determine the question of the onus of proof. If the lands are claimed to be revenue free, that is *lakheraj* in the strict sense of the word, it will be for the plaintiff in a suit for rent to show before he can succeed in his suit that the lands were comprised in his estate, on the other hand, if the defence is only a plea of rent free title, the onus of proof will lie on the defendant, who will have to prove when and how he or his predecessor relieved himself of the obligation to pay rent. (*Biswas, J.*) BHAGIRATHIAMMAL *v.* BIBHUTI BHUSAN. **200 I.C. 749=15 R.C. 77=74 C.L J. 574=46 C.W.N. 309=A.I.R. 1942 Cal. 309.**

———*Rent—Liability for—Rival landlords—Tenancy agreements with both—Respective rights of landlords subsequently adjudicated—Tenant, if liable to pay rent to both.*

Although a person has entered into separate tenancy agreements with rival landlords, he is not liable to pay rent to both, if subsequently there has been an adjudication of the respective rights of the landlords and the successful landlord has called upon him to acknowledge his title or be ejected and it is clear from the record-of-rights that he has acknowledged his title. (*Harries*

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C.J. and Fazl Ali, J.) JAGDISH CHANDRA DEO *v.* BISESWAR LAL. 199 I.C. 341=14 R P. 582=23 P. L.T. 673=8 B.R. 547=A.I.R. 1942 Pat. 323

———*Rent—Payment in excess—Effect.*

Any payment made by a tenant to the zamindar in excess of the legal rent does not necessarily raise the legal rent payable by him. (*Shirreff, J.M. and Sathe, A.M.*) NIADAR *v.* RAGHUNANDAN. 1941 R D. 1112 =1941 O A. (Supp.) 950= 1941 A.W.R. (Rev.) 1199

———*Rent suit—Absence of contract regarding rent—Dismissal of suit if justified though defendant admits certain amount as due.*

Where in a suit for arrears of rent it is found that there was no contract regarding rent, the Court is not on that ground justified in dismissing the suit altogether, when the defendant admits a particular amount as due by way of rent. The suit can be decreed to extent of the defendant's admission. (*Shirreff, S. M. and Sathe, J.M.*) KHUSHIYALI *v.* MUHEMA. 1942 O. A. (Supp.) 35=1942 A.W.R. (Rev.) 35=1942 O.W. N. (B.R.) 45=1942 R.D. 77.

———*Rent —Suspension —Amalgamation of two tenancies into one—Dispossession of tenant by landlord from portion of one of them—Entire rent—If suspended.*

Where two separate tenancies comprising lands in different mouzas and held at separately assessed rents are amalgamated into a single tenancy, and tenant is dispossessed by the landlord from a portion of the lands of one of the tenancies which formed a separate tenancy before amalgamation, the tenant cannot claim suspension of the total rent of the amalgamated tenancy. He is entitled to get abatement only of so much of the rent which had been assessed in respect of the lands of the tenancy from a portion of which he has been dispossessed. (*Mitter, J.*) SAMSUNNEHER *v.* HARI NATH MONDAL. I.L.R. (1942) 2 Cal. 406=46 C. W N. 861.

———*Rent—Suspension—Lump rental—Dispossession from part included in tenancy by mistake.*

Where the landlord has not deliberately dispossessed the tenant from a particular portion of the tenancy but the the portion that has gone out of the possession of the tenant was inserted in the kabuliyat by mistake, the tenant cannot in a suit for rent set up the plea of total suspension of rent on account of dispossession, although the lands were settled on him on a lump rental. (*Manohar Lall, J.*) SUKHRAJ RAI *v.* DIP NARAYAN PANDEY. 197 I.C. 160=8 B.R. 153=A.I.R. 1942 Pat 266 (2).

———Sir—*Effect of creation of occupancy rights in.*

A *sir* is severalty of the *sir* holder only so long as it continues to be *sir*, but if occupancy rights are created therein the *sir* rights are extinguished and it ceases to be the severalty of the former *sir* holder. It then becomes khalsa land and the rent is liable to be realised according to the prevailing custom in respect of khalsa land. (*Sathe, J.M.*) RAM LAKHAN PANDEY *v.* JAGDEO AHIR 1942 O W.N. (B.R.) 285=1942 O.A. (Supp.) 198 (1) =1942 R.D. 374=1942 A W.R. (Rev.) 178 (1).

———Sir—*Plea of—Onus—Admission to tenancy admitted.*

When the admission to the tenancy is admitted, but it is pleaded that the tenant had not the rights of a tenant in chief because the land was *sir*, the onus is on the landlord who alleges it. (*Shirreff, S.M. and Sathe, J.M.*) CHOTA *v.* MANNI LAL 1942 A.W.R. (Rev.) 78=1942 O.A. (Supp.) 84=1942 O.W.N. (B.R.) 66 =1942 R.D. 98.

———*Suit for rent—Plea of want of possession if and when a good defence.*

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In a suit for arrears of rent, want of possession is not a good plea in defence unless the defendant can show that he had to remain out of possession owing to some action on the part of the plaintiff himself. (*Sathe. J. M.*) ZORE *v.* SIRI LAL. 1942 O A. (Supp) 235= 1942 A W.R. (Rev.) 209=1942 O.W.N. (B.R.) 381 =1942 R.D. 470.

———*Surrender and lease to new person—Obstruction by vendee from former tenant—Suit by lessee to recover consideration paid—Plea that transaction effected to defeat provision of law, if open.*

Where a landlord obtains a surrender from a tenant and leases the holding to a third person and he is obstructed by a vendee from the former tenant and the new lessee sues the landlord and the obstructor for the recovery of premium paid and for possession, it is not open to the landlord to plead that the transaction was really a sale by the tenant to the new lessee and that the surrender and lease was a device to defeat the provision of law and he cannot be permitted to retain the benefit received by him. (*Stone, C. J. and Niyogi, J.*) VINAYAKRAO DAMODHAR RAO KOLTE *v.* BHONDU. I.L. R. (1942) Nag. 349=202 I.C. 9=15 R.N. 70=1942 N.L.J. 316=A.I R. 1941 Nag. 103.

———Tenancy — Extinguishment — Abandonment—Basis—Implied surrender—Effect. *See* 1941 Dig., Col. 732. MURLIDHAR *v.* HAZARILAL. I.L.R. (1942) Nag. 703=202 I.C. 25=15 R.N. 61=A.I.R. 1942 Nag. 108.

LAND REGISTRATION—*Title—Property registered in name of idol represented by manager and shebait —Purchase of property in sale in execution against decree against sons of manager—Idol and shebait not parties to suit—Application by purchaser for registration —Maintainabity—C. P. Code, O. 21, Rr. 58 and 100—Failure to object—Effect.*

Five annas share in a Tauzi was recorded in Register D. in the names of three idols through *M* and *J*, who were respectively the *mutawali* (manager) and *shebait* of the idols. The applicant having obtained a decree in the Civil Court against the two sons of *M*, put up 3 as 15 gandas share in the property for sale and purchased the same himself in the execution sale. Neither the idols nor the *shebait* were made parties to the suit. The sale certificate recited that the *debottar* character of the property was a *farzi* (benami) transaction, but there was no finding to this effect by the Civil Court. The applicant's application for registration of the property in his name was rejected by the Land Registration Deputy Collector on the ground that his purchase and *dakhal-dehani* had no effect against the recorded proprietor, the idols. The applicant pleaded that it was clearly stated in the execution proceedings that the entry in Register D. was collusive and benami and that the *shebait* should have objected under O. 21, Rr. 58 and 100. The applicant did not receive any rent since he got delivery of possession after purchase.

Held, (1) that the allegation of *farzi* in the execution proceeding was nothing more than a statement by a party and could not bind the idols; (2) that Rr. 58 and 100 of O. 21, C. P. Code, were not relevant, as they merely provided an optional remedy in case of dispossession, and there having been no dispossession in the case, the rules did not apply at all; (3) and therefore the applicant was not entitled to have his name registered. (*Middleton.*) LAKSHMI NARAINJI *v.* BASANTI KUMARI. 8 B R. 835.

LAND TENURE—*Kattuguthagai—Nature of.*

Kattuguthagai is in essence a lease or grant of land at a favourable rent and is not limited to an interest limited to revenue. There is nothing in the term itself

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from which one is entitled to infer that what was handed over was only the melwaram. (*Sir George Rankin.*) SECRETARY OF STATE *v.* VARADA THIRTA. **69 I.A. 22=I.L.R. (1942) Kar. (P.C.) 49 =I.L.R. (1942) Lah. 893=14 R.P.C. 140=200 I.C. 1=55 L.W. 356=8 B.R. 685=1942 M.W.N. 509=A. I.R. 1942 P C. 21=(1942) 2 M.L.J. 367 (P.C.).**

———*Kattuguthagai—Purpose of grant.*

The Kattuguthagai form of tenure may be granted for diverse purposes and not merely for past military services. (*Sir George Rankin.*) SECRETARY OF STATE *v.* VARADA THIRTA. **69 I.A. 22=I.L.R. (1942) Kar. (P.C.) 49=I.L.R. (1942) Lah. 893=14 R.P.C. 140=200 I.C. 1=55 L.W 356=8 B.R. 685=1942 M.W.N. 509=A.I.R. 1942 P.C. 21=(1942) 2 M.L.J. 367 (P.C.).**

———Mukarrari tenure—Saleability in execution of decree for rent, *See* 1941 Dig., Col. 734. BHAN KUMAR CHAND *v.* LACHMI KANTA RAI. **8 B.R. 507 =199 I.C. 169=14 R.P. 557.**

———*Noabad lands—Terms and conditions of settlement.*

Except for the brief period between 1865 and 1867, when only 360 permanent settlement of Noabad lands were made, Noabad lands had been settled temporarily in Chittagong. Three things are apparent from the revenue history of Noabad lands of Chittagong, namely, (1) that the settlements were not proprietary ones, (2) that the settlements were temporary—for terms of years, and (3) that the settlement-holder had no right to those portions of land which had not been brought under cultivation by him within the period of his settlement. Between 1842 and 1848 and between 1875 and 1882 settlements were made for terms of years which were to expire by 1898. The term of every settlement concluded after 1898 was to end in April, 1925, except with regard to lands in Thana Ramu, where the date fixed was April, 1924. (*Mitter and Khundkar, JJ.*) MAHALUXMI BANK, LTD., CHITTAGONG *v.* PROVINCE OF BENGAL. **I.L.R. (1942) 2 Cal. 35=201 I.C. 279=15 R.C. 158 =46 C.W.N 347=A.I.R. 1942 Cal. 371.**

———Patdi estate in Bombay—Rules governing—Inalienability and impartibility—Alienation by holder—Validity—If invalid from inception or from death of holder—Adverse possession against holder—If adverse against successor—Limitation Act, Art. 134 B—Saranjam Rules, *See* LIMITATION ACT, ART. 134-B. **44 Bom L.R. 146.**

LEASE. *See* (1) LANDLORD AND TENANT.
(2) LAND TENURES.
(3) T. P. ACT, SS. 105-117.

LEGAL PRACTITIONER.

See also (1) LEGAL PRACTITIONERS ACT.
(2) BAR COUNCILS ACT.

———Attorney—Change in constitution of firm of attorneys—Client not asking for change of attorney—Partners on record—If discharged. *See* 1941 Dig., Col. 735. HARCOURT *v.* CLARKE, RAWLINS, KER & CO. **197 I.C. 445=14 R.C. 361.**

———Attorney—Costs—Bill of costs—Instructions for brief—Looking up the law—Ascertainment of legislative practice in various places—Right to remuneration. *See* BOMBAY HIGH COURT (O. S.) RULES, R. 562. **44 Bom L.R. 682.**

———Attorney—Lien—Warrant given to firm of attorneys—Dissolution of firm—Effect of—Right to charge on fund in Court. *See* 1941 Dig., Col. 735. TAPENDRA CHUNDER GOOPTA *v.* JOGENDRA CHUNDER GOOPTA. **199 I.C. 220=14 R.C. 527=A.I.R. 1942 Cal. 76.**

———*Bench and Bar—Rules of conduct.*

LEGAL PRACTITIONERS ACT (1879), S. 12.

It is difficult to lay down any hard and fast rule as to what expressions a lawyer can use with impunity while addressing the Court and what should ordinarily be tolerated by it. Hyper-sensitiveness on the one side or rudeness on the other must be avoided at all costs. An over-subservient Bar would be one of the greatest misfortunes that could happen to the administration of justice. At the same time, a lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the judge, and scrupulously observe the decorum of the Court room. (*Din Mahomed, J.*) HAKUMAT RAI *v.* EMPEROR. **204 I.C. 299=44 P.L.R. 511=A I.R. 1943 Lah. 14.**

———*Competency to refer to arbitration.*

Where the vakalatnama gave the fullest possible powers to a pleader and permitted him to withdraw or compromise the case and admit the claim and to appoint panch or sarpanch or referee and conduct the case in all sorts of ways it was *held* that though the exact words 'refer to arbitration' were not used in the vakalatnama, it was very clearly implied when all such powers were put together that the legal practitioner had the power to refer to arbitration. (*Agarwal and Madeley, JJ.*) HARKARAN SINGH *v.* AGYA RAM. **204 I.C. 257=1942 A.W.R. (C.C.) 350=1942 O.W.N. 685=1942 O.A. 543**

———Costs—Taxation — Attorney's costs—Review of taxation—Increase of charges over those charged in bill of costs—Permissibility. *See* 1941 Dig., Col. 736. SHAMDASANI *v.* CENTRAL BANK OF INDIA, LTD. **I. L.R (1941) Bom. 606=199 I.C. 513=14 R.B. 368=A.I.R. 1942 Bom. 90.**

———Costs—Taxation—Suit against firm dismissed with costs—Dissolution of firm pending suit—Change of attorney after dissolution. *See* 1941 Dig., Col. 736. HARCOURT *v.* CLARKE, RAWLINS, KER & CO. **198 I.C. 620=14 R.C. 470.**

———Liability for costs personally. *See* C. P. CODE, S. 35. **1942 O.W.N. 68.**

———*Power to make settlements in suit and in execution.*

Unless there is any statement to the contrary in a power-of-attorney, a counsel once lawfully retained is empowered both to make settlements and adjustments in the suit and in the execution application which latter is only a continuation of the suit. (*Davies.*) GABRCO *v.* BHANWAR LAL. **1941 A.M.L.J. 80.**

———*Right to recover agreed fee—Collapse of opponent's case resulting in easy work—If ground for reducing fee.*

Where a party agrees to pay his Advocate a particular fee for a particular case, the Advocate is entitled to sue for the full fee, though owing to the collapse unexpectedly of the opposite side's case, the Advocate had not to do that quantity of work originally expected of him. (*Grner. J.*) SETH BALLABDAS *v.* PT. GOVINDRAM TRIVEDI. **1942 N.L.J. 225.**

———*Status in Court.*

A lawyer is no doubt subordinate to the Courts in so far as he is subject to the disciplinary authority of the Courts but all the same he cannot be characterised as a subordinate officer of the Court. To call so such a responsible person and thus degrade him to the level of other ministerial officers working in the Court, is an entirely erroneous conception of the position he occupies. (*Din Mahomed, J.*) HAKUMAT RAI *v.* EMPEROR. **204 I.C. 299=44 P.L.R. 511=A.I.R. 1943 Lah. 14.**

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 12—*Conviction of pleader under Defence of*

LEGAL PRACTITIONERS ACT (1879), S. 12.

India Rules for uttering anti-war slogan—Disciplinary action—If called for.

Where a pleader was convicted under the Defence of of India Rules for uttering a slogan to the effect that none should assist the British Government in their war efforts as it was the duty of everybody to resist all wars by non-violence.

Held, that in the circumstances of the case the exercise of disciplinary jurisdiction under S, 12 of the Legal Practitioners Act was not called for. (*Mukherjea and Sen, JJ.*) EMPEROR *v.* BEPIN CHANDRA MEDHI. **46 C.W.N. 405=75 C.L.J. 428.**

——S. 12—*Disciplinary action under—Power of High Court—Conviction under Defence of India Rules*

In order to see whether disciplinary action under S. 12 of the Legal Practitioners Act should be taken against a pleader who has been convicted under R. 38 read with R. 34 (6) (*e*) of the Defence of India Rules, 1939 the Court must not merely accept the fact that he has been convicted but must consider the material upon which he has been convicted. Where the speech for which he has been convicted incites others to break the law which it is the duty of the Courts to administer, and to do acts tending to subvert order, the Court is entitled to take disciplinary action against him. (*Young, C.J., Dalip Singh and Ram Lall, JJ.*) ADVOCATE GENERAL, PUNJAB *v.* MOHAN LAL. **I.L.R (1941) Lah. 736=199 I.C. 535=14 R.L. 430=43 Cr.L.J. 568=44 P.L.R. 471=A.I.R. 1942 Lah. 85 (F.B.).**

——S. 13—*Letters addressed by pleader to Governor of the province relating to orders passed by a District Munsiff and making false accusations against him—"Misconduct".*

A first grade pleader practising at Markapur wrote a letter as "the leader of the Bar at Markapur" to the Governor of Madras in which he accused the local District Munsiff of being a sympathiser with the *satyagraha* movement and that on a particular day he granted an application of an advocate for adjournment of a case made on the ground that he desired to go to another town to see a friend offering *satyagraha*. It was found on inquiry that the statements were false and that the action of the pleader in making the communication was the result of animosity towards the District Munsiff.

Held, as the letter related to orders passed by the District Munsiff and the accusations were made by the pleader as the "leader of the local Bar" it was idle for him to suggest that his misconduct should be regarded as being entirely dissociated from his status as a legal practitioner. In the circumstances, there was "reasonable cause" for taking disciplinary action against him. (*Leach, C.J., Mockett and Kuppuswami Ayyar, JJ.*) FIRST GRADE PLEADER, MARKAPUR, *In the matter of*. **203 I.C 182=15 R.M. 637=1942 M.W.N. 481 (2)=44 Cr.L.J. 17=55 L.W. 502=A.I.R. 1942 Mad. 630=(1942) 2 M.L.J. 234 (F.B.).**

——Ss. 13 and 14—*Improper conduct—Pleader—Advancing money to finance litigation in which he is engaged—Propriety of.*

A pleader in India, like an Advocate, combines the functions of the solicitor and the Barrister in England. As he fulfils both roles he is subject to the disabilities of both. It would be manifestly improper for him to advance money to a client for the purpose of a litigation in which he is engaged. The safe rule to lay down is that a pleader or an advocate should not lend money to his client at any time for the purpose of an action in which he is engaged. (*Leach, C.J. Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) A PLEADER TRICHINOPOLY, *In the matter of*. **202 I.C. 184=15 R.M. 472=43 Cr.L.J. 798=1942 M.W.N. 483=55 L.W. 481=A.I.R. 1942 Mad. 553=(1942) 2 M.L.J. 196 (F.B.).**

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——S. 13—Misconduct—Filing false fees certificate—Propriety—Liability to disciplinary action. *See* 1941 Dig., Col. 736. S., A PLEADER, VELLORE, *In re* **I.L.R. (1941) Mad. 940=197 I.C. 658=43 Cr.L.J. 233=14 R.M. 383=(1941) 2 M.L.J. 663 (F.B.).**

——Ss. 13 and 14—*Misconduct—Pleader appearing for party—Propriety of giving evidence as witness.*

A person who is appearing as counsel should not give evidence as a witness in the case in which he appears as counsel. If he is in a position to give evidence and it is desirable that he should do so, his proper course is to retire from the case in his professional capacity. (*Leach, C.J., Bell and Byers, JJ.*) PLEADERS, CHIDAMBARAM. *In the matter of*. **203 I.C. 585=55 L.W. 845=A.I.R. 1942 Mad. 691=(1942) 2 M.L.J. 479 (F.B.).**

——S. 13—*Misconduct—Tutoring witness under cross-examination in spite of warning—Gross misconduct.*

It is very improper for a legal practitioner to tutor a witness inside or outside court, and when the tutoring takes place in court and in spite of warnings, the professional misconduct is all the greater. (*Leach, C.J., Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) A. PLEADER, *In the matter of*. **204 I.C. 93=55 L.W. 799 (1)=1942 M.W.N. 758 (2)=A.I.R. 1942 Mad. 701=(1942) 2 M.L.J. 621 (S.B.).**

——S. 14—*Jurisdiction—Subordinate court—Power to institute proceedings, frame charge and hold inquiry.*

If in the course of a proceeding a subordinate court has reason to think that a pleader has committed misconduct in the course of his professional duty, the presiding officer of that Court can under S. 14 of the Legal Practitioners Act institute proceedings against him and inquire into the alleged misconduct. In such a case even though no charge is made by a person concerned, the framing of the charge need not be directed by the High Court. (*Leach, C.J., Bell and Byers, JJ.*) PLEADERS, CHIDAMBARAM., IN THE MATTER OF. **203 I.C. 585=55 L.W. 845=A.I.R. 1942 Mad. 691=(1942) 2 M.L.J. 479 (F.B.).**

——S. 18—Practitioner convicted of embezzling—Proper punishment. *See* 1941 Dig., Col. 737. B. A. PLEADER, SIMLA, *In the matter of*. **I.L.R. (1941) Lah. 731=43 Cr.L.J. 63 (F.B.).**

LETTERS PATENT (Allahabad), Cl. 10—*Appeal against order passed on incompetent second appeal—If lies—Decision in second appeal against order of Insolvency Judge not falling under S. 4, Provincial Insolvency Act—If appealable under Cl. 10, Letters Patent.*

No second appeal lies to High Court when an order passed by the Insolvency Judge does not fall under S. 4 of the Provincial Insolvency Act. If in such a case a second appeal is filed and decided the judgment in that case cannot be treated as a judgment in a second appeal and therefore no appeal would lie under Cl. 10, Letters Patent, against that decision. (*Iqbal Ahmad, C.J., Ganga Nath and Dar, JJ.*) KADAR NATH *v.* ALI AHMAD. **201 I.C 386=15 R.A. 61=1942 A.L.J. 325=1942 A.L.W. 433=1942 A.W.R. (H.C.) 178=A.I.R 1942 All 219 (F.B.)**

——(Allahabad), Cl. 10, Rules of Court, Ch. III, R 7—*Leave to appeal under Cl. 10—Application to be made immediately after judgment and not separately.*

The language of R. 7 of Ch. III of the Rules of Court is perfectly clear and leaves no discretion to the Judge No application other than the one made immediately after the delivery of the judgment could be entertained and hence no question of the sufficiency or insufficiency

LETTERS PATENT (All.) Cl. 30.

of the cause which prevented counsel from making such an application, or even of the existence or non-existence of a cause, can arise. (*Verma, J.*) RAM LAL SAHU *v.* DINA NATH. **202 I.C. 162=15 R.A. 85=1942 A.L.J. 326=1942 A.L.W. 404=1942 A.W.R. (H C.) 157=A.I.R. 1942 All. 260 (2).**

———(**Allahabad**), **Cl. 30**—Final order—Meaning of—Refusal of temporary injunction—Appealability. *See* 1941 Dig., Col. 738. MANMOHAN DAS *v* U.P. GOVERNMENT. **I L.R. (1941) All. 666=197 I C. 289.**

———(**Bombay**) **Cl. 10**—Powers of High Court—Attorney—Moral delinquency in private character—Contempt of Court in private capacity—Scandalous allegations against Judge in notice under S. 80, C. P. Code—Liability to suspension. *See* 1941 Dig., Col. 739. TULSIDAS AMANMAL KARANI, *In he matter of*. **I. L.R. (1941) Bom. 548.**

———(**Bombay**), **Cl. 10**—Reasonable cause—Power to take disciplinary action—Grounds—Misconduct—What amounts to—Moral turpitude—If essential ingredient—Bar Councils Act, S. 10. *See* 1941 Dig., Col. 739, TULSIDAS AMANMAL KARANI, *In the matter of*. **I.L.R. (1941) Bom. 548.**

———(**Bombay**), **Cl. 12**—Cause of action—Bill of exchange drawn in Bombay on person resident outside and accepted by drawee—Dishonour—Suit in Bombay High Court—Jurisdiction of High Court. *See* 1941 Dig., Col. 739. CANARA INDUSTRIAL AND BANKING SYNDICATE CO. LTD. *v.* NARAYAN VENKATESH. **I. L.R. (1942) Bom. 101=14 R.B. 289=198 I.C. 288=A.I.R. 1942 Bom. 15.**

———(**Bombay**), **Cl. 12**—"Cause of action—Promissory note payable" on demand—Cause of action. *See* C. P. CODE, S. 20 (*c*). **44 Bom.L.R. 495.**

———(**Bombay**), **Cl. 17**—Jurisdiction—Minor coparcener of Hindu joint family residing beyond limits of Ordinary Original Jurisdiction—Appointment of guardian of property—Power of High Court—Application by manager for sanction of sale of property as being for benefit of minor—Procedure to be followed by Court. *See* 1941 Dig., Col. 740. RATANJI RAMAJI, *In re*. **I.L.R. (1942) Bom. 39=197 I.C. 678=14 R. B. 238**

———(**Bombay**) **Cl. 26**—*Scope—Power of High Court under—Review of whole case—Setting aside of conviction—If essential.*

Under Cl. 26 of the Letters Patent if the Advocate-General certifies that there is a point of law involved in the case which requires further consideration, the High Court has to determine the point of law, and if it thinks that there has been an error in law, it can review the whole case and pass the requisite sentence or judgment. It is not, however, essential to set aside the conviction whenever there has been some error of law, but if the High Court thinks that the error of law has prejudiced the accused, it must set aside the conviction. (*Beaumont, C.J., Wadia and Sen, JJ.*) EMPEROR *v.* KASAMALLI MIRZALLI. **I.L.R. (1942) Bom. 384=199 I. C. 202=14 R.B. 357=43 Cr.L.J. 529=44 Bom.L.R. 27=A.I.R. 1942 Bom. 71 (F.B.).**

———(**Calcutta**), **Cl. 12**—*Absence of leave—Decree in mortgage suit—If nullity—Effect of waiver—Power of executing Court to refuse to execute decree.*

A decree passed in a mortgage suit instituted in the original side of the Calcutta High Court without leave of that Court under Cl. 12 of the Letters Patent is without jurisdiction and therefore a nullity, if a portion of the mortgaged properties is outside its original jurisdiction. The decree is invalid even in so far as it affects properties within jurisdiction. The executing Court is therefore, entitled to refuse to execute such a decree.

LETTERS PATENT (Cal.) Cl. 12.

As the Court has no jurisdiction, it cannot be vested with jurisdiction either by waiver or by consent. (*Sen. J.*) BEPIN BEHARY LAW v. MOHIT KUMAR PAL. **I. L.R. (1942) 1 Cal. 149=202 I.C. 193=15 R.C. 305=A.I.R. 1942 Cal. 496.**

———(**Calcutta**), **Cl. 12**—"*Business*"—*If includes Government of a country.*

The Government of a country is not a business within the meaning of Cl. 12 of the Letters Patent. (*McNair, J.*) MAHAMMAD ABDUL WAHED *v.* PROVINCE OF BENGAL. **4 F.L.J. (H.C.) 400.**

———(**Calcutta**), **Cl. 12**—"*Cause of action*"—*Suit to declare void decree passed by another Court against company—Presentation of winding-up petition against it on basis of claim under decree—If part of cause of action.*

The presentation of a petition to wind up a company on the basis of a claim under a decree passed against it by another Court, is part of the cause of action in a suit to obtain a declaration that that decree is a nullity. (*Gentle, J.*) MADAN THEATRES, LTD. *v.* RAM KISSEN KAPOOR. **I.L.R. (1942) 1 Cal. 562.**

———(**Calcutta**) **Cl. 12**—*Jurisdiction and discretion of High Court—Suit by wife for declaration of dissolution of Christian marriage—Wife embracing Islam—Parties not domiciled in India—Husband a non-resident foreigner—Specific Relief Act, S. 42.*

Per *Derbyshire, C.J., and Ameer Ali, J.*—Where the parties to a marriage are not domiciled in India and the husband is a non-resident foreigner, the High Court has no jurisdiction to entertain a suit brought by the wife under cl. 12 of the Letters Patent for a declaration under S. 42 of the Specific Relief Act that her Christian marriage with the defendant has been dissolved as a result of her conversion to Islam and the refusal of the defendant to embrace Islam when presented to him.

Per *Derbyshire, C.J.*—Even the submission of the defendant to the jurisdiction of the Court will not avail the plaintiff.

Per *Ameer Ali, J.*—The decision as to the want of jurisdiction of the High Court is subject to the following reservations :—(1) It does not affect the jurisdiction of that Court in the ordinary case—a case not of status—where a part of the cause of action arises within the jurisdiction and leave has been granted. (2) The High Court has general power to grant declaration of a matrimonial character in cases of non-Christian marriages. (3) The question of cause or ground for divorce should be distinguished from the question of jurisdiction. The English Courts do appear to recognise a decree of a foreign Court, with jurisdiction made upon a ground not recognised by English law. (4) The English Courts might recognise as good for India a divorce granted in India, without jurisdiction according to English principles, but where the Indian Courts have assumed jurisdiction.

Per *Nasim Ali, J.*—As there is no statute law by which the Courts in India are bound to acknowledge the validity of divorce according to the religious law of the plaintiff who is not domiciled in India and as the defendant is a non-resident foreigner who has not submitted himself to the jurisdiction of the Court, the declaration sought for by the plaintiff will not put a stop to the dispute between the parties and it is, therefore, not a fit case in which the Court in its discretion should pass a decree under S. 42 of the Specific Relief Act that the marriage of the plaintiff with the defendant has dissolved. (*Derbyshire, C.J., Ameer Ali and Nasim Ali, JJ.*) NOOR JEHAN BEGUM *v.* EUGENE TISCENKO. **I.L.R (1942) 2 Cal. 165=200 I.C. 176=14 R C. 679=75 C.L.J 242=46 C.W.N. 465=A I.R. 1942 Cal. 325.**

LETTERS PATENT (Cal.) Cl. 15.

——(Calcutta), Cl. 12—Suit for money lent in Calcutta to non resident foreigner—Jurisdiction of Calcutta High Court—Contract Act, S. 49. *See* 1941 Dig., Col. 740. DIBYASWARI DEBI *v.* NARAYAN DIN KUMARI., I.L.R. (1942) 1 Cal. 253=14 R.C. 585=199 I.C. 519.

——(Calcutta), Cl. 15—*Appeal under—Extension of time for filing—Application for—Proper forum—Jurisdiction of Judge granting leave to appeal.*

Obiter.—A Judge having an application praying for leave to file an appeal under S. 15 of Letters Patent has no jurisdiction to entertain an application for the extension of the period of limitation under S. 5 of the Limitation Act for filing the appeal. That would be a matter for the Division Bench that may be constituted by the Chief Justice for the purpose of hearing Letters Patent Appeals and if there is no such Bench, it will be for the Chief Justice to constitute a Division Bench to deal with the application for extension of time. (*Mitter and Akram, JJ.*) BALCHAND PROHIT *v.* BEJOYCHAND MAHTAB. I.L.R. (1942) 1 Cal. 403=203 I.C. 580=75 C.L.J. 419=46 C.W.N. 131=A.I.R. 1942 Cal 606.

——(Calcutta), Cl. 15—*Judgment dismissing application for relief under Bengal Money Lenders Act—Appeal.*

An application for reiief under the Bengal Money-Lenders Act is an original application, and an appeal lies under Cl. 15 of the Letters Patent from a judgment of a Judge on the original side of the High Court dismissing such application. (*Derbyshir, C.J. and Panckridge, J.*) KUMUD BEHARI SEN *v.* SATYABRATA SEN. 46 C.W.N. 605.

——(Calcutta), Cl. 15—*'Judgment'—Orders under Ss. 9 and 61 of Insurance Act.*

An order of a Single Judge of the High Court under S. 9 of the Insurance Act directing the refund of the deposits under S. 7 of that Act, is a 'judgment' within the meaning of Cl 15 of the Letters Patent and is appealable. So also an order under S. 61 (1) and (2) of the Insurance Act reducing the amount of the insurance contracts. (*Derbyshire, C.J. and Nasim Ali, J.*) LIGHT OF ASIA INSURANCE CO., LTD. *In the matter of.* I.L.R. (1942) 2 Cal. 85=204 I.C. 175=46 C.W.N. 441=A.I.R. 1942 Cal. 578.

——(Lahore), Cl. 10—*Judgment—Order on appeal holding that trial Court had jurisdiction.*

An order of a judge in Single Bench on appeal holding that the trial Court had jurisdiction to try a suit and directing it to proceed with the suit, is a judgment within the meaning of Cl. 10 of the Letters Patent and therefore appealable. (*Dalip Singh, Din Mahomed and Blacker, J.*) SHAW HARI DIAL AND SONS *v.* SOHNA MAL BELI RAM. I.L.R. (1942) Lah. 491=200 I.C. 652=15 R.L. 3=44 P.L.R. 140=A.I.R. 1942 Lah. 95 (F.B.).

——(Lahore), Cl. 29—Appellate decree of single Bench—Appeal to Privy Council—If lies. *See* C. P CODE, S. 111. 44 P.L.R. 318 (F.B.).

——(Nagpur) and Limitation Act, S. 4—Letters Patent appeal—Time for filing—Long vacation—Exclusion. *See* 1941 Dig., Col. 741. KISANLAL HANUMANBUX *v.* TANSUKHRAI BINJRAJ. 197 I.C. 415=14 R.N. 169.

——(Nagpur.), Cl. 10—*Leave to appeal under—Principle in granting.*

Though it is impossible to lay down any hard and fast rule as to the granting of leave to appeal under the Letters Patent, leave should not be granted where the matter in dispute is trifling, however interesting it may be. (*Stone, C.J. and Bose, J.*) BEHARI LAL ASARAM-

LIMITATION ACT (1859), Cl. 1.

SAO *v.* GYANIRAM NARAYAN. 203 I.C. 67=15 R.N. 106=1942 N.L.J. 506=A.I.R. 1943 Nag. 23.

——(Nagpur), Cl. 10 and Civil Procedure Code, O. 47, R. 4 (1)—Rejection of review application—If a judgment—Appeal, if lies. *See* 1941 Dig., Col. 741. KANHAIYA KASHIRAM .v HIRAJI. I.L.R. (1942) Nag. 41=198 I.C. 130=14 R.N. 204=A.I.R. 1942 Nag. 18.

LICENCE. *See* EASEMENTS ACT. SS. 52 64.

LIFE ASSURANCE COMPANIES ACT (VI OF 1912), S. 22—*Company in Punjab registered both under this Act and under Companies Act—Application for winding up—Forum—Companies Act, S. 287.*

Where in the Punjab a company is registered both under the Life Assurance Companies Act as well as the Companies Act, an application for its winding up must be presented in the District Court only and not in the High Court, and must be made by persons, and subject to the qualifications mentioned in S. 22 of the Life Assurance Companies Act, in view of the provisions of this section read with S. 287 of the Companies Act. After this application has been made, the procedure is regulated by the provisions of the Companies Act. (*Tek Chand and Monroe, JJ.*) RAGHBIR SINGH *v.* INDIAN MUTUAL PROVIDENT FUND INSURANCE CO., LTD., LAHORE. I.L.R. (1942) Lah. 800=199 I.C. 381=14 R.L. 384=44 P.L.R. 1=A.I.R. 1942 Lah. 74

LIFE ESTATE—*Duty of life-tenant—Protection of property—Right of remainderman.*

A life-tenant has the right to possess and enjoy the property. He has a duty to preserve the property in such a manner that it may be taken over after his death by the remainderman. If there is a breach of this duty, or facts are established which will lead the Court to say that there is a reasonable apprehension on the part of the remainderman that this duty which the life-tenant owes will not be performed by him, the remainderman is entitled to ask the Court to protect his right by making suitable orders for the protection and preservation of the property during the lifetime of the life-tenant. It is a fundamental principle that the remainderman is entitled to have suitable orders from the Court, for the preservation of the property from negligence, misdeeds or fraudulent designs of the life-tenant. (*Mitter and Khundkar, JJ.*) POTTU KUMARI BIBI *v.* NIRMAL KUMAR SINGH. 46 C.W.N. 333.

LIMITATION—Computation—Suspension of cause of action—Power of Court to invent new grounds of exemption. *See* LIMITATION ACT, ARTS. 109 AND 120. (1942) 1 M.L.J. 472.

——*Onus.*

Ths burden of proving that a suit is within time always lies on the plaintiff. (*Shirreff, S. M. and Sathe, J.M.*) AMAR BAHADUR SINGH *v.* SHEONATH KURMI. 1942 R.D. 571=1942 A.W.R. (Rev.) 295=1942 O.A. (Supp.) 321=1942 O.W.N. (B.R.) 454.

——*Striking off person's name from array of defendants—Addition of his name at later date—Effect of.*

The effect of striking off a person's name from the array of the defendants, even if it is made under a mistake, is that the suit so far as he is concerned comes to an end. If his name is added at a later date, a new suit must be regarded as having been brought against him, and if it is not within time it is barred by limitation. (*Harries, C.J. and Dhavle, J.*) JAGDISWAR PRASAD MISRA *v.* HAR SARAN RAI. 199 I.C. 196=14 R.P. 555=8 B.R. 526=A.I.R. 1942 Pat. 270.

LIMITATION ACT (1859), Cl. 1, R. 12—*Suit by reversionary heir—Time 'when the cause of action arises.'*

LIMITATION ACT (1908), S. 2.

Under the Limitation Act of 1859 the limitation for a suit by a reversioner who succeeded to the property was 'the period of 12 years from the time when the cause of action arises.' "In the case of a suit for possession by a reversionary heir after the death of the widow, who takes by inheritance from her husband, and is dispossessed, the period of limitation as against the reversioner, in the absence of fraud, is not to be reckoned from the time when he succeeds to the estate but from the time at which it would have been reckoned against the widow if she had lived and brought the suit." (*Sir Madhavan Nair.*) RAMAYYA *v.* LAKSHMAYYA. 202 I.C. 1=46 C.W.N. 1008—15 R.P.C. 26=8 B.R. 874 =1942 O.W.N. 806=23 P.L.T. 717=1943 A.L.W. 2 =1942 A.L.J. 392=A.I.R. 1942 P.C. 54=(1942) 2 M.L.J. 249 (P.C.).

———(IX OF 1908), S. 2 (10)—Suit—If includes appeal. *See* BENGAL LAND REVENUE SALES ACT, S. 26. 8 B.R. 397.

———S. 3—*Equitable considerations—If apply.*

S. 3 of the Limitation Act is mandatory and leaves no room for equitable considerations. (*Chatterji and Meredith, JJ.*) BANWARI NARAIN TEWARY *v.* RAMHARI NARAIN TEWARI 8 B.R. 116=197 I.C. 217 =14 R.P. 284=A.I.R. 1942 Pat. 335.

———Ss. 4 and 12—*Expiry of period of limitation for filing appeal during vacation of Court—Filing of copy application on reopening date—Time taken for obtaining copy—If can be added to the period.*

Where the period of limitation for filing an appeal has expired during the vacation the only privilege which is granted to the appellant under S. 4 of the Limitation Act is that he may file his suit or appeal on the day upon which the Court re-opens and on that particular day alone. If he delays in making his application for a copy until that day, then he is applying for a copy when the period of limitation has already expired and the extension granted by the application of S. 4 cannot be combined with an extension under S. 12 of the Act. (*King, J.*) KAMARAJU PANTULU *v.* SARAMMA. I.L.R. (1942) Mad 868=203 I.C. 5=15 R.M. 592=55 L.W. 426=1942 M.W.N. 503=A.I.R. 1942 Mad. 604=(1942) 2 M.L.J. 104.

———S. 4 and General Clauses Act (1897), S. 10—*General principle underlying—Scope and effect of the sections.*

(Per *Dar, J.*)—S. 4 of the Limitation Act and S. 10 of the General Clauses Act give expression to the general principle of law enunciated by the maxims *Lex non cogit ad impossibilia*—the law does not compel a man to do that which he cannot possibly perform, and *Actus curiae neminem gravabit*—an act of the Court shall prejudice no man. These sections do not in any way extend the period of limitation, nor do they furnish any data for computation of time, they merely embody a rule of elementary justice that if the time allowed by statute to do an act or to take a proceeding expires on a day when the court is closed; it may be done on the next sitting of the court. (*Iqbal Ahmad, C.J., Dar and Plowden, JJ.*) RAJA PANDE *v.* SHEOPUJAN PANDE 204 I.C. 1= 1942 A.W.R. (H.C.) 368=1942 A.L.W. 635=1942 A.L.J. 592=A.I.R. 1942 All. 429 (F.B.).

———S. 4—*Scope and effect—Limitation for application to set aside award expiring on Sunday—Such application made on following day—Judgment pronounced on award earlier on same day—Effect of—Arbitration Act, S. 17.*

After filing an award in Court, the respondent served notice on the petitioner on 21st November, 1941 and obtained judgment in terms of the award under S. 17 of the Arbitration Act on 22nd December, 1941. Later on the same day the petitioner presented an application to set aside the award. The last day of the period prescribed by Art. 158 of the Limitation Act for making such an application, *viz.*, 21st December, 1941, being a Sunday was a day on which the Court was closed.

Held, that S. 4 of the Limitation Act did not extend the period in cases where the last date of the period was a day on which the Court was closed, but only gave to the party concerned the right to make the application on the day that the Court reopened, although the period had in fact expired and that, therefore, the privilege which that section conferred upon the petitioner did not prejudice the right of the respondent to obtain judgment in terms of the award on the expiry of thirty days from the date of the service of the notice and that consequently, the Court had jurisdiction to pronounce judgment in terms of the award on 22nd December, 1941. (*Panckridge, J.*) JOHUR MULL JUGAL KISHORE *v.* KASI PRASAD JHAJHARIA. I.L.R. (1942) 2 Cal. 160=203 I.C. 426=15 R.C. 425=A.I.R. 1942 Cal. 566.

LIMITATION ACT (1908), S. 5.

———S. 5—*Applicability—Application for leave to appeal as pauper.*

The provisions of S. 5, Limitation Act, applies to applications for leave to appeal as pauper. (*Bennett J.*) RAM DULARI *v.* ALIAN BIBI. 17 Luck. 628= 199 I.C. 614=14 R.O. 503=1942 A.W.R. (C.C.) 79 =1942 R.D. 181=1942 O.A. 57=1942 O.W.N. 106 =A.I.R. 1942 Oudh 240.

———S. 5—*Order extending time—Absence of notice to respondent—Irregularity.*

An order granting an application for extension of the period of limitation for filing an appeal under Cl. 15 of the Letters Patent (Calcutta) without giving notice of the application to the respondent is irregular and is liable to be set aside. (*Mitter and Akram, JJ.*) BALCHAND PROHIT *v.* BEJOYCHAND MAHTAB. I.L.R. (1942) 1 Cal. 403=203 I.C. 580=75 C.L.J. 419= 46 C.W.N. 131=A.I.R. 1942 Cal. 606.

———S. 5—Scope—"Sufficient cause"—Existence of circumstances mentioned in Ss. 4 and 14—If can be considered. *See* 1941 Dig., Col. 743. KAYAMBU PILLAI *v.* COURT OF WARDS. 201 I.C. 84=15 R.M. 207= A.I.R. 1942 Mad. 170=(1941) 2 M.L.J. 873.

———S. 5—*Sufficient cause—Acute appendicitis a week before the expiry of limitation.*

Where the applicant suffered from acute appendicitis a week before the expiry of limitation for filing a revision petition and so was unable to file it till 16 days after expiry of the period of limitation, it was held that the delay in filing the revision should be excused and that it could not be said that he was acting without due diligence in not filing the revision until the last week. (*Pollock, J.*) MADHO *v.* SHAM RAO. 1942 N.L.J. 811.

———S. 5—*Sufficient cause—Deliberate adoption of remedy which results in delay.*

Where on the dismissal by the Chief Court of Oudh of an appeal for non-prosecution, the appellant waits till the expiry of the period of limitation for filing an appeal to the Privy Council and then applies for restoration of the appeal and on its rejection applies for leave to appeal to Privy Council and prays for excusing the delay in filing it, there is no sufficient cause for extending time in as much as the applicant deliberately adopted a remedy which in the end proved to be useless. (*Thomas, C.J. and Agarwal, J.*) JAGDISH KUMAR SINGH *v.* HARI KRISHEN DAS 199 I.C. 835=14 R.O. 525=1942 O. A. 135=1942 O.W.N. 206=1942 A.W.R. (C.C.) 156 =A.I.R. 1942 Oudh 362.

———S. 5—Sufficient cause—Discretion of Court—Exercise of—Consideration—Respondent acquiring valuable rights—Relevancy. *See* 1941 Dig., Col. 744.

LIMITATION ACT (1908), S. 5.

KAYAMBU PILLAI *v.* COURT OF WARDS. 201 I.C. 84 = 15 R.M. 207 = A.I.R. 1942 Mad. 170 = (1941) 2 M.L.J. 873.

——S. 5—Sufficient cause—Ignorance of law. *See* U.P. ENCUMBERED ESTATES ACT, S. 45 AND LIMITATION ACT, S. 5. 1942 O.W.N. 438 = 1942 O.A. 336.

——S. 5—*Sufficient cause—Missing of train—But available time not diligently used.*

Where on the last day of limitation a person though he missed the earliest train fails to avail himself of the time available after he reached the place and presents the appeal after Court hours is not entitled to the indulgence of the Court as he has not been prompt in seeking his remedy. (*Thomas, C. J.*) BALDEO *v.* TEJJA. 1942 O.W.N. 475 = 202 I.C. 87 = 15 R.O. 116 = 1942 A.W.R. (C.C.) 309 (3) = 1942 O.A. 376 = A.I.R. 1942 Oudh 488.

——S. 5—Sufficient cause—Mistake as to forum of appeal—Connected suits with a common judgment having different forums of appeal—Absence of negligence. *See* 1941 Dig., Col. 745. U. P. GOVERNMENT, NAZUL DEPT. *v.* CHURCH MISSIONARY TRUST ASSOCIATION, LTD. 17 Luck. 487 = 197 I.C. 723 = 14 R.O. 342 = A.I.R. 1942 Oudh 125.

——S. 5—"Sufficient cause"—Mistaken advice given by pleader. *See* 1941 Dig., Col. 475. KISHAN CHAND *v.* MAHOMED HUSAIN. 199 I.C. 851 = 14 R.L. 434 = A.I.R. 1942 Lah. 94.

——S. 5—*Sufficient cause—New decision of High Court.*

A new ruling or a new statement of the law by High Court cannot be pleaded as a 'sufficient cause' for excusing the delay in filing an appeal. (*Agarwal, J.*) BASDEO *v.* MURLI DHAR SINGH. 201 I.C. 658 = 15 R.O. 105 = 1942 A.W.R. (C.C.) 294 = 1942 O.A. 340 = 1942 O.W.N. 439 = A.I.R. 1942 Oudh 447.

——S. 5—*Sufficient cause—Belated application for copy made by post—Delay in transit—Time if can be extended.*

Where a person makes an application for a copy of judgment so late as within 3 days of the expiry of the period of limitation for filing an appeal and chooses to obtain it by post and gets it after the period of limitation, the delay in the transit cannot be excused and time cannot be extended under S. 5. (*Sathe J.M.*) INDRADEO SINGH *v.* RAMPAT CHAMAR. 1942 O.W.N. (B.R.) 214 = 1942 O.A. (Supp.) 151 = 1942 R.D. 280 = 1942 A.W.R. (Rev.) 131.

——S. 5—Sufficient cause—Uncertainty in the law as to proper remedy. *See* 1941 Dig., Col. 745. ANANDRAO *v.* PARWATIBAI. I.L.R. (1942) Nag. 487.

——S. 6—Application by minor defendant to set aside sale and other proceedings in execution—Not governed by S. 6 of the Act. *See* PRACTICE—NOTICE OF EXECUTION. (1942) 2 M.L.J. 558.

——S. 6 and Arts. 134-B and 144—Applicability—Alienation by manager of math—Suit by succeeding manager to set aside—Limitation—Interval of time between death of one and appointment of other—Effect—Minority of successor—If extends limitation. *See* 1941 Dig., Col. 746. VENKATESWARA SARMA *v.* VENKATESA AYYAR. 199 I.C. 225 = 14 R.M. 523 = (1941) 1 M.L.J. 644 (F.B.).

——Ss. 6 and 7—*Scope and effect—If give fresh period of limitation.*

Ss. 6 and 7 of the Limitation Act do not give a fresh period of limitation; in order to take advantage of S. 6, the person claiming to take advantage of it must be a person entitled to institute the suit at the time from which the period of limitation was to be reckoned. (*Fazl Ali and Varma, JJ.*) BHAGAWAT PRASAD *v.*

LIMITATION ACT (1908). S. 6.

DEBICHAND DOGRA. 199 I.C. 408 = 14 R.P. 570 = 8 B.R. 561 = 23 P.L.T. 528 = 8 Cut. L.T. 99 = A.I.R. 1942 Pat. 99.

——Ss. 6 and 19—*Scope and combined effect of—Acknowledgment of debt during plaintiff's minority—If extends period of limitation up to three years after plaintiff's becoming major.*

The cause of action for a suit arose in June, 1926, at which date the defendant owed money to the plaintiff's father. The latter died on 10—9—1927, the plaintiff being a minor. On 30—9—1927, the defendant wrote a letter to the plaintiff's guardian, acknowledging his liability for the debt. In 1935, the plaintiff brought a suit for the debt. It was pleaded that the suit was barred by limitation.

Held, that S. 6 read with S. 19 of the Limitation Act had the effect of extending the period of limitation; the right to sue accrued to the plaintiff on the death of his father when he was a minor; and the time from which the period of limitation had to be reckoned was the time at which the right to sue accrued to the plaintiff and not the time when the right to sue arose at the date of the original cause of action. When there is an acknowledgment which is valid under S. 19 of the Limitation Act to save limitation in the ordinary course, the time from which the period of limitation is to be reckoned must be taken to be the date of the acknowledgment and not the date of the cause of action. S. 19 in effect does provide a new rule of limitation and not merely a new starting point for the calculation of the period. (*Macklin, J.*) SHANTARAM SHANKAR *v.* CHINTAMANRAO BHALCHANDRA. I.L.R. (1942) Bom. 574 = 202 I.C. 196 = 15 R.B. 143 = 44 Bom.L.R. 522 = A.I.R. 1942 Bom. 248.

——S. 7—*Applicability—Final decree in mortgage suit in favour of Hindu brothers—Some decree-holders minors represented by eldest brother as next friend—Limitation for execution—If saved.*

In a suit on a mortgage a preliminary decree was passed on 11—12—1928. An appeal from that was dismissed by the High Court and the decree of the original Court was confirmed on 11—11—1932. In the meanwhile a final decree was passed on 19—8—1932 by the trial Court, but before that the original plaintiff, a Hindu had died and in his place, his four sons, two majors and two minors, were brought on the record as his legal representatives, and the final decree was in favour of all of them, the minors being represented by the eldest son as next friend. An execution petition was presented on 12—8—1935, but it was returned for remedying some defects, which were never properly remedied, and was therefore rejected. The decree-holders then filed another execution petition on 20—11—1938 and it was urged that the execution petition filed more than three years after the date of the High Court decree was not barred by limitation because two of the decree-holders were minors and their next friend could not give a discharge under S. 7 of the Limitation Act.

Held, that as under O. 32, R. 6, C. P. Code, the next friend was not competent to give a discharge in respect of the decree, limitation for execution was saved under S. 7 of the Limitation Act. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*). KRISHNA REDDI *v.* JAVARAMA RAO. 55 L.W. 835 = (1942) 2 M.L.J. 736.

——S. 7—Applicability— Malabar tarward— Gift deed by karnawan and senior Anandiravan—Karnavan executing also as guardian of minor members—Suit by minor after majority to set aside deed—Limitation—Starting point. *See* 1941 Dig., Col. 747. DEVAKI *v.* KUNHI KANNAN. 197 I.C. 245 = 14 R.M. 349.

LIMITATION ACT (1908), S. 7.

——S. 7—*Hindu Joint family—Decree obtained by manager in suit brought in name of joint family firm on behalf of himself and as next friend of minor—Power of manager to give discharge—Execution application by him dismissed as time-barred—Subsequent application by minor on attaining majority—If barred—Rule of* res judicata—*C. P. Code, O. 32, R. 6.*

If a manager of a joint Hindu family consisting of himself and his minor brother obtains a decree in a suit brought by him in the name of the joint family firm on his own behalf and as next friend of the minor, he can not lawfully receive any money which may be jointly due to them under the decree without the leave of the Court in view of the prohibition contained in O. 32, R. 6, C. P. Code, and he is consequently not in a position to give a valid discharge for the decretal debt without first obtaining such leave. The prohibition is not removed merely because the decree is passed in the name of the firm without further mention of the minor. Consequently if an application for execution of the decree filed by the manager is dismissed as barred by limitation, a subsequent application for execution filed by the minor within three years after attaining majority is not barred either by reason of S. 7 of the Limitation Act or by the principle of *res judicata*. When the leave of the Court is necessary for the manager to receive the decretal money on behalf of the minor, it is not possible to regard an execution proceeding filed by him as a representative proceeding of such a character as to determine finally the interests of the minor by the rule of constructive *res judicata*, although when proceedings have simply been brought in the name of a firm without any disclosure of the fact being made that there are minor members there may be good reasons for regarding execution proceedings brought by a managing member in the name of the firm as being representative proceedings. (*Tek Chand and Beckett, JJ.*) RAM PARKASH CHANDRA *v.* JODH SINGH. **203 I.C. 295=15 R.L. 188=44 P.L.R. 368=A.I.R. 1942 Lah. 280.**

——S. 10—*Applicability—"For the purpose of following in his or their hands such property,"—Meaning of—Suit for money decree in respect of legacy bequeathed under will—Defendants appointed executors and trustees of estate by will—Suit—If falls under S. 10—Art. 123.*

The words "for the purpose of following in his or their hands such property," in S. 10 of the Limitation Act, mean for the purpose of recovering the property for the benefit of the trust in respect of which it had been given, so that when property is used for some purpose other than the proper purpose of the trust in question, it may be recovered without any bar of time from the hands of the persons indicated in the section. Where the plaintiff in a suit against the persons appointed executors under a will and trustees of the testator's estate, seeks a money decree in satisfaction of a legacy alleged to have been bequeathed to him under the will, he cannot be said to be suing to recover any property for the benefit of the trusts created under the will. Nor can such a plaintiff be said to be beneficially interested in the trust estate, when all that he can claim is his share of the interest in a sum of money which was directed to be, but was not invested, in "some good security," as directed by the testator in his will. The suit does not fall under S. 10, but falls under S. 123, Limitation Act, as the suit is one for the recovery of a legacy pure and simple. (*Lobo, J.*) GOPALDAS *v.* HEMANDAS. **I.L.R. (1942) Kar 392=A.I.R. 1942 Sind 145.**

——S. 10—Applicability—High priest of temple—Trustee. *See* 1941 Dig., Col. 749. BAIDYANATHJE *v.*

LIMITATION ACT (1908) S. 10.

URMILA DEVI. **21 Pat. 96=I.L.R. (1941) Kar. (P.C.) 176=44 P.L.R. 200=74 C.L.J. 440=1941 O.W.N. 1367=8 B.R. 151=1942 P.W.N. 1=55 L.W. 31=1942 M.W.N. 106=44 Bom.L.R. 183=46 C.W.N. 377=1942 A.L.J. 53=(1942) 1 M.L.J. 8 (P.C.).**

——S. 10—Applicability — "Specific purpose"—Meaning of—Nattukottai Chetties—Money deposited with person at time of marriage of daughter—If express trust created in favour of children of marriage. *See* 1941 Dig., Col. 749. PALANIAPPA CHETTIAR *v.* NACHIAPPA CHETTIAR. **200 I.C. 357=15 R.M. 26=(1941) 2 M.L.J. 558.**

——S. 10—*Applicability—Suit against legal representatives of deceased trustee for moneys misappropriated.*

S. 10 applies to a suit against the legal representatives of a deceased trustee for the recovery of a specific sum of money misappropriated by him. The suit is in essence a suit to follow trust property in the hands of the legal representatives of the trustee. (*Mitter and Khundkar, JJ.*) AMIYA KRISHNA KHAN *v.* DEBENDRA LAL KHAN. **46 C.W.N. 865.**

——S. 10—Applicability—Suit for profits by administrators of trust property—Defendant entrusted by plaintiffs with property for safe custody and management. *See* 1941 Dig., Col. 749. SHRI MAHADEOJI *v.* BALDEO PRASAD. **I.L.R. (1942) Nag. 92=201 I.C. 220=15 R.N. 33.**

——S. 10—*Applicability—Suit for recovery of money from estate—Defendants executors and trustees of estate under will—Suit if falls under S. 10.*

A suit which is expressly stated to be a "suit for declaration and recovery of Rs. 9426-1-3," the declaration being wholly unnecessary and merely constituting the grounds on which the plaintiff bases his claim to a decree, and which in substance is one for recovery of a sum of money from an estate, of which the defendants are executors and trustees under a will, is not a suit for the purpose of following, in the hands of the defendants, trust property or the proceeds thereof. (*Lobo J.*) GOPALDAS *v.* HEMANDAS. **I.L.R. (1942) Kar. 392=A.I.R. 1942 Sind 145.**

——S. 10—*Applicability — Trust void—Trustee's possession, if adverse to true owner.*

Where a trustee has been in possession for upwards of 12 years, of property under a trust which is void under the law, an action against him by the rightful owner would be barred by limitation under the statute, the reason being that the possession of the trustee is as much adverse to the true owner as that of any trespasser. The property in respect of which the direction in the will creating the charitable trust is void cannot be said to have "vested in trust for a specific purpose" and therefore S. 10, Limitation Act, can have no application and the executor must be taken to have held the property adversely to the true owner and if he so holds it for the statutory period he would acquire a good title to it. The fact that the house tax receipts were issued by the Municipality in favour of the deceased testator is no proof that the executor was not holding the property adversely to the heir. (*Sir Madhavan Nair, J.*) HEM CHAND *v.* PEARY LAL **203 I.C. 1=47 C.W.N. 46 (2)=9 B.R. 70=1942 A.L.J. 718=1943 A.L.W. 7=1943 O.W.N. 1=56 L.W. 8=45 P.L.R. 36=15 R.P.C. 52=A.I.R. 1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C.).**

——S. 10—*Applicability—Trustee for specific purpose—Executor under will—When trustee.*

Whether an executor under a will is a trustee for a specific purpose within the meaning of S. 10, Limitation Act, depends upon the facts of each case. S. 10 will

LIMITATION ACT (1908), Art. 12.

apply to an executor under a will who is therein expressly called trustee and is entrusted with the testator's property for certain definite purposes. When a will appoints certain persons to be trustees of the testator's will and trustees of his estate, and authorises them "the trustees to appoint by will or deed their successors in the office of such trustees, on their death," and the will further provides that "in default of such appointment, the surviving trustees shall have power to appoint any person in place of such deceased trustee," it must be held that the executors named in the will are trustees for specific purposes within the meaning of S. 10. (*Lobo, J.*) GOPALDAS *v.* HEMANDAS. **I.L.R (1942) Kar. 392=A I.R. 1942 Sind 145.**

——**S. 12**—*Applicability—Copy not necessary—Time for obtaining copy—Right to claim exclusion.*

The time for obtaining a copy has to be excluded under S. 12 of the Limitation Act even if no copy is necessary. (*Middleton.*) MAHABIR SINGH *v.* RAMDAS ROUT. **8 B.R. 330.**

——**S. 12**—*Applicability—Revisions.*

S. 12 allows the time spent in obtaining copy of decree to be excluded, but it does not apply to applications for revision, probably on the ground that there is no period of limitation prescribed in the Act for an application for revision. (*Agarwal, J.*) KALLU MAL *v.* MUNICIPAL BOARD, NAWABGANJ. **200 I.C. 608=15 R O. 25=1942 O.W.N. 335=1942 A.W.R. (C.C.) 220=1942 O.A. 241=A I.R. 1942 Oudh 392.**

——**S.** 12 (2)—Applicability—Madras Village Courts Act, S. 73—*Ex parte* decree by Village Court—Application to District Munsiff to set aside—Time taken for obtaining copy of decree of Village Court—Exclusion of. *See* 1940 Dig., Col. 751. STANDARD TYPE FOUNDRY *v.* VENKATARAMANIAH. **199 I.C. 651=14 R. M. 618=(1941) 1 M.L.J. 540.**

——**S. 12 (2)**—Time requisite for obtaining copy—Vacation—Exclusion. *See* 1941 Dig., Col. 751. UMA SHANKAR SINGH *v.* ABDUL KARIM KHAN. **17 Luck. 314.**

——**S. 12 (3)**—*Time taken for obtaining copy—Exclusion—Application for copy filed within time.*

Where the application for the copy of the judgment songht to be appealed against is filed within the period of limitation, then the time spent in obaining the copy must be excluded under S. 12 (3), from the period of limitation for filing the appeal. (*Shirreff, S.M. and Sathe, J.M.*) RAM GHULAM *v.* BANWARI LAL. **1942 O.W.N. (B.R.) 132 (2)=1942 A.W.R. (Rev.) 146 (1)=1942 O.A. (Supp.) 166 (1)=1942 R.D. 198 (2).**

——**S. 14**—*Applicability—Competent tribunal refusing relief—No absence of jurisdiction.*

S. 14 only applies when time has been spent in litigation in a Court which for want of jurisdiction or other similar cause was unable to give relief. It does not apply when there is no want of jurisdiction and when the competent tribunal refuses to interfere with the order of a lower Court. (*Rowland and Chatterji, JJ.*) SHEO RAJDHARI SINGH *v.* KAMESHWAR SINGH. **200 I.C. 309=8 B.R. 668=14 R.P. 647=23 Pat.L.T 263=A.I.R. 1942 Pat. 378.**

——**S. 14**—*Applicability—Conditions—Earlier proceeding—If to be a suit initiated by plaintiff in later suit.*

S. 14 does not require that the earlier proceeding must have been a suit; nor does it require that it must have been initiated by the plaintiff in the later suit seeking advantage from the section. (*Davis, C.J. and Weston, J.*) MADHAVDAS PARMANAND *v.* JAN MAHOMED. **I.L.R. (1941) Kar. 495=199 I.C. 438=14 R.S. 181=A.I.R. 1942 Sind 37.**

LIMITATION ACT (1908), Art. 15.

——**S. 14**—Applicability — Failure to give proper notice to Official Receiver in earlier proceedings—Plaintiff guilty of negligence. *See* 1941 Dig., Col. 752. AMAR NATH *v.* BASANT RAM. **199 I.C. 866=14 R.L. 436.**

——**S. 14**—*Applicability—Insolvency of debtor—Proceedings by Official Receiver to annul alienations—Subsequent suit by creditor under S. 53, T. P. Act—Time taken in insolvency proceedings—If can be excluded—Insolvency proceedings—If outside scope of S. 14.*

In computing the period of limitation for a suit by a creditor under S. 53 of the Transfer of Property Act for a declaration that certain alienations made by a debtor are void, the period of limitation being six years from the date of the alienations under Art. 120 of the Limitation Act, the time taken in prior proceedings by the Official Receiver in insolvency to get the alienations annulled under Ss. 53 and 54 of the Provincial Insolvency Act against the same debtor, cannot be excluded under S. 14 of the Limitation Act. S. 14 can have no application to the case, because in the first place the plaintiff in the later suit is not the petitioner in the prior proceedings and in the second place the cause of action is also different. Although the Official Receiver prosecuting the proceedings under Ss. 53 and 54 of the Provincial Insolvency Act might represent the creditor, a creditor who is the plaintiff in the later suit under S. 53 of the T. P. Act cannot be said to be prosecuting the proceedings under the Insolvency Act.

Quaere: Whether S. 14 of the Limitation Act can have an application to any insolvency matter and whether proceedings in insolvency are completely outside the scope of S. 14. (*Leach, C.J. and Byers, J.*) RAMA NAIDU *v.* GANGI REDDI. **I.L.R. (1942) Mad. 862=202 I.C. 490=15 R.M. 516=1942 M.W.N. 430=55 L.W. 301=A.I.R. 1942 Mad. 483=(1942) 1 M.L.J. 588.**

——**S. 14**—Applicability—Suit under O. 21, R. 63, C. P, Code—Suit failing for want of prayer for possession—Withdrawal with liberty to file fresh suit—Fresh suit beyond time—If saved. *See* C.P.C., O. 23, Rr. 1 and 2. **(1942) 2 M.L.J. 442.**

——**S 14**—*Applicability—Previous case disposed of on merits—Not right to deduction of time.*

Where a previous suit or proceeding has been disposed of on the merits, it cannot be said that the Court has been "unable to entertain it," within the meaning of S. 14. (*King and Kunhi Raman, JJ.*) RAJABAPAYYA *v.* BASAVAYYA. **55 L.W. 644 (2)=1942 M.W.N. 820 (2)=A.I.R. 1942 Mad. 713=(1942) 2 M.L.J. 515.**

——**S. 14 (2)**—*Applicability—Application under S. 167 of the B. T Act—Time spent in resisting proceedings under S. 174 (3)—If can be deducted.*

Assuming that by virtue of S. 29 (2) of the Limitation Act, S. 14 (2) would apply to an application to annul an encumbrance under S. 167 of the B. T. Act, the time spent in resisting proceedings under S. 174 (3) of the B. T. Act to set aside the sale cannot be deducted in computing the period of limitation for the application. In the first place, the application under S. 167 and the resistance to the proceedings under S. 174 (3) are not "for the same reliefs." Secondly, this is not a case of the Court not having been able to entertain the previous proceeding from defect of jurisdiction or any cause whatever. (*Biswas, J.*) CHUNNU LAL *v.* AMLUK CHANDJI. **46 C.W.N. 706.**

——**S. 15**—*Exclusion of time spent in the insolvency Court—Permissibility.*

An order of adjudication adjudging the defendant an insolvent is not an order staying suit against the defen-

LIMITATION ACT (1908), S. 18.

dant because its effect is not to stay proceedings against the insolvent but merely to impose upon the decree-holder the necessity of obtaining leave from the Court; it is when leave is refused that it can be said that there is an injunction and an order staying the proceedings in execution of the decree. (*Gruer, J.*) NANDLAL *v.* RAMDATTA. **I.L.R. (1942) Nag. 306=1942 N.L.J. 294.**

——**S. 18**—Applicability—Appeal under S. 25, Bengal Land Revenue Sales Act—Delay in filing—If can be excused under S. 18, Limitation Act. *See* BENGAL LAND REVENUE SALES ACT, S. 26. **8 B.R. 397.**

——**S. 19**—*Acknowledgment—Admission by prior mortgagee in his suit of genuineness of puisne mortgage.*

Where a subsequent mortgagee who is impleaded in a suit on the prior mortgage produces the mortgage in his favour and its genuineness is admitted by the plaintiff, the prior mortgagee, and it is recorded and signed, it amounts to an acknowledgment of liability within the meaning of S. 19, Limitation Act. (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARKASH RANI. **1942 O.A. 567=1942 A.W.R. (C.C.) 355=1942 A.L.J. 766.**

——**S. 19**—*Acknowledgment by mortgagor after parting with all his interest in hypotheca to a purchaser—Does not bind the purchaser.*

Acknowledgments made by a mortgagor after he had parted with all his interest in the mortgaged property to a purchaser do not bind the purchaser. (*Lord Atkin.*) BANK OF UPPER INDIA, LTD. *v.* SKINNER. **I.L.R. (1942) Lah. 686=47 C.W.N. 43=202 I.C. 740=55 L.W. 854=1942 A.L.J. 648=15 R.P.C. 46=9 B.R. 57=1943 M.W.N. 1=1942 O.W.N. 604=1942 A.W.R. (P.C.) 41=1942 A.L.W. 550=A.I.R. 1942 P.C. 67=(1942) 2 M.L.J. 559 (P.C.).**

[*See also* R.H. SKINNER *v.* BANK OF UPPER INDIA, LTD. **202 I.C. 742=15 R.P.C. 47=47 C.W.N. 46=9 B.R. 58=I.L.R. (1942) Lah. 684.**]

——**Ss. 19 and 21 (3) (b)**—*Acknowledgment by manager of joint Hindu family after his adjudication keeps the debt alive against coparceners.*

The acknowledgment of a debt made by the manager of a joint Hindu family after he was adjudged an insolvent can save limitation as against his other coparceners. (*Wadsworth, J.*) VYAGRESWARUDU *v.* BHADRAMMA. **204 I.C. 245=1942 M.W.N. 480=A.I.R. 1942 Mad. 721=55 L.W. 508=(1942) 2 M.L.J. 233.**

——**S. 19**—Acknowledgment—Effect of—Fresh cause of action. *See* 1941 Dig., Col. 754. BHAWANI SANKAR JAISI *v.* GANGA PRASAD. **198 I.C. 516=14 R.R. 204.**

——**S. 19**—*Acknowledgment—Endorsement of payment on promissory note—If amounts to acknowledgment.*

A mere endorsement of payment on a promissory note cannot be held to be an acknowledgment of liability within the meaning of S. 19 of the Limitation Act. If the endorsement acknowledges a liability to pay the debt, then it would fall under S. 19; but a mere endorsement stating that a particular sum of money has been paid merely acknowledges the fact of payment and not a liability for any debt. (*Harries, C.J. and Manohar Lall, J.*) SHYAM BALLAV NANDI *v.* DOLGOBIND SAHU. **200 I.C. 306=8 B.R. 665=14 R.P. 649=24 Pat. L.T. 21=8 Cut.L.T. 1=A.I.R. 1942 Pat. 395.**

——**S. 19**—*Acknowledgment—Endorsement of payment if acknowledgment—Open payments—Effect of.*

Bare statements of payments endorsed on a promissory note cannot serve as acknowledgments of the debt under the promissory note. If limitation is to be saved under

LIMITATION ACT (1908), S. 19.

S. 19, Limitation Act, one must be able to read into an endorsement not merely that a payment has been made but that a further sum is admitted to be due. (*Horwill, J.*) NARASINGA RAO *v.* RANGAYYA. **1942 M.W.N. 685=55 L.W. 808=A.I.R. 1943 Mad. 133=(1942) 2 M.L.J. 610.**

——**S. 19** — *Acknowledgment — Endorsement of 'Rs. 2/4' on back of note with thumb mark of debtor.*

Where there was an endorsement of 'Rs. 2/4' on the back of a promissory note and there was also the thumb mark of the debtor it was held that it did not amount to an acknowledgment within the meaning of S. 19, Limitation Act. (*Bennett and Agarwal JJ.*) DURGA PRASAD *v.* KISHUNI. **202 I.C. 750=15 R.O. 150=1942 A.W.R. (C.C.) 341 (3)=1942 O.W.N. 582=1942 O.A. 498=A.I.R. 1942 Oudh 508.**

——**S. 19**—*Acknowledgment of liability in respect of a charge under S. 55 (4) (b), Transfer of Property Act—Registration, unnecessary.*

An acknowledgment of liability in respect of a charge under S. 55 (4) (*b*) of the T. P. Act does not of itself create any title or right in the owner which would attract the provisions of S. 17 (1) of the Registration Act, but it is a mere statement, an admission of an existing fact. As such, registration is unnecessary. (*Grille, J.*) SETH PARASRAM SEWARAM DHAKHAD *v.* PUNAMCHAND. **I.L.R. (1942) Nag. 541=201 I.C. 748=15 R.N. 60=1942 N.L.J. 412=A.I.R. 1942 Nag. 102.**

——**S. 19**—*Acknowledgment—Old debt—Renewal—Promissory note and receipt executed—Inadmissibility of promissory note—Receipt can serve as an acknowledgment—Right to interest.*

Where in renewal of an old debt a promissory note and a receipt are executed and the promissory note is found to be inadmissible owing to insufficiency of stamp the receipt can be relied upon as an acknowledgment of liability within the meaning of S. 19 of the Limitation Act. In such a case the interest on the original loan which was calculated up to the date of the receipt as shown therein may be allowed, but interest from that date up to the institution of the suit cannot be allowed. (*Bennett, J.*) SUNDER LAL *v.* NANHU. **200 I.C. 515=15 R.O. 12=1942 O.W.N. 343=1942 A.W.R. (C.C.) 222=1942 O.A. 243=A.I.R. 1942 Oudh 388.**

——**S. 19**—Acknowledgment— Partnership—Firm's name given but not signed—Sufficiency. *See* 1941 Dig., Col. 755. HET RAM *v.* SUBHAG CHAND. **16 Luck. 727.**

——**S. 19**—*Acknowledgment—Promissory note—Endorsement stating that amount is paid towards the note—Effect of.*

An endorsement on a promissory note, "paid Rs. 350 towards this promissory note and endorsed the payment hereon," can be read as an acknowledgment of liability under S. 19 of the Limitation Act The use of the words "towards" in itself implies that more remains to be paid, *i.e.*, that the payment is made on account of a larger sum due under the instrument (*Leach, C.J., Krishnaswami Aiyangar and Bell, JJ.*) VENKATA CHELAMIAH *v.* ANNAPOORNAMMA. **I.L.R. (1942) Mad. 590=201 I.C. 586=15 R.M. 344=55 L.W. 240 (2)=1942 M.W.N. 325=A.I.R. 1942 Mad. 353=(1942) 1 M.L.J. 469 (F.B.).**

——**S. 19**—"*Acknowledgment*"—*Statement of liabilities initialled by debtor—Sufficiency to save limitation.*

A statement of liabilities which is initialled by the debtor at the end or bottom in acknowledgment of its correctness is an "acknowledgment" which would save limitation under S. 19. (*Leach, C. J. and Byers, J.*)

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RAJAH OF TARLA *v.* RAMA RAO PANTULU. I.L.R. (1942) Mad. 927=1942 M.W.N. 532=55 L.W. 398 =A.I.R. 1942 Mad. 680=(1942) 2 M.L.J. 242.

——S. 19—*Acknowledgment—Writing signed by debtor containing details of account and stating amount due—Recital of handing over to creditor of title-deeds of value of debt—Use of word* "bhuktan"—*If denotes novation—If saves limitation.*

A writing by the debtor containing the details of the account of the creditor, stating that a specific amount is due to the creditor on the date of the writing and signed by the debtor is unquestionably an acknowledgment satisfying the requirements of S. 19 of the Limitation Act. Where it is further recited that the debtor has handed over to the creditor documents in his favour the value of which is equivalent to the amount of the debt due to the creditor, without any formal assignment, the mere fact that the word "*bhuktan*" is used (meaning satisfied in full) would not make the writing anything other than an acknowledgment. In the absence of a formal assignment of the title-deeds in favour of the creditor, there is no novation of a contract within the meaning of S. 62 of the Contract Act, but only an inchoate proposition or arrangement for the liquidation of the debt. It cannot therefore be held that the writing is not an acknowledgment sufficient to save limitation. (*Varma and Manohar Lall, JJ.*) RAM DIN SINGH *v.* RAMPARICHHAN SINGH. 199 I.C. 657=8 B.R. 608=14 R.P. 616=22 Pat.L.T. 1057=A.I.R. 1942 Pat. 170.

——S. 19—Admission of liability in application before a Debt Conciliation Board—If saves limitation *See* 1940 Dig., Col. 787. JAWANMAL *v.* AKAJI ANAND. I.L.R. (1941) Nag. 761.

——S 19—'Agent duly authorised'—Judge signing deposition of witness—If an agent of the witness. *See* 1940 Dig., Col. 787. GAJADHAR PRASAD *v.* UDAI CHAND. I.L.R. (1942) Nag. 182

——S. 19—Applicability—Acknowledgment of liability—What constitutes—Acknowledgment of liability of particular debt—Necessity for. *See* 1941 Dig., Col. 756. OFFICIAL ASSIGNEE, MADRAS *v.* NATESA ACHARI. 198 I.C. 611=14 R.M. 481=(1941) 2 M.L.J. 460.

——Ss. 19 and 20—Applicability—Promissory note —Payment and endorsement as being towards note—Payment not appropriated—Sufficiency to save limitation as acknowledgment. *See* 1941 Dig., Col. 756. RAMAYYA *v.* ANJAYYA. I.L.R. (1942) Mad. 405= 201 I.C. 182=15 R.M. 264=1942 M.W.N. 31=A.I.R. 1942 Mad. 146=(1941) 2 M.L.J. 848.

——Ss. 19 and 20—*Relative scope—Payment in respect of promissory note and payment towards amount due under note—Distinction—Payment ineffective under S.* 20—*If can amount to acknowledgment under S.* 19.

Ss. 19 and 20 of the Limitation Act are quite independent of each other. A document may be an acknowledgment within S. 19, although that does not evidence part-payment within S. 20. Whether in any particular case the document relied on amounts to an acknowledgment must depend on the language of the document while a statement that something has been paid "in respect to a promissory note" does not involve any admission that something more remains due on the note, a payment made in part-payment or towards payment of the amount due on the note does involve an admission that there is something more due, and is thus an acknowledgment of the right of the creditor to sue on the note. Where a loan is made by the plaintiff to the defendant, which is entered in the khata of the plaintiff, the entry being signed by the defendant, and within three years of the loan an entry is made in the khata signed by the defendant, to the effect, "credited Rs. 30-10-0 on December 15, 1934, as the price of paddy"..."This has been credited this day, 10th April, 1935, towards the above amount" and the payment is not made in respect of interest but the creditor appropriates it towards the interest, the payment does not operate to save limitation under S. 20 of the Limitation Act, because it is neither a payment of interest as such within the first paragraph of S. 20, nor a part-payment of the principal within the second paragraph of S. 20. But the endorsement does clearly amount to an acknowledgment within S. 19 and saves limitation. (*Beaumont, C.J. and Wadia, J.*) KESARMAL INDAJI SHET *v.* NARAYAN VIDYADHAR. I.L.R. (1942) Bom. 512=202 I.C. 277=15 R.B. 146=44 Bom.L.R. 426=A.I.R. 1942 Bom. 218.

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——S. 19—Scope—If provides new rule of limitation—Minority of plaintiff on date of acknowledgment of debt—Effect on limitation. *See* LIMITATION ACT, SS. 6 AND 19. 44 Bom.L.R. 522.

——Ss. 19 and 21—Scope—Mortgage by Mahomedan—Death of mortgagor—Acknowledgment by some co-heirs—Effect of—Claim barred as against some heirs—If barred as a whole. *See* 1941 Dig., Col. 757. HAKIM SAIYID FIDA ALI *v.* BHUNESHWARI KUAR. 199 I.C. 566=8 B.R. 600=14 R.P. 602=23 Pat.L.T. 431=A.I.R. 1942 Pat. 73.

——S. 19—Separate remedies in respect of same transaction—Acknowledgment in respect of one—If saves limitation as regards the other—Promissory note for unpaid purchase money—Acknowledgment—If saves limitation for suit to enforce vendor's lien for unpaid purchase money. *See* 1941 Dig., Col. 757. SAYED ABDUL HUG *v.* USMAN KHAN. 201 I.C. 172=15 R.M. 256=1942 M.W.N. 102=A.I.R. 1942 Mad. 167.

——S. 19—"*Signed*"—*Meaning of.*

"Signed" in S. 19 includes initialling; it is not necessary that there should be a full signature. (*Leach, C. J. and Byers, J.*) RAJAH OF TARLA *v.* RAMA RAO PANTULU. I.L.R. (1942) Mad. 927=1942 M.W.N. 532=55 L.W. 398=A.I.R. 1942 Mad. 680=(1942) 2 M.L.J. 242.

——S. 19 (1)—*Acknowledgment—Mortgagor acknowledging prior mortgage in later deed—If saves limitation as against intermediate mortgagees.*

Agarwala, J.—An acknowledgment by the mortgagor of a prior mortgage in a later mortgage executed by him is sufficient to save limitation as against intermediate mortgagees who hold mortgages executed before the acknowledgment. To confine the word "acknowledgment" in S. 19 of the Limitation Act to an acknowledgment made prior to a transfer or mortgage would be to add to or alter the language of the section. (*Agarwala and Manohar Lall, JJ.*) RAMLAGAN SINGH *v.* RAM BILOCHAN SINGH. 198 I.C. 3=8 B.R. 316=14 R.P. 377=1941 P.W.N. 667=A.I.R. 1942 Pat. 166.

——S. 20—Acknowledgment of payment—Signature of debtor—If necessary. *See* 1941 Dig., Col. 757. GOBIND RAM *v.* CHUNI RAM JAMUNA DAS. A.I.R. 1942 Pat 47.

——S 20—*Applicability—Dekkhan Agriculturists' Relief Act, S.* 3 (*w*)—*Suit under—Benefit of S* 20, *Limitation Act—If available—Limitation Act, S.* 29.

The effect of S. 29 of the Limitation Act is that in the case of a suit falling under a special or local law which prescribes a different period of limitation from that in the Limitation Act, the plaintiff will not be entitled to the benefit of S. 20. The Dekkhan Agriculturists' Relief Act is a special or local law, and the benefit of S. 20 of the Limitation Act is not therefore available to

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a plaintiff who brings a suit under the special period of limitation provided for by the Dekkhan Agriculturists' Relief Act, in view of S. 29 of the Limitation Act. S. 20 will not therefore apply to a suit falling under S. 3 (*w*) of the Dekkhan Agriculturists' Relief Act. (*Divatia, J.*) KESHAV KRISHNA *v.* BHAGWAN SAMBU. **200 I.C. 12 =14 R.B. 398=44 Bom.L.R. 138=A.I.R. 1942 Bom. 131.**

——**S. 20**—*Applicability*—"*Interest as such*"—"*Person liable to pay the debt*"—*Mortgage decree*—*Subsequent payment by mortgagor towards principal, interest and costs of decree and endorsement in copy of decree*—*Mortgagor parting with entire mortgaged properties before payment*—*Personal liability not enforceable at time of payment*—*Payment*—*If saves limitation for execution.*

A mortgage decree was obtained on 13—8—1935, and the decree-holder applied for execution on 15—4—1940. For the purpose of saving limitation he relied on a payment of Rs. 79 made by the mortgagor on 15—5—1938, towards the principal, interest and costs of the decree, which payment was endorsed on the decree-holder's copy of the decree. The decree-holder claimed that this payment saved limitation for execution under S. 20 of the Limitation Act. It appeared that the mortgagor clearly contemplated payment not merely on account of principal with or without costs but also on account of interest, though he left the exact appropriation to the decree-holder. It, however, appeared that the mortgagor had parted with all interest in the mortgaged properties before the payment relied on. It was not shown by the decree-holder that the payment was made at a time when he could have enforced any personal liability against the mortgagor.

Held, that the payment made by the mortgagor though it was a payment of interest *as such*, was not made by a "person liable to pay the debt" within the meaning of S. 20 of the Limitation Act as the mortgagor had at the time no longer anything to do with the mortgaged properties against which alone the decree could have been executed, and the payment therefore did not fall within the section so as to save limitation. (*Harries, C.J. and Dhavle, J.*) RAMSWARUP PRASAD SINGH *v.* HARIHAR PRASAD SINGH. **21 Pat. 330= 202 I.C. 54=15 R.P. 85=8 B.R. 839=23 Pat.L.T. 328=A.I.R 1942 Pat. 363.**

——**S. 20**—*Applicability*—*Later mortgagee directed to pay off earlier mortgage and authorised to keep same alive*—*Effect*—*Payment by later mortgagee and endorsement*—*If saves limitation as against intermediate mortgagees.*

Manohar Lall, J.—Where a later mortgagee is directed to pay off an earlier mortgage and authorised to take back the earlier mortgage and keep it with him as evidence and the mortgage deed in favour of the later mortgagee provides that the lien possessed by the earlier mortgagee is to be acquired by the later mortgagee, and the later pays off the amount of principal and interest due to the earlier mortgagee he acquires a right of subrogation under S. 92 of the Transfer of Property Act there being an express right of subrogation created by contract in writing and registered. The payment of interest and principal by the later mortgagee and endorsement thereof by him would operate to save limitation under S. 20 in respect of a suit by him on the earlier mortgage paid off by him as against intermediate mortgagees. (*Agarwala and Manohar Lall, JJ.*) RAMLAGAN SINGH *v.* RAM BILOCHAN SINGH. **198 I.C. 3=8 B.R. 316=14 R.P. 877=1941 P.W.N. 667 =A.I.R. 1942 Pat. 166.**

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——**S. 20**—*Applicability*—*Open payments*—*No evidence as to appropriation by creditor towards principal or interest as such*—*If save limitation.*

In the case of payments on account, where it is not clear whether the creditor ever appropriated them specifically towards principal or interest, but it is clear that they were never paid towards principal and were never paid towards interest as such, it must be held that those payments do not prevent the running of time against the creditor. (*Harries, C. J. and Manohar Lall, J.*) SHYAM BALLAV NANDI *v* DOLGOBIND SAHU. **200 I C. 306=8 B.R. 665=14 R.P. 649=24 Pat L.T. 21 =8 Cut.L.T. 1=A.I.R. 1942 Pat. 395.**

——**S. 20 (as amended in 1942)**—*Applicability*—*Suit decided and revision pending when amendment came into force.*

Where after a suit on a promissory note had been decided and a revision under S. 25, Provincial Small Cause Courts Act, is pending, the new amended S. 20 of the Limitation Act comes into force, the plaintiff applicant cannot take advantage of it in respect of his case. (*Bennett and Agarwal, JJ.*) DURGA PRASAD *v.* KISHUNI. **202 I.C. 750=15 R.O. 150=1942 A. W.R. (C.C.) 341 (3)=1942 O.W.N. 582=1942 O.A. 498=A I.R. 1942 Oudh 508.**

——**S. 20**—Authority of agent—If may be implied—Common manager appointed under S. 45 of B. T. Act incurring debt—Agreement between him and proprietors that he should pay off debt out of assets—Payment of interest by him—If effective against proprietors. *See* 1941 Dig., Col. 758. SUKUMARI GUPTA *v.* DHIRENDRA NATH ROY. **197 I.C. 869=14 R.C. 401.**

——**S. 20**—Construction—Payment and indorsement by mortgagor after parting with property—If saves limitation against purchaser of equity of redemption. *See* 1941 Dig., Col. 758. THAYYANAYAKI AMMAL *v.* SUNDARAPPA. **I.L.R. (1942) Mad. 308=201 I.C. 218=15 R.M. 274=A.I.R. 1942 Mad. 200=(1941) 2 M.L.J. 913.**

——**S. 20**—*Material date*—*Date of payment or date of endorsement.*

The material date under S. 20 of the Limitation Act is the date of payment and not the date upon which the payment is endorsed. (*Harries, C.J. and Manohar Lall, J.*) SHYAM BALLAV NANDI *v.* DOLGOBIND SAHU. **200 I.C 306=8 B.R. 665=14 R.P. 649=24 Pat.L.T. 21=8 Cut.L.T. 1=A.I.R. 1942 Pat. 395.**

——**S. 20**—Payment by cheque—When amounts to acknowledgment. *See* 1941 Dig., Col. 759. FATIMA REE BEE *v.* OFFICIAL TRUSTEE. **198 I.C. 564=14 R.R. 207.**

——**S. 20**—*Payment towards principal*—*Test.*

Where on one side of the page of the account book is noted the advance of the capital amount and on the other side exactly opposite are noted the payments alleged, the only possible way to interpret such entries is that the amounts are debited against entries on the other side. (*Davies.*) KALYAN MAL *v.* SHANKER. **1941 A.M.L. J. 106.**

——**Ss. 20 and 21**—Pronote by undivided father and son—Payment by father alone—If saves limitation against son. *See* 1941 Dig., Col. 759. JURO RAUTO *v.* ADIKANDA PRADHANO. **22 Pat.L.T. 1054.**

——**Ss. 20 and 21**—Scope—Hindu joint family—Promissory note by manager—Subsequent partition—Payment and indorsement by one member after partition —If saves limitation against other separated members of the family *See* 1941 Dig., Col. 760. RANGASWAMI AYYANGAR *v.* SIVAPRAKASAM PILLAI. **I.L. R. (1942) Mad. 251=198 I.C. 177=14 R.M. 399= (1941) 2 M.L.J. 883 (P.B.).**

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——S. 20 (2)—Applicabiiity—Mortgagee in posses sion after preliminary decree under invalid contract of sale—Receipt of rents and profits—If saves limitation for application for final decree. *See* 1941 Dig.. Col. 760. DORAISAMI NAICKEN *v.* PERIAKARUPPAN CHETTIAR. 199 I.C. 710=14 R.M. 622.

——S. 20 (2)—Applicability—Usufructuary mortgagee in possession after final decree—Receipts of profits—If saves limitation. *See* 1941 Dig., Col. 761. RAMASWAMI CHETTIAR *v.* KESAVAN CHETTIAR. I. L.R. (1941) Mad. 963=200 I.C 543=15 R.M. 104=(1941) 2 M.L J. 248.

——S. 20(2)—Applicability—Usufructuary mortgage —Final decree in suit on—Appropriation of income by mortgagee in possession—If saves limitation for execution of decree on mortgage. *See* 1941 Dig., Col. 761. KESAVAN CHEETIAR *v.* RAMASWAMY CHETTIAR. 198 I.C. 816=14 R.M. 500=(1941) 1 M.L.J. 116.

——S. 21—*Lawful guardian—Minor in joint Hindu family—Power to make valid acknowledgment on behalf of—Right of person other than manager.*

It is well-established law that in respect of a minor's interest in a joint Hindu family property the manager of the family alone can bind the minor within certain limits and no guardian of property can be appointed or recognised. Where a minor has separate guardian for his person and for his property, it cannot be said that an acknowledgment by the guardian of his person, *e.g.*, his mother falls within S. 21 of the Limitation Act. The section clearly contemplates the guardian of his minor's property making acknowledgments on his behalf; and in the case of a minor in a joint family it is only the manager of the family who can bind the minor by a valid acknowledgment. (*Patanjali Sastri, J.*) SARA DAMBAL AMMAL *v.* KUPPUSWAMI SASTRIGAL 208 I.C. 212=15 R.M. 604=1942 M.W.N 539=55 L. W. 529==A.I.R 1942 Mad 663=(1942) 2 M.L.J. 281.

——S. 21—Payment by co-contractor—If saves limitation against others. *See* 1941 Dig.. Col. 761. JNAN CHANDRA MUKHERJI *v.* MANORANJAN MITRA. I.L.R. (1941) 2 Cal 576=201 I.C. 138=15 R.C. 130 =A I.R. 1942 Cal 251.

——S. 22—*Addition after limitation of unnecessary party on his own application—Such party if can plead bar of limitation.*

If a party is added after limitation the suit is not necessarily barred by time against him. But if a party who is not a necessary party to the suit applies to be impleaded as a party after the period of limitation and is added as a party, he cannot turn round and plead that the suit is barred by limitation. (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARKASH RANI. 1942 O.A. 567=1942 A.W R. (C.C.) 355=1942 A.L.J. 766.

——S. 22—Applicability—Suit against estate of deceased with wrong legal representative as defendant—Subsequent addition of right legal representatives after period of limitation—Effect—Claim—If barred. *See* 1941 Dig., Col 762. SUBBIAH AMBALAM SERVAI *v.* UNNAMALAI ACHI. 200 I.C. 725=15 R.M 116=(1941) 1 M.L.J. 580.

——S. 22—Applicability—Suit in time—Joinder of persons subsequently—Cause of action against such persons accruing during pendency of suit—Effect of. *See* 1941 Dig., Col. 762. KUNJA BEHARI MISRA *v.* BENDUDHAR PANDA. 197 I.C 739=14 R P 350=23 Pat.L.T. 412=8 B R. 291=A I.R. 1942 Pat 185 (2).

——S. 23—*Applicability—Public land—Encroachment upon—Limitation in favour of person encroaching —Public land and private land—Distinction.*

LIMITATION ACT (1908), S. 23.

There is nothing in S. 23 of the Limitation Act upon which a distinction can be made between the case of an encroachment upon private land and that of an encroachment upon public land. Whether the wrong is a continuing one or not must depend upon the nature of the wrong and not upon the nature of the land over which it is committed. If in the one case limitation may run, there is no reason why it should not also run in the case of a precisely similar act committed upon public land. (*Fazl Ali and Meredith, JJ.*) KUSESHWAR JHA *v.* UMA KANT JHA. 197 I C. 818=14 R.P. 371=8 B.R. 302=22 Pat.L.T. 1001=A.I.R. 1942 Pat. 188.

——S. 23—Applicability—Suit by Union Board for possession of land as part of public road. *See* 1941 Dig., Col. 763. DHAJADHARI GHOSH *v.* UNION BOARD OF KHENDRAGORIA. 200 I.C. 386=15 R.C. 1=A.I.R. 1942 Cal 151.

——S. 23 and Art. 142—*Applicability—Suit for possession—Continuing wrong or dispossession—Test—Allegation that defendant had encroached on common land—Plea by defendant that he has been in possession for over twelve years—Limitation.*

In a case where one party complains of encroachment upon common land by the other party and the latter pleads that he has been on the land for over the statutory period, the real question is not whether the wrong is continuing or not, but whether the wrong amounts to a complete ouster of the plaintiff by the defendant that is, to his dispossession. When it is a case of dispossession and the suit is for possession of the land by ejectment of the defendant, Art. 142 of the Limitation Act governs the suit, and the plaintiff's suit must be within 12 years of his ouster. In view of Art. 142 read with S. 28 of the Limitation Act, the plaintiff clearly can have no right of suit after the expiry of 12 years from the date of his dispossession. Once it is found that the plaintiff's right is extinguished by the operation of S. 28, it is quite irrelevant whether the wrong is technically continuing or not, so far as the question of recovery of possession of that land is concerned. The plaintiff cannot recover it because he has no longer any right in that property. (*Fazl Ali and Meredith, JJ.*) KUSESHWAR JHA *v.* UMA KANT JHA. 197 I.C. 818=14 R.P 371=8 B.R. 302=22 Pat.L.T. 1001=A.I.R. 1942 Pat. 188

——S. 23—*Continuing wrong—Obstruction to a right of way—Limitation—Fresh period.*

An obstruction which prevents some one from exercising a right of way falls within the scope of the term 'continuing wrong' and a fresh period of limitation begins to run under S. 23, Limitation Act, at every moment of the time during which the wrong continues. (*Yorke, J.*) MASOOMA BIBI *v.* MOHAMMAD SAID KHAN. 198 I C. 532=14 R.A. 289=1942 R D. 20=1942 O.A. (Supp.) 530=1941 A W R. (H.C.) 376=1941 A.L. J. 706=A.I.R. 1942 All. 77.

——S. 23—*Scope—How far affected by S. 28—Continuing wrong—Wrong and its effects—Distinction—Trespasser continuing in possession for over 12 years —Effect on right of suit.*

A distinction has to be made between the continuance of a legal injury and the continuance of its injurious effects. There is no perpetual right of suit under S. 23, on the ground that an encroachment is a continuing wrong, when the trespass itself gives rise to rights extinguishing any right of suit under S. 28 of the Limitation Act. When the wrong amounts to dispossession of the plaintiff, then, even though it may be a continuing wrong, the plaintiff cannot recover possession after the expiry of 12 years, because under S. 28 of the Limitation Act

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the plaintiff himself would have got no right left which he can enforce by suit. (*Faxl Ali and Meredith, JJ.*) KUSESHWAR JHA *v.* UMA KANT JHA. **197 I.C. 818 =14 R.P. 371=8 B.R. 302=22 Pat.L.T. 1001=A.I.R. 1942 Pat. 188.**

——**S. 26 (2)**—*Acquisition of easement against transferee from Crown—Period requisite.*

An easement against a transferee of the servient tenement from the Crown can be acquired by an enjoyment as of right without interruption for a period of 20 years, and to make up this period the period during which the land had been in the hands of the Government can be tacked on. The word 'belongs' in S. 26 (2) of the Limitation Act should be given its plain meaning and should not be interpreted by a forced construction as equivalent to "has belonged." (*Dalip Singh and Din Mahomed, JJ.*) SAYA RAM DAS *v.* LAHORE ELECTRIC SUPPLY CO., LTD. **200 I.C. 438=14 R. L. 467=44 P.L.R. 116=A.I.R. 1942 Lah 124.**

——**S. 28**—*Applicability—Suit for possession of property—Suit to recover assessment on land—If one for possession of property.*

Although a right to assessment on land may for certain purposes be regarded as immovable property, it is impossible to hold that a suit to recover assessment is a suit for possession of property within the meaning of S. 28 of the Limitation Act. A right to recover assessment is a mere right in action, and cannot be lost by failure to bring a suit for possession of such property for 12 years. (*Beaumont, C.J. and Wadia, J.*) BALKRISHNA KHANDERAO *v.* ANANTABAJI. **I.L.R. (1942) Bom. 326=201 I.C. 120=15 R.B. 58=44 Bom.L.R. 288=A.I.R. 1942 Pat. 174.**

——**S. 28**—*Extinction of title.*

If the owner whose property is encroached upon suffers his right to be barred by the law of limitation the practical effect is the extinction of his title in favour of the party in possession. Consequently where the executor holds the property adversely to the heir for upwards of 12 years on behalf of the charity for which it was dedicated, the title to it, acquired by prescription, becomes vested in the charity and that of the heir if he had any, becomes extinguished by operation of S. 28. (*Sir Madhavan Nair.*) HEM CHAND *v.* PEARY LAL. **203 I.C. 1=15 R.P.C. 52=47 C.W.N. 46 (2)=9 B. R. 70=1942 A.L.J. 718=1943 A.L.W. 7=56 L.W 8=1943 O.W.N. 1=45 P.L.R. 36=A.I.R. 1942 P.C. 64=(1943) 1 M.L.J. 11 (P.C.).**

——**S. 28**—*Operation of—Suit filed within 12 years of dispossession—Possession actually obtained after that period.*

The institution of a suit for possession within 12 years of dispossession is sufficient to bar the operation of S. 28 of the Limitation Act, although possession is actually obtained under the decree passed in the suit after that period. (*Biswas, J.*) MAHARAM ALI *v.* MOBARAK ALI. **46 C.W.N. 551.**

——**S. 28**—Scope and effect of—Adverse possession—Nature of rights acquired by. *See* 1941 Dig., Col. 763. MAHOMED YUSUF *v.* SARJU SINGH. **198 I.C. 496=14 R.A. 285=A.I.R. 1942 All. 42**

——**S. 29**—Construction and scope—"Special or local law"—Dekkhan Agriculturists' Relief Act, S. 3 (w)—Suit under—Benefit of S. 20—If available. *See* LIMITATION ACT, S. 20. **44 Bom.L.R. 138**

——**S. 29 (2) (a)**—*Applicability of sections enumerated into petitions under Prov. Insol. Act.*

Per *Iqbal Ahmad, C.J.*—If a special or local law is a complete code in the matter of 'limitation' or if the phraseology of the sections enumerated in S. 29 (2) makes those sections inapplicable to proceedings under a special or local law, the application of those sections to the special or local law must be deemed to have been expressly excluded by the Legislature. The Prov. Insol. Act is a self contained Act in the matter of 'limitation' with respect to proceedings contemplated by the Act. It follows that the general provisions of the Lim. Act, other than those specified in Provincial Insol. Act, cannot be appealed to for determining the periods of limitation as regards proceedings under the latter Act. A petition for insolvency either under S. 9 or S. 13 of the Act is not an application and hence S. 29 (2), Lim. Act, which makes provision for the determination of the periods of limitation prescribed 'for any suit, appeal or application by special or local law' can obviously have no application to petitions under the Insol. Act. (*Iqbal Ahmad, C.J., Dar and Plowden, JJ.*) RAJA PANDE *v.* SHEOPUJAN PANDE. **204 I.C. 1=1942 A.W.R. (H.C.) 368=1942 A.L.W. 635=1942 A.L.J. 592=A.I.R. 1942 All. 429 (F.B.).**

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——**Art. 2**—Applicability—Suit for damages against Police Officers for wrongful restraint—Limitation—Starting point. *See* GOVERNMENT OF INDIA ACT, S. 270. **(1942) 2 M.L.J. 14.**

——**Arts. 2 and 36**—*Availability of protection under Art. 2—Wilful and malicious act.*

No doubt Art. 2 of the Limitation Act makes no reference whatsoever to *bona fides* and *mala fides*. But the protection of the Article cannot be claimed by a defendant where it is shown and found that the act complained of was a wilful and malicious act which the defendant could not have committed in the honest belief that he was justified in doing it under any enactment—and a suit in respect of such an act may be filed within the time limited by Art. 36. (*Yorke, J.*) BISHESHWAR PRASAD PANDEY *v.* LACHMAN PRASAD. **1942 A.L.W. 63.**

——**Art. 10**—*Physical possession contemplated by—Construction of statement in sale deed as to delivery of possession.*

The physical possession contemplated by Art. 10, Limitation Act, does not consist of formal statements by third parties but of physical control visible to other people, which gives notice of a change. Where a sale deed contained a statement that "the immovable property as above has been sold for the above amount and the possession has also been delivered. It is as follows. Excluding the standing crop which is in the field, the possession has been delivered of the black soil," it was *held* that the statement cannot be regarded as evidence which warranted in law the conclusion that transfer of physical possession within the meaning of Art. 10, Limitation Act, took place at the time of sale. (*Digby, J.*) GANPAT ISHNAJI *v.* CHANDRABHAGABAI. **204 I.C. 20=1942 N.L.J. 567=A.I.R. 1943 Nag. 90.**

——**Art. 10**—*Sale of share of joint holding—Deed purporting to sell occupancy rights by mistake—Subsequent deed correcting misdescription and substituting sale of proprietary rights—Limitation for pre-emption—Terminus-a-quo.*

A sale of an undivided share of a joint holding does not admit of physical possession and is, therefore, governed by the second part of Art 10 of the Limitation Act and the *terminus a quo* is the date of the registration of the instrument of sale. Where a deed of sale of a share in an undivided holding which was executed and registered, purported to sell occupancy rights but subsequently another deed reciting the sale of proprietary rights in the same land was executed and registered, and this deed recited that the mention of occupancy rights in the earlier deed was made under a misconception, that the parties had intended to sell proprietary rights and that

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the object of the later deed was to correct the misdescription and to substitute therefor the sale of proprietary rights, the limitation for pre-emption runs from the date of registration of the second deed. The reason why Art. 10 of the Limitation Act lays down that the *terminus a quo* is the date of the registration of the deed of sale (in cases where the subject of the sale does not admit of physical possession) is that the date of registration is the date on which the public must be presumed to know that the transfer has taken place. The registration of the earlier deed which conveyed the sale of occupancy rights cannot be presumed to inform any one interested that a sale of proprietary rights had taken place. The necessary publicity could only be given by the registration of the later deed of sale of proprietary rights. From the point of view of publicity and notoriety, it is wholly immaterial that the later deed is not the actual deed of conveyance but merely a deed correcting a misdescription of the nature of the transaction mentioned in the earlier deed. (*Sale, J.*) WASAKHA SINGH *v.* MAHOMED HUSSAIN. **200 I.C. 81=14 R.L. 442=44 P.L.R. 99=A.I.R. 1942 Lah. 118.**

——**Art. 11**—Applicability—Claim petition—Dismissal after sale as not tenable—Suit within one year—Failure to institute—Effect of. *See* C. P. CODE, O. 21, R. 63. **44 Bom.L.R. 548.**

——**Art. 11**—Applicability—Execution by Collector—Application to order sale subject to mortgage—Rejection—If falls under O. 21, R. 63, C. P. Code—Suit within one year to set aside order—If necessary. *See* C. P. CODE, O. 21, R. 63. **44 Bom. L.R. 819.**

——**Art. 11**—Applicability—Order dismissing claim for default if "against" claimant—Suit within one year—If necessary. *See* C. P. CODE, O. 21, R. 63. **8 Cut. L.T. 93.**

——**Art. 12**—Applicability—Declaratory suit. *See* 1941 Dig., Col. 764. FAZLAR RAHIM *v.* KHORSED ALAM. **199 I.C. 403=14 R.C. 542.**

——**Art. 12**—*Applicability—Suit to declare that plaintiff's interest in property is not affected by sale and confirmation thereof—No prayer to set aside sale—Limitation.*

Art. 12 of the Limitation Act has no application to a suit in which the plaintiff does not want a sale to be set aside but merely asks for a declaration that, notwithstanding the sale in question, the interest which he has in the property sold is not affected by the sale in question or the confirmation thereof. (*Harries, C.J. and Manohar Lall, J.*) BANARSI DAS *v.* BHAWANI KUER. **202 I.C. 57=15 R.P. 83=8 B.R. 843=23 Pat L.T. 364=A.I.R. 1942 Pat. 386.**

——**Art. 12**—*Applicability—Void sales—Sales in proceedings to which plaintiff not a party.*

Art. 12 of the Limitation Act does not apply to void sales. It applies only to cases where the plaintiff was a party to the proceedings in which the sale was held. (*Bennett, J.*) AMJAD ALI *v.* EJAZ RASUL KHAN. **17 Luck. 456=198 I.C. 107=14 R.O. 373=1941 O.W.N. 1328=1941 A.W.R. (Rev.) 1152=1941 O.A. 1013=A.I.R. 1942 Oudh 120.**

——**Art. 12 (a)**—Applicability—Sale on basis of mortgage decree. *See* 1941 Dig., Col. 765. MAHOMED BAKHSH *v.* ALLAH DIN. **17 Luck. 1=A.I.R. 1942 Oudh 33.**

——**Art. 23**—*Starting point of limitation under—Pendency of revision and reference.*

Limitation for a suit for malicious prosecution begins to run when the proceedings are terminated by acquittal or otherwise and the proceedings cannot be said to terminate when they are pending in any appellate or revisional Court or by way of reference. (*Agarwal and*

LIMITATION ACT (1908), Art. 49.

Madeley, JJ.) BHIKHAM SINGH *v.* DARSHAN SINGH. **1942 O.A. 348=1942 O.W.N. 446=1942 A.W.R. (C.C.) 300 (1)=A.I.R. 1942 Oudh 489.**

——**Art. 29**—*"Legal process"—Meaning of—Collector acting under S. 154, Bombay Land Revenue Code—If Court—Seizure by Collector under S. 154—If under "legal process."*

The words "under legal process" in Art. 29 of the Limitation Act cannot be interpreted as meaning according to law and there is no justification for holding that any process taken according to law is legal process. By "legal process" is meant procedure by some sort of Court. The Collector acting under S. 154 of the Bombay Land Revenue Code is not acting as a Court, but is really acting as a creditor. Art. 29 applies to a seizure under a process issued by a Court, and does not apply to a seizure by the Collector under S. 154 of the Bombay Land Revenue Code. (*Beaumont, C. J. and Sen, J.*) SHIVRAO SHESGIRI *v.* SECRETARY OF STATE. **203 I.C. 611=44 Bom.L.R. 668=A.I.R. 1942 Bom. 300.**

——**Art. 30**—Starting point—Onus. *See* 1941 Dig., Col. 765. EAST INDIAN RAILWAY *v.* GOPILAL SHARMA. **199 I.C. 437=14 R.C. 553.**

——**Art. 32**—Suit for ejectment of occupancy tenant—Allegation of several acts of waste—Right to sue—When accrues. *See* B.T. ACT, S. 155. **46 C.W.N. 786.**

——**Arts. 36, 29 and 2**—*Suit for damages for wrongful seizure of goods by Official Receiver—Article applicable.*

A suit for damages for wrongful seizure of goods by the Official Receiver acting at the instance of a creditor and not under the orders of the Insolvency Court is governed by Art. 36 of the Lim. Act and neither Art. 2 nor Art. 29 applies to such a case. (*Ganga Nath and Hamilton, JJ.*) JHAMDUMAL SHYAM LAL *v.* JANKI BALLABH TRIPATHI. **1942 A.L.W. 599.**

——**Art. 47**—*Applicability—Proceedings under S. 145, Cr. P. Code, consigned to records.*

Art. 47 of the Limitation Act does not apply where there has been no order for possession by the Magistrate under S. 145, Cr. P. Code, but the proceedings under that section have been consigned to records by the agreement of the parties. (*Lord Thankerton.*) JAGATJIT SINGH *v.* PARTAB BAHADUR SINGH. **8 B.R 831=1942 O.A. 390=1942 A.W.R. (P.C.) 37=1942 O.W.N. 508=201 I.C. 499=18 R.P.C. 19=55 L.W. 597=1942 A.L.W. 488=1942 P.W.N. 213=44 Bom L.R. 868=47 C.W.N. 38=A.I.R. 1942 P.C. 47=(1942) 2 M.L.J. 384 (P.C.).**

——**Art. 47 and S. 28**—*Order against co-sharer under S. 145, Cr. P. Code—Suit not brought within time—His title, if extinguished.*

A suit for joint possession by a co-owner bound by an order passed under S. 145, Cr. P. Code, in favour of his co-owner whose exclusive possession is maintained by that order comes within Art. 47 of the Limitation Act. If such a suit is not brought within the period prescribed by that article, the title of the co-sharer bound by the order will be extinguished by reason of S. 28 of the Limitation Act. (*Mitter and Khundkar, JJ.*) KHALEQUE NAWAZ KHAN *v.* LABIBUDDIN AHMED. **I.L.R. (1942) 2 Cal. 332=46 C.W.N. 817=A.I.R. 1943 Cal. 67.**

——**Arts. 49 and 2**—Applicability—Inspector destroying tin of ghee seized by him under Punjab Pure Food Act after order of release by Magistrate—Suit to recover tins or value thereof. *See* PUNJAB PURE FOOD ACT, S. 7. **A.I.R. 1942 Pesh. 57.**

——**Art. 49**—*Starting point—Suit for return of empty oil drums—Limitation—Starting point—Defen-*

LIMITATION ACT (1908), Art. 49.

dant's possession—When becomes unlawful—Mere demand by plaintiff for return—Sufficiency.

Possession, which to start with is permissive, cannot become unlawful until he asserts a title in himself or until he refuses to return possession. A mere demand by the plaintiff would not be enough. A suit by an owner for recovery of certain empty oil drums or their value from the defendant who had taken them on loan undertaking to return them whenever required, is in time and not barred by Art. 49 of the Limitation Act, if filed within three years of the refusal by the defendant to return them, though beyond three years of the date of demand by the plaintiff. (*Somayya, J.*) KUPPUSWAMI MUDALIAR *v.* PANNALAL SOWCAR. **55 L.W. 56=1942 M.W.N. 348=A.I.R. 1942 Mad. 303=(1942) 1 M.L.J. 187.**

——**Art. 49**—*Word 'other'—Meaning of.*

The word 'other' in Art. 49 means specific movable property in general as distinguished from the movable property mentioned in the previous articles. (*Mir Ahmad, J.*) HARNAM SINGH *v* N. W. F. PROVINCE GOVERNMENT. **202 I.C. 218=15 R. Pesh. 38=A.I.R. 1942 Pesh. 57.**

——**Arts. 52 and 85**—*Applicability— Supply of different goods on different dates—Absence of agreement as to period of credit—Debtor supplying goods to creditor in part payment—Limitation for suit—Starting point.*

The fact that the debtor has supplied to the creditor certain articles or goods in partial discharge of the monies due by him to the creditor cannot alter the character of the account between the parties and bring it within the ambit of Art. 85 of the Limitation Act. Nor would the mere supply of different goods on different dates to the debtor give rise to a fresh period of limitation from the date of the last supply. If no period of credit has been agreed upon, Art. 52 would obviously apply and limitation would start from the date of the delivery of the goods on each occasion, unless the case can be brought under Art. 85. (*Abdur Rahman, J.*) LAKSHMANAN CHETTIAR *v* NALLA SEVUGAM SERVAI. **55 L.W. 585=1942 M.W.N. 561=A.I.R. 1943 Mad. 13=(1942) 2 M.L.J. 337.**

——**Art. 56**—*Applicability—Suit by Advocate for fees.*

A suit by an Advocate for his fees when there is no contract, is governed by Art. 56 of the Limitation Act. (*Mitter and Khundkar, JJ.*) SACHINDRA NATH CHATTERJEE *v.* BENGAL NAGPUR RY. CO., LTD. **201 I.C. 650=15 R.C. 263=75 C.L.J. 7=A.I.R. 1942 Cal. 444.**

——**Arts. 57 and 96**—Applicability—Banker and customer—Customer drawing cheques on Bank without funds to his credit—Bank honouring same through carelessness of clerk or officer—No evidence of misapprehension of there being any security—Limitation for suit. *See* 1941 Dig., Col. 767. UMA SHANKAR PRASAD *v.* BANK OF BIHAR, LTD., **197 I.C. 449=14 R.P. 309=8 B.R. 218=1942 Comp. C. 35=A.I.R. 1942 Pat. 201.**

——**Arts. 60 and 62**—*Applicability—Suit to recover surrender value of a life insurance policy.*

It is essential for a claim to fall under Art. 62, Limitation Act, that the money must at the time of its receipt by the defendant belong to the plaintiff. That term could hardly be applied to a surrender value in a life insurance policy which grows from year to year and does not even begin to accrue until a certain number of premia has been paid. It is Art. 60 that would apply to such a claim and a suit would be in time when the demand is made less than 3 years prior to suit. (*Grille,*

LIMITATION ACT (1908), Art. 62.

J.) ANNAPURNABAI *v.* HINDUSTAN CO-OPERATIVE INSURANCE CO., LTD. **203 I.C. 193=15 R.N. 113=1942 N.L.J. 380=A.I.R. 1943 Nag. 9.**

——**Arts. 62 and 120**—Applicability—Claim against fraudulent transferee from benamidar—If falls under Art. 62—Trust—If exists between benamidar and real owner. *See* 1941 Dig., Col. 768. DEVARAJALU NAIDU *v.* JAYALAKSHMI AMMAL. **200 I.C. 249=15 R.M. 18=(1941) 2 M.L.J. 222.**

——**Arts. 62, 97 and 120**—*Applicability—Contract of sale—Sale avoided by seller for failure of buyer to complete payment—Suit by buyer to recover part price paid—Money paid as consideration in part—Limitation.*

Consideration in a contract of sale is not money paid for the use of the payer, so as to attract the operation of Art. 62 of the Limitation Act, except perhaps when the contract is of such a nature that it is void in law *ab initio*. A test for the applicability of Art. 62 is whether when the money was paid it was recoverable immediately by the plaintiff. Art. 97 and not Art. 62 would govern a suit for recovery of part purchase price paid on sale which afterwards goes off by reason of the failure of the buyer to complete payment. Art. 120 also cannot be applied to such a case. (*Davis, C.J. and Weston, J.*) MADHAVDAS PARMANAND *v.* JAN MAHOMED. **I.L.R. (1941) Kar. 495=199 I.C. 438=14 R.S. 161=A.I.R. 1942 Sind 37.**

——**Arts. 62 and 96**—Applicability—Execution sale—Subsequent suit by defeated claimant under O. 21, R. 63, C. P. Code—Decree—Suit by purchaser for purchase money from decree-holder—Limitation—Starting point—Mistake. *See* 1941 Dig., Col. 768. RUDRAYYA *v.* SUBBARAYAPPA. **200 I.C. 722=15 R.M. 119.**

——**Arts. 62, 89 and 120**—*Applicability—Loan taken from* Nidhi *on security of shares—Sale of shares—Subsequent suit by debtor for account and for balance—Limitation.*

Art. 62 of the Limitation Act is applicable to cases where the defendant has received money which in justice and equity belongs to the plaintiff but in circumstances where the receipt by the defendant would be regarded in law as a receipt to the plaintiff's use. Where the receipt by the defendant, is on his own account and is not or cannot be regarded as one on behalf of the plaintiff, Art. 62 can have no application. Plaintiff's husband took a loan from the defendant *Nidhi* and placed with the *Nidhi* certain shares which he held in the *Nidhi* as security for the repayment of the loan. The *Nidhi* afterwards sold the shares and adjusted the proceeds towards the amount due. There was a surplus left with the *Nidhi*. After his death, the plaintiff brought a suit against the *Nidhi* for payment of the balance that may be found due to her after giving credit for the yearly dividends on the shares on the one side and after debiting her with any liability incurred by her husband touching the shares on the other.

Held, that suit was governed by Art. 120 of the Limitation Act and neither Art. 62 nor Art. 89 applied to the case. (*Abdur Rahman, J.*) PERIA NEGAMAM SRI LAKSHMI VILASA DRAVIYA SAGAYA NIDHI *v.* VARALAKSHMI AMMAL. **55 L.W. 90=1942 M.W.N. 129=A.I.R. 1942 Mad. 386=(1942) 1 M.L.J. 274.**

——**Arts. 62 and 116**—Applicability—Registered perpetual lease by one of the joint tenants—Covenant to refund nazarana in case of dispossession—Lessee knowing lessor's defect in title—Subsequent dispossession—Suit to recover nazarana paid—Limitation—Starting point. *See* 1941 Dig., Col. 768 AHSAN ALI KHAN *v.* SURAJ NARAIN. **17 Luck. 289=A.I.R. 1942 Oudh 82.**

LIMITATION ACT (1908), Art. 62.

——Art. 62—*Applicability—Suit against Municipality for recovery of licence fees and profession tax wrongly levied—Limitation.*

Art. 62 of the Lim. Act is not confined to an action for money had and received in the strictest sense of the term as understood in the English Common Law Courts and cannot be held to be inapplicable when the action is based not on any implied contract but on the principle of *ex aequo et bono*. Art. 62 is intended to apply to all actions for money had and received to the use of the plaintiff whether they be actions which may be deemed strictly to be based on implied contracts or whether they be merely to enforce an equitable claim to the return of the money had and received. A suit to recover license fees and profession tax alleged to have been wrongfully levied by a Municipality is one to which Art. 62 applies: Such a suit does not fall under Art. 120. (*Wadsworth and Patanjali Sastri, JJ.*) INDIA SUGARS AND REFINERIES, LTD. *v.* MUNICIPAL COUNCIL, HOSPET. **1942 M.W.N. 714=55 L.W. 783=A.I.R. 1943 Mad. 191=(1942) 2 M.L.J. 663.**

——Arts. 62, 89 and 120—Applicability—Suit for money collected by deceased karpardar or agent—Karpardar not liable to make over collections directly on receipt but permitted to keep amounts for litigation expenses of principal—Running account—Limitation applicable. *See* 1941 Dig., Col. 769. SADHU CHARAN PARIJA *v.* KRISHNAMANI DEI. **197 I.C. 674=8 B.R. 269=14 R.P. 338=23 Pat.L.T. 457=A.I.R. 1942 Pat. 181.**

——Art. 62—Applicability—Suit to recover surrender value of a life insurance policy. *See* LIMITATION ACT, ARTS. 60 AND 62. **1942 N.L.J. 380.**

——Art. 62—Applicability—Theft of money—Suit for recovery from thief—Limitation applicable. *See* 1941 Dig., Col. 769. GAFFAR KHAN *v.* SYED NOOR. **200 I.C. 338=15 R.M. 81=(1941) 1 M.L.J. 27.**

——Arts. 62, 109 and 120—Relative applicability—Suit for profits against person entrusted with property for safe custody. *See* 1941 Dig., Col. 769. SHRI MAHADEOJI *v.* BALDEO PRASAD. **I.L.R. (1942) Nag. 92=201 I.C. 220=15 R.N. 33.**

——Art 63—*Suit for principal barred—Suit for interest—If also barred.*

Where there is no independent contract to pay interest, the interest is a mere accessory to the principal and if the principal is irrecoverable, so is the interest thereon. But this principle does not apply if there was a special contract to pay interest at a specified rate. The mortgagee was given possession from the date of the mortgage and the mortgagor agreed to redeem the property after two years by payment of the mortgage sum. Until redemption he was to remain in possession and to say Rs. 10 per month as rent. If he failed to pay rent for three months, then he agreed to pay the remainder of the rent on demand and to pay at an enhanced rate for the future. It was specifically stated that the rent would also be a charge on the mortgaged property. For the payment of the mortgage money and the rent, the mortgaged property, the person and other property of the principal were made liable and the surety then agreed that if the mortgagor did not pay the mortgage money and rent according to the terms of the deed, then he (the surety) would from his pocket pay the mortgage money and the rent on demand and for his payment he made his person and his property of every kind liable.

Held, that in the circumstances there was an independent contract to pay rent and that even if the rent be regarded as interest it was recoverable as being due under a special contract even if the principal was irrecoverable. (*Almond, J.C. and Md. Ibrahim, J.*) HAJI NATHU *v.* NIKKI DEVI. **A.I.R. 1942 Pesh. 85.**

LIMITATION ACT (1908), Art. 89.

——Art 64—"Account stated"—Meaning of. *See* 1941 Dig., Col. 770. NABENDRA NATH BASAK *v.* SHASABINDOO NATH. **197 I.C 321=14 R.C. 332.**

——Art. 64—*Account stated—Nature of acknowledgment forming basis of.*

The acknowledgment which forms the basis of an account stated must be an acknowledgment within time. An account stated may contain some time-barred items and yet the account stated may form the basis of a suit. But if the whole account is time-barred, then the ban imposed by S. 25 (3) of the Contract Act would apply. (*Grille, J.*) GANESH PRASAD *v.* RAMBAT BAI. **I.L.R. (1942) Nag. 369=201 I.C. 550=15 R.N 52=1942 N.L.J. 248=A.I.R. 1942 Nag. 92.**

——Art. 75—*Scope of—Instalment bond with exigibility clause in case of default—General principles governing.*

The Limitation Act does not lay down substantive law and so the exception made in Art. 75 in favour of the creditor who waives, cannot be construed as conferring a right which does not exist under the ordinary law. The Article refers to cases in which the creditor is entitled to exercise the privilege and it cannot apply when under the ordinary law, or by reason of a special contract, he is precluded from doing so. In case of bonds providing for repayment of debts by instalments with exigibility clause in case of default, the general principle is that the person in default should not be allowed to take advantage of his own wrong and these clauses are generally inserted for the creditor's benefit. It follows that unless the bond specially takes away the privilege it must be taken to exist. (*Bose, J.*) GULAB RAO *v.* GANPATI. **203 I.C. 250=15 R.N. 119=1942 N.L.J. 296=A.I.R. 1942 Nag. 138.**

——Art. 85—Applicability—Debtor supplying goods to creditor in part payment of amount due on account—If makes account mutual, open and current account. *See* LIMITATION ACT, ARTS. 52 AND 85. **(1942) 2 M.L.J. 337.**

——Art 85—Applicability—Mutual, open and current account—Meaning of—Banker and customer—Customer drawing money on various occasions by cheques but making only two payments towards interest due on overdraft—Nature of account—Limitation for suit. *See* 1941 Dig., Col. 772. UMA SHANKAR PRASAD *v.* BANK OF BIHAR, LTD. **14 R.P. 309=1942 Comp.C. 35=8 B.R. 218=197 I.C. 449=A.I.R. 1942 Pat. 201.**

——Art. 85—*Mutual, open and current account—Test—Absence of shifting balance—If takes case out of the Article.*

A mutual account within the meaning of Art. 85, Limitation Act, is an account of dealings between two parties which are such as to create independent obligations in favour of one party against another. The fact that the balance was always in favour of one party throughout the entire period of accounting would not take the transaction out of the category of Art. 85 of the Limitation Act. Though a shifting balance is a test of mutuality its absence is not a conclusive proof against mutuality. (*Yorke, J.*) VIDYA RAM *v.* SHANTI LAL. **1942 A.L.W. 321.**

——Art. 85—Scope—If affects S.74, Partnership Act—Suit after 1—10—1933 for debt due and acknowledged before 1—10—1933—Last date of account or of accounting year falling after 1—10—1933—Suit—If barred—S. 74, Partnership Act—If excluded. *See* PARTNERSHIP ACT, S. 74. **I.L.R. (1942) Kar. 442.**

——Art. 89—Applicability—Loan raised on security of shares—Creditor selling shares—Subsequent suit by

LIMITATION ACT (1908), Art. 87,

debtor for surplus and account—Limitation—Relation of principal and agent—If exists. *See* LIMITATION ACT, ARTS. 62, 89 AND 120. **55 L.W. 90=(1942) 1 M.L.J. 274.**

——**Art. 97**— Applicability— Contract of sale—Buyer's failure to complete payment of price—Selling avoiding contract—Suit by buyer for recovery of part price paid—Limitation Act, Arts. 62 and 120. *See* LIMITATION ACT, ARTS. 62, 97 AND 120. **I.L.R. (1941) Kar. 495.**

——**Arts. 97 and 62**—*Applicability—Suit for return of consideration by vendee of mortgagee rights against the vendor on failure of suit on mortgage—Starting point.*

A suit for the return of the consideration by vendee of mortgagee rights against his vendor on the dismissal of a suit on the mortgage which was found to be without consideration and not binding on the heirs of the executants, is governed by Art. 97 and not by Art. 62, Limitation Act for purposes of limitation and the starting point of limitation is the date of the dismissal of the suit on the mortgage when the consideration failed. (*Dar, J.*) BALJEET *v.* SHUDARSHAN DAS. **1942 A.L.W. 50.**

——**Art. 97**—*Mortgagee obtaining sale of mortgaged property after mortgagor's death from guardian of his minor sons—Sale subsequently set aside—Effect on mortgage—Suit by mortgagee for mortgage-money which was set off as part of purchase-money—Limitation—Starting point—Contract Act, S. 65.*

Where after the death of the mortgagor the mortgagee without acting in good faith obtained a sale of the mortgaged property from the guardian of the minor sons of the mortgagor reciting the amount due under the mortgage to be part of the consideration, and the sale was set aside in a subsequent suit brought by one of the minor sons on attaining majority, the mortgagee cannot ask the Court to treat his mortgage as alive in spite of the fact that he had put an end to it by his own act. Since he chose at the time of the sale to abandon his mortgage security and use the money due under the mortgage in part payment of the price of the vended property, the requirements of S. 65 of the Contract Act will be fully satisfied if he gets a money decree for the specific sum of the money which has been lost to him by the sale being set aside. A suit to recover the specific sum which was mentioned in the sale-deed as having been due under the mortgage and which was set off as part of the purchase-money, will be governed by Art. 97 of the Limitation Act, and time will begin to run from the date on which the mortgagee was deprived of the possession of the property. (*Fazl Ali and Shearer, JJ.*) DHANI SAHU *v.* BISHUN PRASAD SINGH. **197 I.C. 498=8 B.R. 230=14 R.P. 316=A.I.R. 1942 Pat. 247.**

——**Arts 103 and 104**—Suit for dower—Divorce by written deed—Limitation—Starting point. *See* 1941 Dig., Col. 773. BURE KHAN *v.* KHADIM BIBI. **198 I.C. 326=14 R.L. 323.**

——**Art. 106**—Partnership for running chit fund—Suit for dissolution and accounts—Starting point—Partnership—When terminates. *See* 1941 Dig., Col. 773. SAMUEL NADAR *v.* THANGAYYA NADAR. **201 I.C. 242=15 R.M. 286=A.I.R. 1942 Mad. 104=(1941) 2 M.L.J. 490.**

——**Arts. 109 and 120**—*Applicability—Claim for mesne profits in respect of property bought at Court auction—Sale set aside—Profits if 'wrongfully received'.*

When an execution sale is set aside even though the purchasers had entered into possession by virtue of a Court sale the profits received, by them would be "wrongfully received" within the meaning of Art. 109, Limitation Act and any suit in respect of it would only be governed by that Article and not by Art. 120. (*Allsop and Verma, JJ.*) RAM CHARAN *v.* BANSIDHAR. **203 I.C. 223=15 R.A. 231=1942 A.L.J. 411=1942 A.W.R. (H.C.) 278=1942 A.L.W. 380=A.I.R. 1942 All. 358.**

LIMITATION ACT (1908), Art. 109,

——**Arts. 109 and 120**—*Applicability — Person recognised as landlord by Collector under S. 3 (5) of the Madras Estates Land Act—Receipt of rents and profits—If wrongful—Suit by person ultimately declared by Civil Court to be entitled to estate for accounts of rents and profits—Limitation applicable—Starting point—Final decision by Civil Court—If gives fresh cause of action—Implied contract—Interest—Right to.*

It cannot be laid down as a general rule that whenever a person finds an impediment in the way of his successfully asserting his right to relief his cause of action is suspended and the course of time interrupted until such impediment is removed or that a fresh cause of action arises on its removal. Nor is there any general proposition that where the rights of parties have been subjected to adjudication by a competent Civil Court limitation for other suits based on such rights should be computed from the date of their final determination. The Courts have no power, on considerations of hardship or equity, to invent new grounds of exemption from the bar of limitation not recognised by the statute. The defendant in 1915 brought a suit for declaration that the first plaintiff's adoption by *R* (a Zamindarini) was invalid and that he (the defendant) was the nearest reversioner entitled to succeed to the estate on her death. The trial Court decreed the suit in 1920, declaring the adoption to be invalid. The 1st plaintiff appealed from the decree and pending the appeal *R* died on 24-10-1923. The defendant thereupon filed an application before the Collector for registry of his name as the proprietor of the estate after the death of *R* on the basis of the trial Court's decree. He also filed an application before the Collector for recognising him as land-holder of the estate under S. 3 (5) of the Madras Estates Land Act, The Collector, after hearing the objections of the 1st plaintiff and other claimants passed an order on 12-1-1924, whereby he "recognised" the defendant as the land-holder for the purposes of the Estates Land Act, and the defendant accordingly entered possession of the estate and began to collect the rents and profits thereof. The validity of the 1st plaintiff's adoption was finally upheld by the Privy Council in June, 1935, and the suit of the defendant was dismissed. The formal order in council was passed in July, 1935. Subsequently on the plaintiff's application, the Collector cancelled his previous order recognising the defendant as land-holder, and directed the registry of the estate in the names of the first and 2nd plaintiffs recognising them as the land-holders thereof the 2nd plaintiff being a devisee under a will by *R*, of her half share in the estate which had been given to her absolutely under an ante-adoption agreement. The plaintiffs after having obtained possession of the estate brought the present suit in October, 1935, for recovery of the rents and profits, received by the defendant during the period of his possession and management of the estate under the Collector's order dated 12-1-1924. The plea of limitation was raised.

Held, (1) that the receipt of the rents and profits by the defendant under the Collector's order dated 12-1-1924 was not wrongful so as to attract the application of Art. 109 of the Limitation Act; (2) that the defendant would be liable to account for the rents and profits received by him as if he were a trustee, although there could be no question of trust or strict fiduciary

relationship between the parties who claimed the estate adversely one to the other ; (3) that the position of a person like the defendant who was recognised by the Collector as a land-holder was essentially different from the case of a person taking possession under colour of a decree of Court which is afterwards reversed ; (4) that suit was governed by Art. 120 of the Limitation Act, there being no other specific article of the Act applicable to the case ; (5) that the defendant having received the rents and profits in his own alleged right (having set up title to the estate in himself) and not in acknowledgment of the plaintiffs' right, a right to sue accrued to the plaintiffs each time the defendant received the rents and profits as land-holder the Collector's order notwithstanding and hence the plaintiffs' claim for profits received more than six years before the suit was barred by time ; (6) that His Majesty's Order in Council dismissing the defendant's suit did not bring about a new state of things and did not impose any new obligation on the defendant but only declared the first plaintiff's pre-existing title to the estate by holding his adoption to be valid, and it could not be said that this adjudication gave rise to a fresh cause of action for the plaintiffs to sue for the entire profits received by the defendant ; (7) that the defendant was not liable on the basis of an implied contract to render accounts and he could not be regarded as having assumed management of the estate as an *interim* receiver during the pendency of the prior litigation on the understanding that he should render an account of the rents and profits received in the course of such management in case the plaintiffs' title was upheld ; (8) that the plaintiffs were entitled to interest on the mesne profits on equitable grounds, the defendant being liable to account as if he were a trustee. (*Wadsworth and Patanjali Sastri, JJ.*) KRISHNAYYA RAO *v* MAHARAJA OF PITHAPURAM. I.L.R. (1942) Mad. 562=202 I.C. 514=15 R.M. 506=55 L.W. 264=A.I.R. 1942 Mad. 487 =(1942) 1 M.L.J. 472.

——Arts. 110 and 115—Applicability—Suit for rent based on unregistered kabuliyat. *See* 1941 Dig., Col. 774. OFFICIAL TRUSTEE OF BENGAL *v.* BEJOY CHAND MAHATAB. 199 I.C. 788=14 R.C. 674=A I.R 1942 Cal. 222.

——Art. 110—Patnis sold for arrears of rent—Sale subsequently set aside and possession restored to patnidar—Suit for such arrears—Limitation—Starting point. *See* 1941 Dig., Col. 774, OFFICIAL TRUSTEE OF BENGAL *v.* BEJOY CHAND MAHATAB. 199 I.C. 788=14 R.C. 674=A.I.R. 1942 Cal. 222.

——Art. 112—Suit to recover unpaid share money on forfeited shares—Starting point of limitation—Articles creating liability to pay in spite of forfeiture. *See* 1941 Dig., Col. 806. MUDHOLKAR *v.* M. E. R. MALAK. I.L.R. (1942) Nag. 114.

——Art. 116—*Starting point—Vendor and vendee—Vendor failing to discharge mortgage on property as agreed to under sale—Suit on mortgage—Sale of properties resulting in dispossession of vendee—Suit by latter for damages—Limitation—Starting point—Measure of damages.*

Under a sale deed of 19-4-1928 the first defendant conveyed certain properties to the plaintiff for Rs. 1000 the sale being effected to discharge a debt due to a third person under a mortgage of the properties; it was agreed between the parties that the vendor himself should discharge the mortgage and it was recited in the sale deed that the sale price was received by the vendor for discharging the debt. The vendor who took the purchase money failed to discharge the mortgage debt, and as the result of a suit brought by the mortgagee the properties were sold and the plaintiff, the vendee, was dispossessed. He therefore brought a suit against the vendor for damages amounting to Rs. 1000, which was the consideration paid by him.

Held (1) that the suit must be conceived as one for breach of the covenant for quiet enjoyment and the starting point of limitation was the date of dispossession of the vendee. (2) That the measure of damages would be the market-value of the properties on the date of the dispossession. (*Kuppuswamy Ayyar, J.*) MUTHU GOUNDAN *v.* MOTTAYAN. 1942 M.W.N. 687=55 L.W. 809=A.I.R. 1943 Mad. 150=(1942) 2 M.L.J 617.

——Art. 116—Suit for rent—Registered patni lease—Limitation. *See* 1941 Dig., Col. 775. HUMAYUN RAZA *v.* TARINICHARAN TEWARI. A.I.R. 1942 Pat. 83.

——Art. 118—Burden of proof—Suit to declare adoption invalid or untrue—Onus. *See* HINDU LAW—ADOPTION. 8 Cut L. T. 96.

——Art. 118—*Starting point—Adoption set up soon after death of adoptive father—Person challenging adoption aware of same—Limitation.*

Under Art. 118 of the Limitation Act, the starting point of limitation will be the time when the alleged adoption became known to the plaintiff. If a person who is setting up a case of adoption begins to proclaim the alleged adoption soon after the death of the adoptive father and if the person challenging the adoption is aware of such allegation, the period of limitation in such a case will begin to run immediately after the latter comes to know of the allegation even though the alleged adoption never has taken place. (*Fazl Ali. J.*) KASHI PALEI *v.* RADHIKA DEI. 8 Cut. L.T. 96=A.I.R. 1943 Pat. 68.

——Art. 120 — Applicability — Accretion— Islets in river—Notice by Government claiming penal assessment—Suit for declaration of title and injunction—Limitation. *See* MADRAS LAND ENCROACHMENT ACT, S. 14, EXPLANATION. (1942) 2 M.L.J. 223.

——Art. 120—Applicability—Contract of sale—Buyer failing to complete payment of price and seller avoiding contract—Suit by buyer to recover part price paid. *See* LIMITATION ACT, ARTS. 62, 97 AND 120. I.L.R. (1941) Kar. 495.

——Art. 120—*Applicability—Co-sharers—Suit by one for share of income—Limitation—Starting point—Right—If limited to six years before suit.*

A co-sharer's suit for his share of the income of the joint property is governed by Art. 120 of the Limitation Act, and the starting point is when the right to sue accrues, *i.e.*, when the right of the plaintiff is denied or when there is an ouster. He may be entitled to an account of the share of income for a period which may be more than 6 years before the date of suit. It canno be said that even in the absence of ouster or assertion of hostile title to the knowledge of the plaintiff, his right to share in the income should be confined only to a period of 6 years before the date of suit. (*Somayya, J.*) VISALAKSHI AMMA *v.* MADHAVA MENON. 202 I.C. 78=15 R.M. 434=55 L.W. 196=1942 M.W.N. 239 =A.I.R. 1942 Mad. 514=(1942) 1 M.L.J. 408.

——Art 120—Applicability—Loan raised on security of shares from *Nidhi*—Latter selling shares and realising amount due—Subsequent suit by debtor's heir for account of shares and for balance due—Limitation. *See* LIMITATION ACT, ARTS. 62, 89 AND 120. 55 L.W. 90=(1942) 1 M.L.J. 274.

——Art 120—Applicability—Person recognised a land holder of estate under S. 3 (5), Madras Estates Land Act—Collection of rents and profits—Subsequent

LIMITATION ACT (1908), **Art. 120.**

decision by Civil Court declaring title to estate in another—Suit by latter for account of rents and profits —Limitation—Starting point. *See* LIMITATION ACT, ARTS. 109 AND 120. **(1942) 1 M.L.J. 472**

———**Art. 120**—Applicability—Right to conduct festival in temple—Dispute between vadagalais and Tengalais—Former getting order under S. 144, Cr. P. Code, against latter—Festival not performed from 1914 to 1927—Susequent order under S. 144, Cr. P. Code, in 1930—Suit by Thengalais in 1930 to declare illegal—If barred. *See* 1941 Dig., Col. 777. SRINIVASA AYYANGAR *v.* RAMANUJA CHARIAR. **198 I.C. 793=14 R.M. 512=43 Cr.L.J. 433=(1941) 1 M.L.J. 322.**

———**Art. 120**—Applicability—Suit against Municipality to recover licence fees and profession tax wrongly levied. *See* LIM. ACT, ART. 62. **55 L.W. 783=(1942) 2 M.L.J. 663.**

———**Art. 120**—*Applicability—Suit against receiver for negligent management—Suit brought under leave of Court which appointed him—Right to sue—When accrues.*

Art. 120 of the Limitation Act applies to a suit against a receiver appointed under O. 40, C. P. Code, for his negligence in the management of the estate, when such suit is brought by the plaintiff under leave granted to him in proceedings arising out of exceptions to the receiver's accounts by the Court which appointed the receiver. To such a suit, neither S. 10 nor Art. 36 nor Art. 89 nor Art. 115 of the Limitation Act is applicable. The "right to sue" accrues in this class of suits, when the leave to sue the receiver or the ex-receiver is given to a person by the Court which had appointed the receiver. (*Mitter and Khundkar, JJ.*) RAM CHANDRA BANERJEE *v.* BAIDYANATH ROY. **I.L.R. (1942) 1 Cal. 577=202 I.C. 389=15 R.C. 327=75 C.L.J. 1 =46 C.W.N. 294=A.I.R. 1942 Cal. 483.**

———**Arts. 120 and 131**—Applicability—Suit by mutawalli against Secretary of State for declaration of right to receive yeomiah allowance as lawful holder of office—Limitation. *See* 1941 Dig., Col. 777. HUSSAIN BATCHA SAHIB *v.* SECRETARY OF STATE. **199 I.C. 693=14 R.M. 620=(1941) 1 M.L.J. 374.**

———**Arts. 120, 142 and 144**—*Applicability—Suit for declaration of title.*

A suit which is confined to a mere declaration of title and is neither in form nor in substance a suit for possession of immovable property is governed by Art. 120, and not by Art. 142 or 144 of the Limitation Act. (*Lord Thankerton.*) JAGATJIT SINGH *v.* PARTAB BAHADUR SINGH. **8 R.R. 831=1942 O.A. 390=1942 A.W.R. (P.C.) 37=1942 O.W.N. 508=201 I.C. 499= 18 R.P.C. 19=55 L.W. 597=1942 A.L.W. 488= 1942 P.W.N. 213=44 Bom.L.R. 868=47 C.W.N. 38 =A.I.R. 1942 P.C. 47=(1942) 2 M.L.J. 384 (P.C.).**

———**Art. 120**—Applicability—Suit to establish right to inherit movable property. *See* 1940 Dig., Col. 809. SHARIFA BEGAM *v.* COURT OF WARDS. **I.L.R. (1941) Lah. 843.**

———**Art. 120**—*Starting point of limitation—Knowledge of infringemen of right—Mere adverse entry in the village record—If affects title.*

It is wrong to say that the period of limitation for a suit for declaration of right begins to run when the right to sue accrued and that it is immaterial whether the plaintiff had knowledge of it or not. Unless the plaintiff knows that there is any infringement of his right, it cannot be said that any right to sue accrues to him. A suit for declaration of right cannot be said to be time barred so long as the plaintiff has a subsisting title to the property. Each invasion of rights gives him a fresh cause of action. The mere act of

LIMITATION ACT (1908), **Art. 127.**

forbearance of a previous action on the part of a person in possession cannot debar him from instituting a suit later on when a fresh invasion is made against his title which gives him an independent cause of action and the mere making of an adverse entry in the village records cannot be said to have actually disburbed the plaintiff's title if he still continues in possession. (*Thomas, C.J. and Agarwala, J.*) BHAIRO SINGH *v.* LAL AMBIKA BAKSH SINGH. **199 I.C. 776=14 R.O. 538=1942 O. A. 168=1942 O.W.N. 225=A.I.R. 1942 Oudh 374.**

———**Art. 120**—*Starting point under—Suit for declaration by deceased's brother against the widow—Mutation in name of widow and filing of suit for profits by her—Cause of action.*

Where a suit was filed for a declaration by the deceased's brother against the widow that the property was the joint family property and that mutation in the widow's name was made only for consolation and that her assertion of right by filing a suit for profits against the plaintiff would not affect him, it was *held* that the plaintiff was not bound to institute a suit for declaration on the basis of the mutation entry, for he was not disturbed at all by it as it did not throw any cloud on his title and that it was not until the defendant actually asserted a title by means of filing the suit for profits that it became obligatory upon him to file the suit and that hence limitation for the suit started only from the latter date and not from the date of mutation entry. (*Ghulam Hasan, J.*) PIARA *v.* KALLU. **1942 O.A. 602=1942 O.W.N. 744.**

———**Art. 120**—*Suit for declaration that plaintiffs are under proprietors—Starting point of limitation—Adverse entry in revenue records followed by ejectment.*

So long as an adverse entry in the Revenue Records does not injure the plaintiff he need not come into Court at all and hence a plaintiff in a suit for declaration that he is an under-proprietor is not out of time if he institutes the suit within 6 years of the injury which the entry created namely ejectment. (*Bennet and Ghulam Hasan, JJ.*) CHHABRAJ KUER *v.* RAM DEO SINGH. **200 I.C 45=14 R.O. 534=1942 O.A. 162= 1942 A.W.R. (C.C.) 166=1942 O.W.N. 217=A.I.R. 1942 Oudh 346.**

———**Art. 123**—Applicability—Suit for legacy under will—Defendants appointed executors under will and trustees of testator's estate—Suit, if one under S. 10, Lim. Act. *See* LIM. ACT, S. 10. **I.L.R. (1942) Kar. 392.**

———**Arts. 127 and 144**—*Applicability—Open and continuous exclusion by lunatic brother of his joint sane brother—Court of Wards retaining possession for lunatic's widow after his death.*

The exclusion or ouster by a lunatic brother of his joint sane brother if open and continuous bars the sane brother's claim under Art. 127. If after the death of the lunatic brother the Court of Wards openly retains possession on behalf of his widow then Art. 144 applies. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. **I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All. 267 (2).**

———**Art. 127**—*Applicability—Suit by one of two brothers forming a joint family to enforce right to share in the property.*

Where one of the two brothers forming a joint family is in possession of the property, though the other never actually joined in cultivation with his brother he must be held to have been in possession through his brother and hence a suit by the latter to enforce his right to share in the property is governed by Art. 127,

LIMITATION ACT (1908), Art. 131.

Lim. Act. (*Bennet and Madeley, JJ.*) APARNA BAKHSH SINGH *v.* CHANDRA SHEKHAR SINGH. 1942 O.A. 527=1942 O.W.N. 639=1942 A.W.R. (C.C.) 345 (2)

——Art. 131—*Scope—Plaintiff's right to property extinguished by adverse possession.*

Art. 131 of the Limitation Act contemplates a case where the plaintiff's right to the property has not been already extinguished by adverse possession of the defendants. If there was never any relationship of landlord and tenant between the plaintiff and the defendant, and the latter held the land adversely to the former for more than 12 years, the plaintiff would be no more competent to sue for assessment of rent then he could institute a suit for eviction against the defendant. (*Mukherjea and Biswas, JJ.*) JOGESH CHANDRA KOMAR *v.* CHANDI CHARAN DATTA. 75 C.L.J. 440.

——Arts. 132 and 147—Applicability—English mortgage—Provision that in certain event date of payment is to be changed and that mortgagor shall pay costs of insurance, etc.—Suit on—Limitation. *See* T. P. ACT, S. 58. 55 L.W. 417.

——Art. 134—*Applicability—Question of* bona fides *or notice of transferee—If relevant.*

It is the first principle of the interpretation of statutes that nothing extraneous should be considered in interpreting a statute when its meaning is unambiguous on the face of it and as the meaning of Art. 134 is clear, no question of *bona fides* or notice of the transferee arises under it. (*Mir Ahmad, J.C. and Sooft, J.*) KHADI KHAN *v.* MURAD KHAN. 200 I.C. 732=A.I.R. 1942 Pesh. 39.

——Art. 134—*Knowledge of transfer—Onus.*

Under Art. 134, the onus initially lies on the plaintiff to prove as to when he came to know of the transfer. He must show that he had knowledge of the transfer within 12 years of the suit. If he shows this, the onus is shifted to the transferee to prove that the transfer was before 12 years of suit and that the plaintiff had knowledge of it. (*Mir Ahmad, J.C. and Sooft, J.*) KHADI KHAN *v.* MURAD KHAN. 200 I.C. 732=A.I.R. 1942 Pesh 39.

——Art. 132—Starting point—Anomalous mortgage falling under S. 58 (*g*), T. P. Act (as amended in 1929)—Personal covenant to pay on fixed date—Dispossession of mortgagee before term—Suit for sale within 12 years of date fixed for payment but beyond 12 years of dispossession—If barred. *See* I.L.R. (1942) Kar. 452.

——Art. 132—*Starting point under—Suit by co-mortgagor to recover proportionate amounts in respect of mortgage money paid off by him alone.*

The period of limitation for a suit by one of several heirs of a mortgagor or by one of the several subsequent transferees of the mortgaged property who has paid the entire mortgage decree for contribution against the other heirs or transferees in which the sale of the defendant's share in the mortgaged property is sought is twelve years from the date of payment and not from the date when the original mortgage money became payable. (*Thomas, C.J., Bennett and Agarwall, JJ.*) BRIJ BHUKHAN *v.* BHAGWAN DATT. 203 I.C. 285=15 R.O. 191=1942 A.W.R. (C.C.) 319=1942 O.W.N. 672=1942 O.A 413=A.I.R 1942 Oudh 449 (F.B.).

——Art 132—Starting point—Unpaid purchase money—Suit to enforce lien for—Payment made towards the amount—If extends period. *See* T. P. ACT, S. 55. (1942) 2 M.L.J. 482.

——Art. 134 B—*Estate made inalienable and impartible by Government Rules—Holder to have life estate—Successor to take estate unencumbered by any debt or charge—Alienation by holder—Validity—Alienee in possession for over 12 years—Adverse possession—Successor—If bound.*

Where an estate known as the Patdi estate is held for life by each holder for the time being and passes on his death to the next holder unencumbered by debts or charges except those imposed by Government, and the estate is made inalienable and impartible by rules framed by the Government on the lines of the Bombay Saranjan Rules which Saranjan Rules do not apply to the estate, and there is no rule in the rules governing the estate to the effect that there is to be a formal resumption on the death of each holder and re-grant to the successor, if any alienation of a part of the estate is made by a holder it will be invalid from its inception and not merely from his death. But if the alienee continues in possession of the part transferred to him for over 12 years during the lifetime of the alienor or his successor, he acquires a title to it by adverse possession not only as against the holder during whose tenure he completes 12 years' possession but as against all subsequent successors. Though the successor does not claim through his predecessor, but claims in his own right, the successor gets the estate as it was at the time of the death of the predecessor. If, therefore, the estate had lost by adverse possession a particular part of it, and if the alienee had become its owner by the extinction of the holder's title thereto, the estate which comes to the successor is the estate minus the part the ownership of which had passed from the estate to the alienee's family. It would be open to a person to acquire title by adverse possession for over 12 years, and the fact that the alienor holder had only a life estate would not come in the way of the acquisition of title by adverse possession. Even if the analogy of the head or mahant of a math is applied to the holder of the estate, it would make no difference. On that analogy Art. 134-B of the Limitation Act would apply, and if the alienee completes 12 years' possession after the death of the alienating holder, he perfects his title by adverse possession. (*Divatia, J.*) NARANSINHJI CHANDRA SINHJI *v.* MADHAO SING KESARI SING. 200 I.C. 889=15 R.B. 46=44 Bom.L.R. 146=A.I.R 1942 Bom. 138.

——Art. 141—Applicability. *See* 1941 Dig., Col. 779. FANINDRA NATH DUTTA *v.* SATYA CHARAN DE. 197 I.C. 756=14 R.C. 378.

——Art. 141 — *Applicability — Commencement of adverse possession during last male holder's life time—Intervention of limited estate—If interrupts running of time.*

Where adverse possession commences to run against the last male owner himself the intervention of the limited estate will not prevent time running and will not enable the reversioners coming after the limited owner to say that he has got a fresh cause of action on the death of the owner of the limited estate. (*Bennet, J.*) MATA PRASAD *v.* BRIJ KISHORE SINGH. 200 I.C. 265=14 R.O. 589=1942 A.W.R. (C.C.) 139=1942 O.A 118=1942 O.W.N. 191=A.I.R. 1942 Oudh 303.

——Arts. 142 and 144—*Relative applicability.*

Art. 142 of the Limitation Act applies to a suit for possession when the plaintiff while in possession of the property has been dispossessed or has discontinued the possession. Art. 144 is a residuary article applying to suits for possession not otherwise provided for. A period of 12 years runs in the case of Art. 142 from the date of the dispossession or discontinuance; in the case of Art. 144 it runs from the date when the possession of the defendant becomes adverse to the plaintiff; when a plaintiff's case is that he was dispossessed, it is Art. 142 and not Art. 144 that would apply and if the plaintiff

LIMITATION ACT (1908), Art. 142.

does not prove his possession within 12 years before suit, his suit should fail. (*Bennett, J.*). GAURI SHANKAR SINGH *v.* JADU NATH PANDE. **1942 O.W.N. 753=1942 O.A. 599.**

——**Art. 142**—*Applicability—Burden of proof—Suit for mandatory injunction for the removal of constructions on a plot—Proof of ouster.*

A plaintiff who comes to Court seeking a mandatory injunction for the removal of constructions upon a plot founds his suit upon the basis that he has a subsisting title in the plot. If he has no subsisting title then he is not in a position to maintain such a suit and if he goes further and shows that by reason of the act of the defendants he has been ousted then he must clearly be under a duty to show that the ousting which has interfered with his possession and resulted in his dispossession has taken place within 12 years of the institution of the suit. Where the plaintiff has proved this, it then lies upon the defendant, to establish that he had exercised such exclusive possession as amounted to an ouster of the plaintiff from a date more than 12 years prior to the institution of the suit. (*Yorke, J.*) RAM SEWAK *v.* RAM SAHAI. **1942 A.L.W. 225=1942 O.W.N. 281.**

——**Art. 142**—Applicability—Encroachment on common land by defendant—Defendant in possession for over 12 years and in ouster of plaintiff—Limitation—Continuing wrong—Right of suit after 12 years. *See* LIMITATIAN ACT, S. 23 AND ART. 142. **22 P.L.T. 1001.**

——**Arts. 142 and 144**—*Applicability of Art. 142—Conditions—Facts to be proved by plaintiff.*

In any suit in which a plaintiff alleges his possession within 12 years prior to the defendant's possession the case must fall under Art. 142. Whenever there is an allegation of original possession which the plaintiff lost by dispossession the suit must fall under Art. 142 of the Limitation Act. Where a plaintiff in a suit for possession alleges a licence for a term under which the defendant got into possession there is only a discontinuance of possession and not dispossession and it is governed by Art. 142 and not Art. 144. The word 'discontinuance' means cessation of possession by one followed by possession of another, and 'dispossession' means the coming into possession of one and the driving out of the person in possession. In a suit governed by Art. 142 the plaintiff has to prove that the defendants permissive possession began within 12 years prior to the suit. (*Niyogi, J.*) GANGOOBAI *v.* SONI. **1942 N L J. 99.**

——**Art. 142**—Applicablity—Suit for possession—Plaintiff alleging possession of his predecessor in interest, till dispossession by defendant. *See* 1941 Dig., Col. 780. FANINDRA NATH DUTTA *v.* SATYA CHARAN DE. **197 I.C. 756=14 R C. 378.**

——**Art. 142**—Discontinuance of possession—Meaning of. *See* 1941 Dig., Col. 780 MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. **200 I.C. 392=15 R.C. 7=46 C.W.N. 561=A.I.R. 1942 Cal 180.**

——**Art. 142**—*Possession within 12 years of suit—Forcible possession by rightful owner from trespasser—If can be taken into account—Trespasser obtaining possession under S. 9, Specific Relief Act—Effect of on limitation—Adverse possession—Interruption.*

The act of a person who takes possession, either forcibly or otherwise than in due course of law, may be high-handed and not legal in the sense that it is not authorised by law, but if he happens to be the rightful owner, there is no justification for holding that the period during which he had both title and possession should not be taken into account for pusposes of deciding whether

LIMITATION ACT (1908), Art. 144..

he was in possession within 12 years of his suit. The fact that the trespasser from whom he wrested possession had succeeded in a suit under S. 9 of the Specific Relief Act cannot make any difference in the position of the real owner so obtaining possession. (*Leach, C. J. and Byers, J.*) NARASAYYA *v.* SUBBAYYA. **55 L.W. 515=1942 M W N 478=A.I.R. 1942 Mad. 728=(1942) 2 M.L.J. 266.**

——**Arts. 142 and 144**—*Rights of a person in possession—Position of a trespasser—Presumptions as to possession when arises.*

The person seeking to displace the rights of the person in possession has to establish that that person has no title and that the title resides in the plaintiff. It is always assumed that the person in possession is in rightful possession and so his possession is always referred to a lawful title, whenever that is possible. A trespasser does not displace the rightful owner's title unless he intends to prescribe for a hostile title and he does not necessarily intend so to prescribe simply by remaining in occupation. His attitude may be a purely negative and passive one. All the usual presumptions about possession being adverse and so forth do not arise except in favour of the person in possession and those who claim through him. If the rightful owner succeeds in getting into possession and an attempt is made to oust him by those who do not claim through the trespasser, then the presumptions are in favour of the rightful owner. (*Stone, C. J. and Bose, J.*) SHRI RAGHUNATHSWAMI DEOSTHAN *v.* DONNA. **1942 N.L.J. 431.**

——**Art. 142 and Art. 141 of 1871 and 1877 respectively**—*Scope and effect of.*

The effect of Art. 142 of the Act of 1871 and Art. 141 of Act of 1877 was to create a fresh rule in regard to limitation in all cases in which the prospective right arising out of adverse possession had not already ripened into an absolute title (*Verma and Yorke, JJ.*) ABDUL SAMADKHAN *v.* GIRDHARI LAL. **I.L.R. (1942) All. 259=200 I.C. 269=14 R.A. 423=1942 A.L.J. 179=1942 A.L.W. 161=1942 O.A. (Supp.) 145 (2)=1942 A.W.R. (H.C.) 84 (2)=A.I.R. 1942 All. 175.**

——**Arts. 142 and 144**—*Scope—Suit by licensee.*

It may be that Arts. 142 and 144 of the Limitation Act are not limited to suits for possession based on proprietary title, but they certainly contemplate suits for possession in which some interest in immovable property is claimed. They can have no application to a suit by a mere licensee who does not assert any claim to any interest in immovable property. (*Biswas, J.*) ARUNKUMAR BASU *v.* SUDHIR CHANDRA BASU. **75 C.L.J. 236.**

——**Art 144**—*Starting point—Adverse possession—Mahomedan co-owners—Mortgage of specific items by some with possession—Suit by other for their shares—Starting point of limitation.*

Where some co-owners usufructuarily mortgage specific items of property held by the members of a Mahomedan family and the mortgagee enters into possession of the mortgaged items under the mortgage deed, a suit by the other members of the family to recover possession of their shares in the items mortgaged is barred under Art 144 of the Limitation Act at the end of 12 years of such possession and adverse possession as against those other members cannot be said to begin only from the date of ouster to their knowledge. (*Leach, C.J., Lakshmana Rao and Krishnaswamy Ayyangar, JJ.*) PALANIA PILLAI *v.* AMJATH IBRAHIM ROWTHER. **203 I.C. 195=15 R.M. 597=1942 M.W.N.**

LIMITATION ACT (1908), Art. 146-A.

525=55 L.W. 532 (2)=A.I.R. 1942 Mad. 622=(1942) 2 M.L.J. 321.

——Art. 146 A—Applicability — Suit by Union Board for possession of land—Land in possession of defendant on date of its creation. *See* 1941 Dig., Col. 782. DHAJADHARI GHOSH *v.* UNION BOARD OF KENDRAGORIA. 200 I.C. 386=15 R.C. 1=A.I.R. 1942 Cal. 151.

——Art. 147—Applicability — English mortgage—Provision for payment by mortgagor of insurance charges and for changing date of payment in certain event—If alters nature of mortgage—Limitation for suit. *See* T. P. ACT, S. 58. 55 L.W. 417.

——Art. 158—*Filing of objections to award—Limitation—Starting point.*

Under Art. 158 of the Limitation Act, three things are necessary for fixing the starting point of limitation: (1) the award must have been filed; (2) in Court, and (3) notice of the filing has been given to the parties Where the arbitrator handed over the award to the Reader during the absence of the Judge on leave, and the Judge resumed his duties on a later date and in the presence of the parties passed an order directing them to file objections within the time prescribed by law.

Held, that the period of ten days prescribed under Art. 158 ran from the later date. (*Tek Chand and Beckett, JJ.*) IMAM DIN *v.* ALLAH RAKHA. 201 I.C. 462=15 R.L. 49=44 P.L.R. 249=A.I.R. 1942 Lah 190.

——Art. 164—*Applicability*—Ex parte *decree passed on original side of High Court—Application to set aside.*

Art. 164 of the Limitation Act governs an application to set aside an *ex parte* decree passed on the original side of the High Court. Such an application should, therefore, be made not later than thirty days from the date of the decree or the date of the applicant's knowledge of the decree. (*Derbyshire, C.J. and Nasim Ali, J.*) SURENDRA NATH ROY *v.* HRISHIKESH SAHA. 46 C.W.N. 280.

——Art. 166—Applicability—Application to set aside sale under S. 47, C. P. Code. *See* 1941 Dig., Col. 784. BHAN KUMAR CHAND *v.* LACHMI KANTA RAI. 8 B.R. 507=199 I.C. 169=14 R.P. 557.

——Art. 166—*Applicability — Application under S. 47, C P. Code, for setting aside sale.*

Per *Bhide, J.*—An application for setting aside a sale, which falls within the scope of S. 47, C. P. Code, is governed by Art. 166 of the Limitation Act. (*Tek Chand, Bhide and Beckett, JJ.*) GAURI *v.* UDE. I.L.R. (1942) Lah. 559=203 I.C. 166=15 R.L. 174=44 P.L.R. 302=A.I.R. 1942 Lah. 153 (F.B.).

——Art. 166—*Applicability—Execution sale—Failure to value property in accordance with S. 13, Bihar Money-Lenders' Act—Application to set aside on that ground—Limitation—C. P. Code, O. 21, R. 90.*

An application to set aside an execution sale on the ground that the sale was bad and a nullity as it was held without the valuation as required by S. 13 of the Bihar Money-Lenders Act falls under O. 21, R. 90, C. P. Code, and is governed by Art. 166 of the Limitation Act and is barred if preferred beyond 30 days of the sale. The mere fact that the application is labelled as being under Ss. 47 and 151, C. P. Code, will not take it out of O. 21, R. 90, C. P. Code, so as to make it maintainable though preferred beyond 30 days. (*Fazl Ali and Meredith, JJ.*) SHEO DAYAL NARAIN *v.* MOTI KUER. 21 Pat. 281=200 I.C. 782=15 R.P. 9=8 B.R. 720=1942 P.W.N. 202=23 Pat.L.T. 139=A.I.R. 1942 Pat. 238.

——Art. 166—Applicability—Void sale. *See* 1941 Dig., Col. 784. BHAN KUMAR CHAND *v.* LACHMI KANTA RAI. 8 B.R. 507=199 I.C. 169=14 R.P. 557.

LIMITATION ACT (1908), Art. 181.

——Arts. 166 and 181—Official Receiver's application to declare execution sale void—Article applicable. *See* 1940 Dig., Col. 819. MOTILAL *v.* NATHU. I.L.R. (1942) Nag. 377.

——Art. 178 (as amended by Arbitration Act X of 1940)—*Applicability—Application by arbitrator for filing award in Court.*

Art. 178 of the Limitation Act, as amended by the Arbitration Act X of 1940, is clearly intended to apply to those cases where a party to the arbitration proceedings applies for the filing of the award in Court. It is not intended to apply to an arbitrator filing an award in Court. An arbitrator who applies for filing an award in Court seeks no relief from the Court for himself or against anybody. The arbitrator in applying for the filing of an award in Court is performing a mere ministerial act at the request of a party to the arbitration or by the order of the Court. He has no interest in the award apart from his fees and charges. The Legislature never intended that Art. 178 should apply to an application for the filing of an award in Court by an arbitrator. (*Lobo, J.*) JOHN B. PAES *v.* SOOMAR UMER. I.L.R. (1942) Kar. 466=A.I.R. 1943 Sind. 33.

——Art. 178—*Applicability—Award filed after ninety days from date of service.*

The period of limitation provided by Art. 178 of the Limitation Act refers to an application made to the Court under the Arbitration Act by a party to an award to obtain an order directing the arbitrator to file the award. It does not apply to an award which had already been filed in Court, although it was in fact filed more than ninety days after notice of it had been served. (*Gentle, J.*) KESHRI MULL *v.* MEGH RAJ BAS DEO. I.L.R. (1942) 2 Cal. 69=203 I.C. 269=15 R.C. 416=A.I.R. 1942 Cal. 542.

——Art. 181—*Applicability — Application under S. 16 of Telegraph Act.*

Art. 181 of the Limitation Act does not apply to an application under S. 16 of the Telegraph Act, such an application being in the nature of a plaint. (*Tek Chand and Beckett, JJ.*) ABDUL AZIZ *v.* PUNJAB GOVERNMENT. 201 I.C. 739=15 R.L. 81=44 P.L.R. 275=A.I.R. 1942 Lah. 186.

——Arts. 181 and 182—*Applicability—Death of decree-holder pending execution proceedings—Such proceedinge dismissed for default—Application by his legal representatives to revive proceedings—Limitation.*

Per *Sen, J.*—An application by the legal representatives of a deceased decree-holder for reviving the execution proceedings dismissed for default on the death of the decree-holder, is not governed either by Art. 181 or Art. 182 of the Limitation Act. The Code of Civil Procedure nowhere provides for such an application. It is a proceeding by which the inherent jurisdiction of the Court is invoked. The Court will exercise its inherent powers if it considers that justice requires its exercise and if it is satisfied that there are no such laches on the part of the applicant which would disentitle him to relief. (*Mukherjea and Sen, JJ.*) ANNADA PRASAD MITRA *v.* SUSHIL KUMAR MANDAL. 201 I.C. 479=15 R.C. 207=75 C.L.J. 114=46 C.W.N. 326=A.I.R. 1942 Cal 390.

——Arts. 181 and 182—Applicability—Execution sale set aside—Application under O. 21, R. 93, C. P Code, by unsuccessful auction-purchaser for refund o poundage and interest—Starting point—Appellate orde or original order. *See* 1941 Dig., Col. 785. VEERA SWAMI *v.* NAMAYYA. 197 I.C. 302=14 R.M. 353=(1941) 2 M.L.J. 121.

LIMITATION ACT (1908), Art. 181.

——**Arts 181, 180 and 182**—*Execution proceeding —Court ordering on* 2—8—1935 *judgment debtor's land to be leased to decree-holder for* 15 *years in full satisfaction of decree—Execution filed on* 30—9—1935 *to enforce order—Mutation of lease entered and attested on* 29—12—1937—*On* 30—5—1939 *lease certificate drawn up and signed by Judge—Application on* 11—11—1940 *for possession of leased land—If barred.*

During the execution taken out by the decree-holder the Court ordered on 2—8—1935 that the land of the judgment-debtor should be leased to the decree holder for 15 years and that the lease shall completely wipe out the decretal debt. The execution was filed in default on 30—9—1935. The decree-holder moved the revenue authorities to enter a mutation of lease. Mutation was entered and attested on 29—12—1937. The judgment-debtor was not present, nor any one representing the Court. On 30—5—1939 a lease certificate was drawn up and signed by the Judge. The document was attached to the file. On 11—11—1940 the decree-holder presented another application to the execution Judge asking that he should be put in possession of the land leased to him.

Held, that Art. 180 had no application whatsoever as it applied to auction purchasers. An order for preparing the lease certificate having been given and the execution having been filed in full satisfaction on 20—4—1939 there was no decree to execute any more and therefore Art. 182 also was inapplicable. The application being one for which there was no provision in the Limitation Act, Art. 181 applied. The decree holder became entitled to ask for possession only when the lease certificate was prepared and signed by the Judge. The period of limitation therefore began to run under Art. 181 on 30—5—1939. The attestation of mutation did not confer any title. The Court was leasing the property to the decree holder and the Court was not a party to the mutation proceedings and hence right to apply could not be said to have accrued when the mutation was attested on 29—12—1937. (*Mir Ahmad, J.*) DOST MAHOMED *v.* MANGAL SAIN HARI SINGH. **204 I.C. 66=A.I.R. 1942 Pesh. 87.**

——**Art. 181**—*Revival—Execution sale—Satisfaction recorded in full and execution dismissed—Subsequent setting aside of sale under O. 21, R. 90, C. P. Code, at instance of mortgagee—Finding of fraud and collusion on part of decree-holder and Judgment-debtor —Subsequent application for sale of some property—Revivor of former application—Fraud—If prevents revival.*

The appellant obtained a decree for rent against the respondents on 18—3—1936 and applied for execution on 18—12—1937. This resulted in a sale of the respondent's property on 11—4—1938, which was confirmed on 12—5—1938. Thereafter the Court recorded full satisfaction and dismissed the execution case. Subsequently on 15—7—1938 a mortgagee of the property applied under O. 21, R. 90, C. P. Code, to have the sale set aside, and on 29—11—1939, the sale was set aside by the Appellate Court on the finding that the respondents deliberately allowed their property to be sold for an inadequate price in order to get rid of the mortgage on it, and that the processes were fraudulently suppressed in collusion with the judgment debtors (respondents) for extinguishing the rights of the mortgagee. On 12—2—1940, the decree-holder again applied for sale of the very same property and prayed for revival of his previous application.

Held, that the order setting aside the execution sale resulted in the setting aside of the orders which were consequent on that sale, including the order dismissing

LIMITATION ACT (1088), Art. 182.

the first execution case on full satisfaction, thus leaving the decree-holder's first application to be dealt with and resulting in a revivor of the prior application for execution leading to the first sale. As that application was in time, it should be allowed to proceed to its normal conclusion. The fact that the appellant (decree-holder) was guilty of fraud in respect of the prior sale was no ground for declining to revive the former application for execution. The honesty or dishonesty of the sale had no logical bearing on the question whether the subsequent proceedings were or were not a continuation of the former proceedings. (*Agarwala, J.*) KAMESHWAR SINGH *v.* HARI CHAND PANDEY. **197 I.C 708=14 R.P 343=8 B.R. 279=22 P.L.T. 992=A.I.R. 1942 Pat 112.**

——**Art. 181**—*Starting point—Preliminary mortgage decree—Provision for instalments—Default clause giving decree-holder right to apply for sale for all instalments remaining due—No payment made—Application for final decree five years after preliminary decree —If barred.*

A preliminary decree in a mortgage suit passed in June, 1933, provided for the payment of the decretal amount in seven annual instalments of Rs. 115 in June of each year; a default clause provided that on default of payment of any one instalment, the decree-holder might proceed to sell the mortgaged property for the whole amount of the instalments still remaining due and unpaid and also for a sum of Rs. 262 which had been conditionally relinquished. No instalments were paid in 1934, 1935, 1936 and 1937. On 22—6—1938, before the 1938 June instalment became due, the decree-holder applied for a final decree to which the judgment-debtor raised the plea of limitation.

Held, that every fresh default gave rise to a fresh cause of action, that the decree-holder was at no time *bound* to enforce the penalty and hence the application for final decree was not barred by limitation. (*King, J.*) GOPAL NAICKER *v.* ALAGIRISAMI NAICKER. **I. L.R. (1942) Mad. 770=202 I.C. 629=15 R.M. 536=1942 M.W.N. 367=55 L.W. 276=A.I.R. 1942 Mad 581=(1942) 1 M.L.J. 532.**

——**Art. 182**—*Date of decree—Meaning—Partition suit.*

The date of the decree is the day on which judgment is pronounced, and limitation begins to run from that date, although no formal decree can be drawn up in a partition suit until paper bearing a proper stamp under the Stamp Act is supplied to the Court. A.I.R. 1924 Cal. 351, foll. (*Chatterji and Meredith, JJ.*) BANWARI NARAIN TEWARY *v.* RAMHARI NARAIN TEWARI. **8 B.R 116=197 I.C. 217=14 R. P. 284=A.I.R. 1942 Pat. 335.**

——**Art. 182**—Restitution—Suit under O. 21, R. 63, C. P. Code—Decree setting aside claim order—Application by successful plaintiff for restitution of costs paid by him to defendant in the claim proceedings—Limitation—Starting joint. *See* C. P. CODE, S. 144. **1942 M.W.N. 689.**

——**Art. 182 and Agra Tenancy Act, Sch. IV, Gr. F, Serial 5**—*Revival—Deposit of first application as order was received too late for execution—Dismissal of second application owing to decree holder's failure to comply with court's order—Third application beyond time —If a continuation of the earlier ones.*

Where an application for execution by ejectment was deposited as the order reached the *kurk amin* at a time when according to law it could not be executed and a second application for execution was dismissed owing to decree-holder's non-compliance with the Court's directions as to filing copy of the decree, it was *held*

that a third application filed beyond time could not be treated as a continuation of the earlier ones because the decree-holder had neither complied with the Court's order nor had appealed against the dismissal of the earlier application and that the question whether an application for execution could be treated as one in continuation of a prior application or not was always a question of fact and had to be decided on the facts of each case. (*Sathe, J.M.*) SHEO AGYAN *v.* SHEO NANDAN. 1942 R.D. 699=1942 O.W.N. (B.R.) 571 =1942 A.W.R. (Rev.) 403 (2)=1942 O.A. (Supp.) 429 (2).

——Art. 182—*Starting point—Date of decree—Decree under O. 20, R. 12 (2)—Mesne profits assessed and amount finally determined—Decree not drawn up—Subsequent application by plaintiff to assess Court-fee and to draw up decree—If step-in-aid—Execution application—Limitation.*

For the purposes of computing limitation under Art. 182 of the Limitation Act the date of the judgment has to be taken as the date of the decree which is the starting point of limitation. In the case of a decree for mesne profits under O. 20, R. 12 (2), C.P. Code, such date is the date of the final adjudication between the parties fixing the amount of the mesne profits. The fact that the Court defers the drawing up of the final decree until payment of the deficit Court-fee by the plaintiff, and that the Court draws up the final decree only on the application of the plaintiff on payment of the deficit Court-fee would not enlarge the period of limitation under Art. 182, Limitation Act, for execution of the decree for mesne profits on the ground that the decree is actually drawn up not on the date of the judgment fixing the mesne profits but subsequently on payment of the Court-fee and on application by the plaintiff. The application by the decree-holder to assess the deficit Court-fee or to receive the deficit Court-fee or to prepare and sign the decree cannot be regarded as a step-in-aid of execution under Art. 182 (5) of the Limitation Act. (*Rowland and Chatterji, JJ.*) MAHOMED SADIQUE MIAN *v.* MAHABIR SAO. 21 Pat. 366=199 I.C. 818 =14 R.P. 631=8 B.R. 631=23 Pat.L.T. 202=1942 P.W.N. 139=A.I.R. 1942 Pat. 410.

——Art. 182 (2)—"Appeal"—Meaning of—Appeal against order dismissing judgment-debtor's application to record satisfaction of decree—If saves limitation for execution. *See* 1940 Dig., Col. 821. SEETHARAMA CHETTIAR *v.* ABDUL RAHIMAN SAHIB. 198 I.C. 531 =14 R.M. 452=(1940) 2 M.L.J. 371.

——Art. 182 (2)—*Order for costs not varied by final order in appeal but closely related to it—Starting point.*

Where in remanding a case for trial *de novo* the appellate Court passed an order for costs against the guardian of the successful minor appellants and the suit though dismissed in the trial Court was ultimately decreed in appeal on a question as to the staring point of limitation for the execution of the order for costs against the guardian, it was held that the order for costs though not varied by the final order, in appeal was at least closely related to it since both were passed during proceedings in the same suit and that was sufficient reason for taking the date of the final decree in the suit on appeal as the proper starting point of limitation. (*Madeley, J.*) KRISHNA DEBI *v.* SOBANLAL. 203 I.C. 346=15 R. O. 202=1942 A. W. R. (C. C.) 213=1942 O. A. 226 =1942 O.W.N. 315=A.I.R. 1942 Oudh 464.

——Art. 182 (3)—*Rejection of review application—Starting point.*

The words 'where there has been a review of judgment' in Art. 182 (3) of the Limitation Act can only cover cases where an application for review of a judgment has been allowed and they do not cover cases in which the application for review has been rejected. In the former case limitation would begin to run from the date of the decree substituted on review and in the latter from the date of the original decree itself. (*Yorke, J.*) BENGALI MAL *v.* BAIJNATH PRASAD. 202 I.C. 726=15 R.A. 189=1942 A.W.R. (H.C.) 246=1942 A.L.W. 429=1942 A.L.J. 352=A.I.R. 1942 All. 338.

——Art. 182 (4)—*Amendment of decree—Limitation for execution*—Terminus a quo.

Under Art. 182 (4) of the Limitation Act, *terminus a quo* for an application for execution of a decree runs from the date of the order of the amendment, if there has in fact been an amendment within the meaning of that clause, even though that amendment has been made more than three years from the date of the original decree. But if the alteration in the decree does not amount to an amendment within the meaning of that clause, no fresh *terminus a quo* is available to the decree-holder for execution of the decree. (*Agarwala and Shearer, JJ.*) KESHO SINGH *v.* BHUNESHWARI KUER. 202 I.C. 105=15 R. P. 87=8 B.R. 853=23 P.L.T. 731=1942 P.W.N. 179=A.I.R. 1942 Pat. 478.

——Art. 182 (5)—Application in accordance with law—Application neither signed nor verified, but Court acting upon it. *See* 1941 Dig., Col. 787. SUNDAR SINGH *v.* KHILANDA RAM. 197 I.C. 521=14 R. Pesh. 48.

——Art. 182 (5)—Application to proper Court—Execution of mortgage decree—Local area assigned to another Court under S. 13 (2) of Civil Courts Act subsequent to decree—Application for execution to that Court—If made to proper Court. *See* C. P. CODE, SS. 37 (*b*) AND 38. 75 C.L.J. 255.

——Art. 182 (5)—Final order—Date of—Dismissal of execution application for default. *See* 1940 Dig., Col. 823. SHANKARLAL *v.* MAHADEO. I.L.R. (1942) Nag. 245.

——Art. 182 (5)—*Final order—Execution petition—Order returning on ground of non-production of sale papers—Validity—If "final order".*

It is not incumbent upon a decree-holder to furnish the sale papers along with the execution petition itself. The duty of the Court is to see whether all the requirements of O. 21, Rr. 11 to 14 are complied with. Where these requirements are complied with, an order returning the execution petition on the ground that the sale papers had not been produced is clearly illegal. Such an execution petition must be considered to be still pending, and the order returning it is not a "final order" contemplated by Art. 182 (5) of the Limitation Act. (*Somayya, J.*) SUNDARABALA KADIRESA THEVAR *v.* AVUDAI AMMAL. 202 I.C. 211=15 R.M. 462= 1942 M.W.N. 254=A.I.R. 1942 Mad. 495=(1942) 1 M.L.J. 542.

——Art. 182 (5)—*"Final" order—Language of order—Intention of Court passing order—Relevancy—Duty of Court considering later execution petition to construe order.*

The question whether an order is a "final" order within the meaning of Art. 182 (5) of the Limitation Act is not to be judged by reference to what the Court passing the order thought at the time nor by the language employed by it. It is for the Court before which the nature of the order is properly in question at a later stage which has to deal with the matter and to consider the legal character of the earlier order and the decision must be arrived at on an independent consideration of the correct rule of law as applied to the true facts. (*Krishnaswami Ayyangar and Kunhi Raman,*

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JJ.) SYED GHULAM KHADIR SAHIB *v.* VISWANATHAYYAR. 1943 M.W.N. 68=(1942) 2 M.L.J. 768.

——**Art. 182 (5)**—Final "order"—Meaning of. *See* 1941 Dig., Col. 787. ALAGAPPA CHETTIAR *v.* RAMAKRISHNA AYYAR. 200 I.C. 287=15 R.M. 23=(1941) 2 M.L.J. 493.

——**Art. 182 (5)**—"Final order"—Order requiring applicant to comply with directions of Court—Application returned for attending to directions of Court—Failure to re-present within reasonable time—Subsequent re-presentation after decree had become barred along with fresh application—Limitation, if saved—Revival. *See* 1941 Dig., Col. 787. OFFICIAL RECEIVER, RAMNAD *v.* NARAYANASWAMI THEVAR. 201 I.C. 113=15 R.M. 223=A.I.R. 1942 Mad. 216=(1941) 2 M.L.J. 1018.

——**Art. 182 (5)**—Final "order"—Order returning application for transmission of decree to another Court as decree had not been received from transferee Court—If saves limitation. *See* 1941 Dig., Col. 788. KANDASAMI CHETTIAR *v.* GOKULDAS MADANJI & CO. 197 I.C. 261=14 R.M. 351=(1941) 1 M.L.J. 837.

——**Art. 182 (5)**—Final order—Order that Letters Patent appeal has abated. *See* 1941 Dig., Col. 788. MURLIDHAR *v.* MAHABIR SINGH. I.L.R. (1942) All. 658=197 I.C. 800=14 R.A. 243.

——**Art. 182 (5)**—*"Final order"—What is—Test—Execution petition returned for remedying defects but not re-presented—Legal status of—Order on—If "final".*

An order merely returning an execution petition as defective is not a final order, though in special circumstances it may amount to one, notwithstanding the language employed. The true test is whether the order puts an end to the petition in respect of which it is made so far as the Court passing it is concerned When a petition is returned for the purpose of the petitioner doing something to enable the Court to proceed further with it, the Court really defers its consideration until it is brought back with the defects remedied. It is only then that the Court is placed in a position to consider it judicially and make what can be regarded as a final order on it. An execution petition returned for amendment but not represented has no legal existence till it is re-presented, and if it is re-presented after the time limited it does not acquire the status of a petition calling for an order unless the delay is excused. Where the application for excusing the delay is rejected by the Court, the consequence is that there is no valid petition before theCourt to be ordered or rejected. And it cannot be the subject of a "final" order. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SYED GHULAM KHADIR SAHIB *v.* VISWANATHAYYAR. 1943 M.W.N. 68=(1942) 2 M.L.J. 768.

——**Art. 182 (5)**—"In accordance with law"—Application for larger amount than is due under decree—If saves limitation. *See* 1941 Dig., Col. 789. SUBRAMANIAN CHETTIAR *v.* MUTHUSWAMI GOUNDAN. 200 I.C. 748=15 R.M. 125=(1941) 1 M.L.J. 267.

——**Art. 182 (5)**—*"In accordance with law"—Application complying with O. 21, Rr. 11 to 14—Omission to produce sale papers and encumbrance certificate—Effect of.*

An execution petition which complies with the requirements of O. 21, Rr. 11 to 14, C. P. Code, is in accordance with law; the mere non-production of sale papers and encumbrance certificate would not make it one not in accordance with law so as to justify its return. It is not till a later stage that these papers can be called for under R. 194 of the Civil Rules of Practice. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SYED GHULAM KHADIR SAHIB *v.* VISWANATHAYYAR. 1943 M.W.N. 68=(1942) 2 M.L.J. 768.

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——**Art. 182 (5)** *"In accordance with law"—Application solely for purpose of keeping alive decree.*

An application for execution filed, not with any real intention of proceeding with it, but solely for the purpose of keeping the decree alive, is an application in accordance with law if all the requirements of O.21, R. 11 are satisfied and would save limitation under Art. 182 (5) of the Limitation Act. (*Weston, J.*) KODUMAL MOTIRAM *v.* ASSUDOMAL. I.L.R. (1942) Kar. 428.

——**Art. 182 (5)**—*"In accordance with law"—Meaning of—Application for arrest of defendant not residing within Court's jurisdiction—Step-in-aid.*

An application for arrest of the judgment-debtor which complies with the requirements of O. 21, R. 11, C. P. Code, is one in accordance with law and saves limitation under Art. 182 (5), Limitation Act even though the judgment-debtor who is sought to be arrested is at the time of the application residing out of the jurisdiction of the Court to which the application is made. Although a judgment-debtor can be arrested only within the jurisdiction of the Court which issues a warrant, there is nothing in the Civil Procedure Code which forbids the issue of a warrant unless the judgment-debtor ordinarily resides within the jurisdiction of the Court or happens to have entered that jurisdiction at the time the application for arrest is made or at the time the warrant is issued. Omission or misstatement of the address of a judgment-debtor sought to be arrested is not a defect requiring amendment under O. 21. R. 17, C. P. Code, or entailing rejection of the application. When all the requirements of an execution application laid down in O. 21, R. 11, C. P. Code, are satisfied, the execution application, when filed in time by a person entitled to execute the decree against a person liable to satisfy the decree, and seeking relief in one of the modes allowed by law, must be held to be an application in accordance with law, and it is immaterial whether the application will eventually be effective or ineffective. (*Weston, J.*) KODUMAL *v.* ASSUDOMAL. I.L.R. (1942) Kar. 428

——**Art. 182 (5)**—*"In accordance with law"—"Proper Court"—Application to Court which passed the decree for attachment of property outside jurisdiction—If saves limitation.*

An application by the decree-holder to the Court which passed the decree to attach the judgment-debtor's property beyond the limits of the Court's jurisdiction is one in accordance with law and made to the proper Court, so as to save limitation under Art. 182 (5) of the Limitation Act. (*Harries, C.J. and Manohar Lall, J.*) GHASIRAM BHOLANATH *v.* ABHIN CHARAN. 8 Cut. L.T. 7.

——**Art. 182 (5)**—*"Made in accordance with law to the proper Court"—Construction—Application to Insolvency Court—If a step-in-aid.*

The words "made in accordance with law to the proper Court" in Art. 182 (5) of the Limitation Act is to be read also along with the concluding words "to take some step-in-aid of execution." As an Insolvency Court is not a proper Court for execution, any so called steps-in-aid taken in that Court do not extend the period of limitation. The time between adjudication of judgment debtor and his discharge cannot be excluded. (*Grieve, J.*) NANDLAL *v.* RAMDATTA. I.L.R. (1942) Nag. 306=1942 N.L.J. 294.

——**Art. 182 (5)**—*"In accordance with law"—"Proper Court"—Petition* prima facie *in accordance with law*

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and made to proper Court—If ceases to be such on ground of subsequent inquiry showing that it must fail.

An execution petition which on the face of it is made in accordance with law and to a proper Court does not cease to be such on the ground that, if proceeded with, it might fail on proof of certain facts An execution petition, like aplaint, deals with allegations of fact and not-with facts which, after a subsequent inquiry, are held to be proved. The fact that subsequent inquiry may show that the execution application must fail is no reason for holding that it is not in accordance with law or not made to the proper Court. when, on the face of it, it is in accordance with law and made to the proper Court. (*Davis, C.J. and Weston, J.*) VIRUMAL KUNDANDAS *v.* CHELLARAM ISSARDAS. **I.L.R. (1942) Kar. 448= A.I.R. 1943 Sind 29.**

——**Art. 182 (5)**—"Proper Court"—Court transmitting decree to another Court for execution—Subsequent application to Court transferring decree—If one made to proper Court. *See* 1941 Dig., Col 789 KANDASAMI CHETTIAR *v.* GOKULDAS MADANJI & CO. **197 I.C. 261=14 R.M. 351=(1941) 1 M.L.J. 837.**

——**Art. 182 (5)**—"*Proper Court*"—*Step in-aid—Decree—Transfer for execution to another Court—Subsequent application to decree Court to again transfer decree to same Court—If one made to proper Court and step-in-aid.*

Where a decree has been transferred by the Court which passed it for execution to another Court, an application to the first Court to transfer it for execution to the same Court is a valid application, even if such application is made before the proceedings taken in the other Court have first been reported and certified by that Court. It is an application made to the proper Court within the meaning of Art. 182 (5), Limitation Act and therefore saves limitation. Respondent obtained a decree against the appellants in a suit for sale on a mortgage for Rs. 54,000 and odd. The final decree was passed on 2—7—1927. In October, 1927, the respondent applied for transfer of the decree for execution to the subordinate judge's Court of East Khandesh as the properties were within that Court's jurisdiction. An rder of transfer was made on 22—12—1927, and a copy of the decree and certificate of non-satisfaction were sent to the Court of Khandesh on 3—9—1928. A darkhast was filed in the latter Court for sale, but as there were no bidders the darkhast was disposed of on that ground on 22—3—1933. On 12—5—1934, the decree was attached by a judgment-creditor of the respondent. On 4—12—1935, the respondent applied to the Court which passed his decree for a fresh certificate and order of transfer to the Court of Khandesh and a fresh order re-transferring the decree to the Court of Khandesh was made on 10—1—1936 It appeared that after the infructuous proceedings in the Khandesh Court, the pleader of the respondent took away the copy of the decree and certificate of non-satisfaction for non-payment of his fees and refused to give them up.

Held, that the application by the respondent to the Court which passed the decree for a re-transfer, made on 4—12—1935, was one made to the proper Court and was calculated to be and did have the effect of a step-in-aid of execution under Art. 182 (5) of the Limitation Act. (*Broomfield and Macklin, JJ.*) RAMLAL HARIRAM *v.* RATANLAL BALCHAND. **204 I.C. 285=44 Bom.L.R. 830=A.I.R. 1943 Bom. 1.**

——**Art. 182 (5)**—*Step-in aid — Application by decree-holder purchaser for possession of property sold in execution—Application for payment out of Court of money realised in execution—Limitation—If saved.*

LIMITATION ACT (1908), Art. 182.

An application for possession of property purchased or money realised by a plaintiff decree-holder in execution is a step-in-aid of execution and saves limitation under Art. 182 (5) of the Limitation Act. There can be no difference in principle when the application is for payment out of Court of money realised in execution and whe it is an application for possession of property sold in execution by the decree-holder purchaser. (*Leach, C.J., Lakshmana Rao and Somayya, JJ.*) SANKARA MENON *v.* SUNDARA AYYAR. **55 L.W. 857=1943 M.W.N. 4=A.I.R. 1943 Mad. 129=(1943) 1 M.L.J. 9 (F.B.).**

——**Art. 182 (5)**—*Step-in-aid—Application made for saving time only—If step-in-aid.*

An execution application made to a proper Court and, outwardly at least, in accordance with law, is one within the provisions of Art. 182 (5) of the Limitation Act, even if it is made merely for the purpose of gaining time and keeping the decree alive. It is not necessary for the Court to be satisfied that the application is made *bona fide* and that the decree-holder has the intention of proceeding to execution in pursuance of the application. There is nothing inherently wrong in making an application for the purpose of saving time. (*Davis, C.J and Weston, J.*) VIRUMAL KUNDANDAS *v* CHELLARAM ISSARDAS. **I.L.R. (1942) Kar. 448=A.I.R. 1943 Sind 29.**

——**Art. 182 (5)**—Step in-aid—Application to record part-payment or adjustment of decree debt under O. 21, R. 2, C. P. Code—If saves limitation *See* 1941 Dig., Col. 790. ATMARAM NEMCHAND *v.* MALLAPPA APPAYYA. **I.L.R. (1942) Bom. 11=198 I.C. 206= 14 R.B. 281=A.I.R. 1942 Bom. 17.**

——**Art. 182 (5)**—*Step-in-aid—Application to transferring Court to recall decree from transferee Court and to retransfer it to the same Court—If further execution.*

An application to the Court which passed a decree and transferred it for execution to another Court, to recall the decree from that Court and to send it back again to that Court for execution is not a step-in-aid of execution for it took the decree holder no nearer execution than he was before the application. (*Pollock and Bose, JJ.*) MARUTI *v.* NANJAPPA CHETTY. **I.L.R. (1942) Nag. 539=200 I.C. 56=14 R.N. 315=1942 N.L.J 101=A.I.R. 1942 Nag. 63.**

——**Art. 182 (5)**—*Step in-aid — Certification by decree holder—Effect of.*

A certification of payment by the decree holder cannot be regarded as a step in aid of execution giving rise to a fresh period of limitation under Art. 182 (5) of the Limitation Act. (*Harries, C. J. and Dhavle, J.*) GANJHOO DEO MOHAN SINGH *v.* HARI SAHU. **21 Pat. 481=204 I.C. 318=9 B.R. 139=A.I.R. 1943 Pat. 7.**

——**Art. 182 (5)**—Step-in aid—Claim to attached property—Order allowing—Suit by decree-holder—If step-in-aid—Suit finally dismissed—Execution application within three years but beyond three years of prior execution petition—If barred. *See* 1941 Dig., Col. 790. RAMA SUBBAYYA *v.* THIMMIAH. **200 I.C. 815=15 R.M. 133=A.I.R. 1942 Mad. 5=(1941) 2 M.L.J. 754.**

——**Art. 182 (5)**—*Step in aid—Decree for mesne profits under O. 20, R. 12, C.P. Code—Court fixing amount of mesne profits but postponing drawing upof decree until payment of Court-fee—Application to assess Court fee and to prepare decree—Effect of.*

A step in-aid of execution implies that there is already a decree which can be executed and in furtherance of which the step is taken. Where under O. 20, R. 12, C.

LIMITATION ACT (1908), Art. 182.

P. Code, the Court fixes the amount of the mesne profits but defers the drawing up of the decree until payment of the necessary Court-fee by the plaintiff, an application by the plaintiff praying the Court to assess and receive the deficit Court-fees or to prepare the final decree cannot be considered to be a step-in-aid of execution under Art. 182 (5). (*Rowland and Chatterji, JJ.*) MAHOMED SADIQE MEAN *v.* MAHABIR SAO. **21 Pat. 366 = 199 I.C. 818 = 14 R.P. 631 = 8 B.R. 631 = 23 Pat.L.T. 202 = 1942 P.W.N. 139 = A.I.R. 1942 Pat. 410.**

——**Art. 182 (5)**—Step-in-aid—Joint decree—Execution by one decree holder only—Failure to comply with O. 21, R. 15, C. P. Code—If saves limitation for execution by other decree-holder. *See* C. P. CODE, O. 21, R. 15 AND LIMITATION ACT, ART. 182 (5). **8 Cut.L.T. 86.**

——**Art. 182 (5)**—*Step-in-aid—Joint and several decree—Application for execution—One of judgment debtors not correctly impleaded—Application, if step in-aid of execution against all.*

In the case of a joint and several decree an application for execution made against any one of the judgment-debtors is a step-in-aid of execution against all. The fact that one of the judgment-debtors is not correctly impleaded in that the person who was mentioned as his guardian was not nominated by the Court, is immaterial. (*Varma and Rowland, JJ.*) KAMAL KISHORE NARAYAN *v.* BIRJENDER NARAIN CHOWDHARY. **197 I.C. 480 = 14 R.P. 314 = 23 Pat.L.T. 734 = 8 B.R. 225 = A.I.R. 1942 Pat. 285.**

——**Art. 182 (6)**—*Decree-holder ordered to refund money realised in execution—Application for execution within three years of order but more than 12 years after original decree—If barred—Application, if can be treated as continuation of original application—C. P. Code, S. 48.*

If a decree-holder has realised an amount of money by execution of his decree, but is compelled to refund that amount by a decree passed in a subsequent suit for refund, there is no doubt that he will be entitled to take out execution for this amount under Art. 182 (6) of the Limitation Act, if the application is presented within three years from the date of the final decree in the refund suit. But he will not be entitled to avail himself of this provision if his decree comes within the prohibition contained in S. 48, C.P. Code, (*i.e.*) if 12 years had already expired from the date of the original decree. Where the decree was fully satisfied and the execution case was dismissed on full satisfaction, the subsequent application for execution for recovery of the amount which the decree holder had to refund is in substance a new application and cannot be treated as a continuation of the original application for execution. (*Mukherjee and Khastgir, JJ.*) RAI KUMARI PRAFULLA NALINI DASI *v.* NRISHINGHA KUMARI DASI. **I.L.R. (1942) 1 Cal. 245 = 74 C.L.J. 502 = 46 C.W.N. 149 = A.I.R. 1942 Cal. 255.**

——**Art. 182 (7)**—*Instalment decree—Default clause—Application for execution claiming whole amount on default—Return for amendment—Failure to amend and re-present—If amounts to election to treat whole amount as due—Limitation for execution.*

The doctrine of election, is not a mere legal prohibition to any party against ever changing his mind; it is an equitable doctrine which is applied in law in order to prevent prejudice being done to the opposite party. A decree providing for payment of the amount by instalments commencing from 15—4—1935, contained a default clause giving the decree-holder the liberty to apply for recovery of the whole amount in default of payment of any instalment. Nothing was paid and an execution application was filed on 23—9—1935 claiming the whole amount. It was, however, returned for amendment, but was never re-presented. A fresh application was presented on 19-8—1938. The plea of limitation was raised and it was contended that the decree-holder having elected to recover the whole amount in 1935, and failing to pursue his course, his application in 1938 was barred even in respect of the instalments which were within three years.

Held, that the application of 1935 never came to the notice of the judgment-debtor at all and only amounted to a memorandum by the decree-holder of a course which he decided momentarily to pursue but which he subsequently abandoned. There could therefore be no question of any election on his part to treat the whole amount as due on the date of that application so as to bar the whole decree. It could not be said to have prejudiced the judgment-debtor who was never made aware of it and there was no legal obstacle to the decree holder executing his decree in respect of the instalments within three years. (*King, J.*) ISMAIL ROWTHER *v.* GOMAKANI ROWTHER. **203 I.C. 478 = 15 R.M. 643 = 1942 M.W.N. 476 = 55 L.W. 522 = A.I.R. 1942 Mad. 679 = (1942) 2 M.L.J. 225.**

——**Art. 182 (7)**—Instalment decree—Default clause—Execution—Limitation—Principle governing. *See* 1941 Dig., Col. 791. PEOPLE'S BANK OF NORTHERN INDIA, LTD. *v.* AIJAZ ALI. **17 Luck. 449 = 14 R.O. 506 = 199 I.C. 636 = A.I.R. 1942 Oudh 219.**

——**Art. 182 (7)**—Instalment decree—Default clause—Execution on default—Limitation. *See* 1941 Dig., Col. 791. MATA DIN *v.* SITA RAM. **17 Luck. 346 = 197 I.C. 689 = 14 R.O. 339 = A.I.R. 1942 Oudh 31.**

——**Arts. 183 and 181**—*Application under O. 45, R. 15, C. P. Code—Article applicable.*

The transmission order being a *sine qua non* for execution proceedings an application under O. 45, R. 15, is one for enforcing an order in Council of His Majesty and is covered by Art. 183, Limitation Act, and therefore the residuary Art. 181 cannot apply. (*Bilgrami, J.C.*) PARTAP SINGH *v.* HARKISHAN SINGH. **199 I.C. 46 = 14 R. Pesh. 78 = A.I.R. 1942 Pesh. 14.**

LIS PENDENS. *See* T.P. ACT, S. 52.

LOCAL AUTHORITIES LOANS ACT (IX OF 1914), S. 4—Scope—Loan by Panchayat Board without sanction—Effect—Right of creditor to return of money—Contract Act, S. 65. *See* 1941 Dig., Col. 791. SUBBA RAO *v.* VENKATAPURAM PANCHAYAT BOARD. **201 I.C. 81 = 15 R.M. 209 = A.I.R. 1942 Mad. 111 = (1941) 2 M.L.J. 216.**

LUNACY ACT (1858), S. 9—*Manager—Competency to interfere with personal law of lunatic.*

The Legislature never intended that a manager appointed under S. 9 of the Lunacy Act should be competent to interfere with the personal law of a lunatic member of a joint Hindu family. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARAMESHWARI NANDAN SINGH. **I.L.R. (1942) All. 618 = 202 I.C. 227 = 15 R.A. 104 = 1942 A.L.J. 197 = 1942 A.L.W. 245 = A.I.R. 1942 All. 267 (F).**

MADRAS AGRICULTURISTS' RELIEF ACT (IV OF 1938)—*Applicability—Debt sought to be payable before Act—If can be varied down.*

No debts which have ceased to be payable when the Act came into force can in any way be affected by any provision of the Act. Where full satisfaction of a decree had been entered before the Act came into force, it cannot be made the subject of an application under the Madras Act IV of 1938. (*Wadsworth and Patanjali Sastri, JJ.*) RANGANAYAKULU *v.* GURUSWAMI. **1942**

MADRAS AGRI. RELIEF ACT (1938).

M.W.N. 137=55 L.W. 170 (2)=A.I.R. 1942 Mad. 323=(1942) 1 M.L.J. 341.

———Applicability—Surety for debtor—Amount scaled down as against debtor under Act—Surety not agriculturist—Right to claim benefit of *pro tanto* discharge—Contract Act, Ss. 128 and 134. *See* 1941 Dig., Col. 793. SUBRAMANIAN CHETTIAR *v.* CHINNAMUTHU BATCHA ROWTHER. 201 I C 305=15 R M. 299=A.I.R. 1942 Mad. 145=(1941) 2 M.L.J. 751.

———Scope—If invalid as affecting rights under Negotiable Instruments Act—Government of India Act. *See* 1941 Dig., Col. 793. KARUPPA GOUNDAN *v.* NARAYANASWAMI & CO. 201 I C. 117=15 R M. 227=A I.R. 1942 Mad 169=(1941) 2 M.L J 808.

———Ss. 3 (1) and 8—"*Person*"—"*Same creditor*"—*Composite family in Nellore—If undivided Hindu family—Successive managers of such family—If same creditor.*

The association known as the composite family, the existence of which by custom has been recognised in the Nellore and adjacent districts, cannot be properly termed an "undivided Hindu family," such as is recognised in the definition of "person" in S. 3 (1) of Act IV of 1938. That definition includes under the category of "persons" an undivided Hindu family, a Marumakkathayam or Aliasanthana tarward or tavazhi and excludes other associations. Where a debt alleged to have been incurred in 1922 when a mortgage deed was executed in favour of *X* as the manager of a joint composite family including *A*, and after *X*'s death in 1934, a new mortgage was taken in 1934 in the name of *A* who is alleged to have become the manager of the family.

Held, that the debt could not be scaled down on the basis of the earlier mortgage deed of 1922 on any theory that the creditor under the first mortgage was an association known as the composite family and the creditor under the later deed was the same association. (*Wadsworth and Patanjali Sastri, JJ.*) RANGAREDDI *v.* VENKATAREDDI. 1942 M W.N. 719=55 L.W. 706 =A.I.R. 1943 Mad. 5=(1942) 2 M.L J 592.

———S. 3 (1)—Reunited Hindu family—If "undivided Hindu family" for purposes of Act IV of 1938 *See* 1941 Dig., Col. 795. RAJESWARA RAO *v.* VENKATA RAYANIM GARU. 197 I.C 324=14 R.M. 357=(1941) 2 M L.J 304.

———S. 3 (ii), Proviso A—*Applicability—Association of persons—Assessment of to income-tax—Individual members not entitled to benefits of Act.*

Where an association of persons is assessed to income-tax under S. 3 of the Income-tax Act, it is clear that what is assessed is the income of the individual members of that association, and every individual member of the association must therefore be deemed to have been assessed to income-tax within the meaning of proviso A to S. 3 (11) of Madras Act IV of 1938, and the individual members are not in consequence entitled to claim the benefits of the Act. (*Wadsworth and Patanjali Sastri, JJ.*) RAMASWAMI NAICKER *v.* SOKKAYYA NAICKER 202 I.C. 456=15 R M. 501 =55 L W. 352=1942 I T.R. 226=1942 M.W.N. 287 =A.I.R. 1942 Mad. 428=(1942 1 M.L.J. 559.

———S. 3 (ii) Proviso A—Partnership—Assessment to income-tax—Claim by partner to be agriculturist—Sustainability. *See* 1941 Dig., Col. 795 SOMAPPA *v.* VENKATASWAMY CHETTY 199 I.C. 424=14 R.M. 575=(1941) 1 M.L.J. 782.

———S. 3 (ii), Proviso B—*Applicability—Firm assessed to profession tax—Partner can claim benefit as agriculturist.*

Where a firm has been assessed to profession tax, the individual members of that firm can be assessed again

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on their share of the income of the firm. In applying proviso B to S. 3 (*ii*) of the Madras Act IV of 1938, to a partner who is an agriculturist debtor, one is not entitled to take into consideration his share of the income of the firm which has been separately assessed to profession tax in addition to his personal income in respect of which he has actually been assessed to profession tax. A partner of a firm may claim to be an agriculturist, and as an agriculturist scale down his liability under a partnership debt, though the firm itself may be paying a large sum as profession tax. But this anomaly is not a sufficient justification for adding to the proviso words which it does not contain. (*Wadsworth and Patanjali Sastri, JJ.*) MANIKKAM CHETTIAR *v.* KRISHNAPPA CHETTIAR. 1942 M.W.N. 23=55 L. W. 24=A.I.R. 1942 Mad. 382=(1942) 1 M.L.J. 24.

———S. 3 (ii), Proviso B—*Applicability—Retired officer paying profession-tax on pension received by him—Disqualified to be agriculturist.*

A person who pays a profession tax on his pension as a retired police officer does in fact pay profession-tax on an income derived from a profession, and is therefore disqualified from having the benefits of Madras Act IV of 1938. (*Wadsworth and Patanjali Sastri, JJ.*) KRISHNA WARIAR *v.* MALAVALEE BANK, LTD. 202 I C. 19=15 R M. 420=55 L W. 238=1942 M. W N. 331=A.I.R. 1942 Mad. 449=(1942) 1 M.L.J. 466.

———S. 3 (ii), Proviso B—*Person assessed to profession tax—Court cannot go into legality of assessment.*

It is not open to the Court dealing with a matter under Madras Act IV of 1938 to go into the question whether a person who has in fact been assessed to profession tax during the relevant period has been assessed legally or illegally. (*Wadsworth, J.*) KRISHNAMURTHI *v.* JAGANNADHAPADHI KHADANGA. I L.R. (1942) Mad. 941=55 L.W. 470=1942 M.W.N. 447=A.I. R. 1942 Mad. 598=(1942) 2 M.L.J. 153.

———S. 3 (ii), Proviso C—"*Aggregate annual value*"—*Meaning—If refers to the total of the valuations for two half-years.*

The words "aggregate annual value" in proviso C to S. 3 (11) of Madras Act IV of 1938 refer to the total of the rental values of the various buildings and lands in respect of which the tax has been imposed and not to the total of the valuations for two half years. If a person is assessed for the first of the four half-years on the basis of an annual rental value of not less than Rs. 600, he is excluded from the benefits of the Act. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATARAMANAYYA *v.* MALLIKHARJANUDU 202 I C 6=15 R M. 447=55 L.W. 288=1942 M W.N. 415=A.I.R. 1942 Mad. 533=(1942) 1 M L J. 571.

———S. 3 (ii) Proviso C—*Annual rental value—Computation—Debtor holding only share in house—Only proportionate share of value to be taken into account.*

Where an agriculturist debtor holds only a share in a house and not the whole of it, in computing the aggregate annual rental value of his properties to ascertain whether he is disqualified under proviso C to S. 3 (*ii*) of Madras Act IV of 1938, from claiming the *benefits* of the Act, only his proportionate share of the value of the house should be taken into account and not the whole annual rental value of the house. (*Patanjali Sastri, J.*) JIKKINI BIBI SAHIBA *v.* RANGANAYAKI AMMAL. 55 L.W 851=(1942) 2 M.L J. 487.

———S. 3 (ii), Proviso C—*Applicability—Receiver appointed in mortgage suit at the instance of mortgagee—Assessment to property tax and payment by him—*

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Annual rental value exceeding Rs. 600—*Mortgagor disqualified.*

Where a receiver appointed under O. 40, R. 1, C. P. Code, in a mortgage suit is assessed to and pays property tax, it is a payment on behalf of and as representative of the mortgagor who is the owner of the property; and when the assessment is in respect of a property of an annual rental value exceeding Rs. 600, the owner of the property, *i.e.*, the mortgagor must be held to be disqualified by proviso C to S. 3 (*ii*) of Madras Act IV of 1938 from claiming to be an agriculturist. (*Wadsworth and Patanjali Sastri, JJ.*) NAMBERUMAL CHETTY *v.* RAMAYYA NAIDU. **202 I.C. 765=15 R.M. 578=1942 M.W.N. 391=55 L.W. 298=A.I.R. 1942 Mad. 602=(1942) 1 M.L.J. 561.**

——**S. 3 (ii), Proviso C**—Applicability—Usufructuary mortgagee of house bound to pay house-tax—Demand made on mortgagee—Tax paid by owner for the two relevant years—Mortgagee—If assessed to tax. *See* 1941 Dig., Col. 796. TIRUGNANAVALLI AMMAL *v.* VENUGOPAL PILLAI. **200 I.C. 257=15 R.M. 22=(1941) 2 M.L.J. 497.**

——**S. 3 (ii), Proviso C**—*Construction*—"*Annual rental value*"—*Meaning of*—*Net value or gross rental.*

The phrase "annual rental value" in proviso C to S. 3 (2) of Madras Act IV of 1938 is a general phrase and must be construed as the final figure of rental value on which the assessment is based and that has to be taken as the annual rental value for purposes of proviso C. The annual rental value is therefore the net figure after making the statutory deductions and not the gross rental. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATARAMAYYAR *v.* AYYASWAMI SASTRIGAL. **1942 M.W.N. 708=55 L.W. 780=A.I.R. 1943 Mad. 194=(1942) 2 M.L.J. 676.**

——**S. 3 (ii), Proviso C**—*Construction*—*Payment of property tax throughout the period of two years*—*If essential for disqualification.*

In order to come within the purview of proviso C to S. 3 (11) of Madras Act IV of 1938, it is not necessary that property tax on a rental value of not less than Rs. 600 must have been paid throughout the period of two years specified in the proviso. If, at any point of time within that period the disqualification has been incurred, that would satisfy the terms of the Proviso. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATARAMANAYYA *v.* MALLIKHARJANUDU. **202 I.C. 6=15 R.M. 447=55 L.W. 288=1942 M.W.N. 415=A.I.R. 1942 Mad. 533=(1942) 1 M.L.J. 571.**

——**S. 3 (ii), Proviso C**—*Construction*—*Period of two years*—*Computation*—*If period of assessment or subsequent period.*

Proviso C to S. 3 (ii) of Madras Act IV of 1938 excludes a person from the category of an "agriculturist," if he has within the two years immediately preceding the 1st October, 1937, been assessed to property or housetax, provided the aggregate annual rental value of such buildings and lands is not less than Rs. 600. The period during which the rental value is not less than Rs. 600 must be the same two years within which the assessment is made and not some subsequent date outside the period of assessment to disqualify the person who claims to be an agriculturist. The verb "is" in the final clause of proviso C must be read as being equivalent to "was." (*Wadsworth and Patanjali Sastri, JJ.*) VENKATAPAYYA *v.* MALLAYYA. **65 L.W. 164=1942 M.W.N. 208=A.I.R. 1942 Mad. 410=(1942) 1 M.L.J. 378.**

——**S. 3 (ii), Proviso D**—*Applicability*—*Inam*—*Annual payment of Rs.* 150 *by* mokhasadar *in place of rate varying with yield*—*If quitrent or kattubadi*—*Right of* mokhasadar *to benefit of Act.*

Where after a proposal for the enfranchisement of an Inam had fallen through the land continued to be held by a *mokhasadar*, on a payment varying with the yield, of Rs. 4 per putti up to 1889, on which date there was an agreement between the zamindar and the *mokhasadar* that instead of the varying payment an annual sum of Rs. 150 should be paid "towards cist."

Held, that the fixed annual payment to the zamindar was in the nature of a quitrent or kattubadi, which would disqualify the *mokhasadar* under proviso D to S. 3 (ii) of Madras Act IV of 1938 from claiming the benefits of the Act as an agriculturist, as he is a land holder. (*Wadsworth, J.*) SARANGAPANI *v.* VENKATARATNAM. **55 L.W. 610=1942 M.W.N. 721=A.I.R. 1942 Mad. 733=(1942) 2 M.L.J. 421.**

——**S. 3 (ii), Proviso D**—*Applicability*—*Payment of more than Rs.* 500 *as peishkush in respect of estate formerly situated in Madras and now forming part of Orissa*—*If sufficient for deprivation of benefit of Act*—*Government of India (Constitution of Orissa) Order, S.* 26.

The effect of S. 26 of the Government of India (Constitution of Orissa) Order, 1936, is that the Madras Estates Land Act is to continue in force in the areas transferred to the Province of Orissa newly created. A person who pays Rs. 255 8-0 to the Government of Madras as peishkush for his estate in Madras and Rs. 2,508 to the Government of Orissa in respect of parts of his estate which became part of the New Province of Orissa after the Government of India Order, must therefore be regarded as "a landholder of an estate under the Madras Estates Land Act, 1908" within the meaning of S. 3 (ii), proviso D of the Madras Act IV of 1938 even with reference to the estates owned by him in the Province of Orissa, and if he pays more than Rs. 500 as peishkush in respect of such estates, he is disqualified under the proviso from claiming the benefits of the Act as an agriculturist. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATA NARASINGA RAO *v.* SURAYYA RAJU. **55 L.W. 648=A.I.R. 1943 Mad. 91.**

——**S. 3 (ii), Proviso D**—Construction—Jenmi—Payment of land revenue—If should be as jenmi. *See* 1941 Dig., Col. 796. NARAYANAN NAMBUDRIPAD *v.* ACHUTHAN NAYAR. **200 I.C. 859=15 R.M. 145=A.I.R. 1942 Mad. 120=(1941) 2 M.L.J. 584.**

——**S. 3 (ii), Proviso D**—Owner of share in shrotriem paying less than Rs. 100 as proportionate jodi—If "agriculturist". *See* 1941 Dig., Col. 797. SRINIVASAYYA *v.* OBULA RAJU. **199 I.C. 746=14 R.M. 625=(1941) 2 M.L.J. 164.**

——**S. 3 (iii)**—'Debt'—Advance by one partner to partnership—If can be scaled down. *See* 1941 Dig., Col. 797. SATTIRAJU *v.* VENKATASATYAM. **198 I.C. 801=14 R.M. 496=(1941) 1 M.L.J. 56.**

——**S. 3 (iii)**—Debt—Liability to make restitution—Claim for restitution against son of original party—Liability to be scaled down—Insolvency of father—Application by son—S. 21. *See* 1941 Dig., Col. 797. VINAYAKA RAO *v.* JUNIOR PRINCE'S ESTATE. **201 I.C. 287=15 R.M. 290=(1941) 1 M.L.J. 467.**

——**Ss. 3 (ii), Proviso and 8, Expl.**—Applicability—Sole legatee executing promissory note in 1936 of debts under earlier notes by testator—Testator dying in 1935—Right of legatee to benefit of Act—Legatee agriculturist but testator not agriculturist when he died—Effect. *See* 1941 Dig., Col. 798. NAGABHUSHANAM *v.* VENKAYYA. **200 I.C. 327=15 R.M. 80=(1941) 2 M.L.J. 281.**

——**S. 3 (v)**—"*Creditor*"—"*Assignee*"—*Meaning of.*

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In defining the term "creditor" in S. 3 of Act IV of 1938, so as to include his heirs, legal representatives and assigns the Legislature must be presumed to have intended to refer to those who are the legal heirs or the legal assigns and not to persons who claim to have acquired rights in a manner which the law does not recognise. If a debt under an earlier mortgage has in some informal way been made over to another before a second deed is executed in his name, he cannot by virtue of such informal transfer, be deemed to be the assign of the previous mortgage of the latter's legal representative. (*Wadsworth and Patanjali Sastri, JJ.*) RANGA REDDI *v.* VENKATAREDDI. 1942 M.W.N. 719=55 L.W. 706=A.I.R. 1943 Mad. 5=(1942) 2 M.L.J. 592.

——S. 3 (v)—"Creditor"—Promissory note—Endorsee—If creditor. *See* 1941 Dig., Col. 798. KARUPPA GOUNDAN *v.* NARAYANASWAMI & CO. 201 I C 117=15 R M 227=A.I R. 1942 Mad. 169=(1941) 2 M L J. 808.

——S. 4 (c)—*Scope—"Rent"—Rent due to Local Board as trustee of chatram estate—Not liable to scaling down.*

The exemption in S. 4 (*c*) of Madras Act IV of 1938 will cover any sum payable to a local authority even though it partakes of the nature of rent, and it makes no difference whether the rent in question be an ordinary contractual rent or a rent governed by the special provisions of the Madras Estates Land Act, which would bring it within the definition of "rent" under Act IV of 1938. The words "any other sum" in S. 4 (c) must be read in their natural and wide sense not restricted by the proximity of the special words preceding, and the *ejusdem generis* rule should not be applied. Rent due under the Madras Estates Land Act to a District Board as a trustee of a chatram estate is therefore not liable to be scaled down under Act IV of 1938. (*Wadsworth, J.*) VENKATASUBBA BAGAVATHAR *v.* MANAGER, L. F. CHATRAM, TIRUKKURUNGUDI. 201 I.C. 771=15 R.M 410=1942 M W N. 215=55 L. W. 203=A.I.R 1942 Mad. 462=(1942) 1 M.L.J. 416.

——S. 4 (d)—Applicability and scope—Debt on security of house property alone in Municipality in existence on 1st October, 1937—Subsequent addition of agricultural property as security after Act—Liability of debt to be scaled down. *See* 1941 Dig., Col. 799. MUTHUKARUPPAN CHETTIAR *v.* SUBBIAH CHETTIAR. 201 I.C 265=15 R.M. 288=A.I.R. 1942 Mad. 34=(1941) 2 M.L.J. 653.

——S. 4 (d)—*"House property"—Meaning of—Mortgage of houses along with other house sites without the buildings thereon—If exempt from Act.*

Where a mortgagor has given as security for the debt some houses and other lands and not the buildings standing thereon (which are owned by third parties) it cannot be said that he contracted the debt on the security of "house property" alone as contemplated in S. 4 (*d*) of Madras Act IV of 1938, so as to exempt the debt from the operation of the Act. (*Patanjali Sastri, J.*) JIKKINI BIBI SAHIBA *v.* RANGANAYAKI AMMAL. 55 L.W. 851=(1942) 2 M.L.J. 487.

——S. 4 (f)—Applicability—Surety for next friend of minors—Liability of—If one arising out of breach of trust. *See* 1941 Dig., Col. 799. LINGA REDDI *v.* SUBBARAMI REDDI. 201 I.C. 33=15 R.M. 184=A.I.R. 1942 Mad. 202=(1941) 2 M.L.J. 1008.

——S. 4 (g)—*Applicability — Security bond in favour of family—Assignment to member in lieu of maintenance—If protected under S. 4 (g).*

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The mere fact that an asset of a joint family, in the shape of a security bond executed in favour of the family by another, has been assigned to a member of the family in lieu of maintenance, would not make the liability of the debtor under the security bond a liability in respect of maintenance protected by S. 4 (*g*) of the Madras Act IV of 1938. (*Wadsworth and Patanjali Sastri, JJ.*) SUBBARAMIAH *v.* GURUMMA. 202 I.C. 64=15 R.M. 425=1942 M.W.N. 182 (1)=55 L.W. 118=A.I.R. 1942 Mad. 385=(1942) 1 M.L.J. 290.

——S. 4 (h)—*Applicability—Woman taking assignment of debt from male creditor—Claim to exemption—Assignor not entitled to exemption—No bar to claim by assignee.*

A woman taking an assignment of a debt from a male creditor is not disentitled to claim the exemption under S. 4 (*h*) of Madras Act IV of 1938 merely because her assignor, a male was not entitled to such exemption. By taking the assignment, she becomes the owner of the debt and when she claims the benefit of the exemption it is no answer to say that the original creditor or payee was a male. (*Patanjali Sastri, J.*) MUTHAL ACHI *v.* DORAISAMI PILLAI. 203 I.C. 192=15 R.M. 600=55 L.W. 457 (1)=1942 M W.N 432=A.I.R. 1942 Mad. 662 (2)=(1942) 2 M.L.J. 123.

——S. 4 (h)—*Claim to exemption under—Plea of benami—Evidence to prove—Admissibility.*

A plea of benami is admissible and can be gone into in a matter arising under S. 4 (*h*) of the Madras Act IV of 1938. Where in an application under S. 23 of the Act, the decree-holder who is a woman pleads that she comes within the exemption under S. 4 (*h*), and the debtor pleads the existence of a mortgage in her favour, it is open to the decree-holder to adduce evidence to show that though the mortgage stood in her name, she was really a benamidar for another and that she was not beneficially interested therein. (*Wadsworth and Patanjali Sastri, JJ.*) RANGASWAMI PILLAI *v.* VASU AMMAL. 201 I.C. 790=15 R M. 414=55 L.W. 127=1942 M.W.N. 139=A.I.R. 1942 Mad. 388=(1942) 1 M.L.J. 289.

——S. 4 (h)—'Property'—Maintenance allowance decreed to Hindu daughter against father's heirs or devisees. *See* 1941 Dig., Col. 799. CHINNABBI *v.* VENKATASUBBAMMA. 199 I.C. 753=14 R.M. 626=(1941) 1 M.L.J. 123.

——S. 6—*Applicability and scope—Hindu joint family of father and sons—Father assessed to income-tax—Sons, if disqualified from claiming benefits of Act.*

Prima facie, S. 6 of Madras Act IV of 1938 contemplates the existence of a larger agriculturist unit consisting of a family of several branches, one branch of which is headed by the father who is disqualified from being an agriculturist under one or other of the provisos to S. 3, in which case his sons would be also disqualified as long as they are joint. The section does not apply to a case where there is no such larger unit, and where the family consists only of a father and his sons, the latter would be entitled to the benefits of the Act, if his assessment to income tax, which is the ground of his disqualification, has been made in his individual capacity and not as manager of the joint family of himself and his sons. (*Wadsworth and Patanjali Sastri, JJ.*) SUNDARAM *v.* SUBBA RAO. 1942 M.W N. 191=55 L.W. 160=A.I.R. 1942 Mad. 402=(1942) 1 M.L.J 327.

——Ss. 7, 8 and 9—"Decree"—Preliminary decree in mortgage suit passed after Act—Scaling down—Power of Court. *See* 1941 Dig., Col. 800. VARADARAJA PILLAI *v.* RUKMANI AMMAL. 199 I.C. 448=14 R.M. 582=1942 M.W.N. 832=(1941) 2 M.L.J. 359.

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——**S. 7**—*Mortgage debt—Purchaser of part of mortgaged property undertaking to pay debt but failing to do so—Suit by mortgagee for redemption—Right to get whole debt scaled down—Purchaser not agriculturist—If bar to claim of mortgagor to scaling down.*

The purchaser of a part of mortgaged property who was directed to pay off the mortgage debt failed to do so, and therefore the whole mortgage debt remained due when Madras Act IV of 1938 came into force. The mortgagor brought a suit for redemption of the mortgage claiming the benefit of the Act as an agriculturist and depositing in Court the amount which he alleged to be due under the mortgage when scaled down under the Act.

Held, that the mortgage money being liable to be scaled down under the Act, the mortgagee was entitled, on payment of the scaled down amount, to call upon the mortgagee to deliver up the mortgage deed duly discharged, *i.e.*, to redeem the mortgage as a whole in spite of the fact that the purchaser was not an "agriculturist".

Held, further, that the Court by allowing the mortgagor to redeem the mortgage as a whole, was not conferring the benefit of the Act on the non-agriculturist purchaser, because the latter would have to refund to his vendor (the mortgagor) the purchase money reserved with him, which as a result of the scaling down, he would not have to pay to the mortgagee. (*Wadsworth and Patanjali Sastri, JJ.*) SATYANARAYANAMURTHI *v.* SATHIRAJU. **202 I.C. 402=15 R.M. 491=55 L.W. 280=1942 M.W.N. 365=A.I.R. 1942 Mad. 525=(1942) 1 M.L.J. 506.**

——**S. 7**—*Mortgage debt—Scaling down at instance of mortgagor—Mortgaged property purchased by non-agriculturist cannot be proceeded against for more than scaled down amount.*

Where a mortgage debt is liable to be scaled down at the instance of the mortgagor who is an agriculturist and claims the benefits of Madras Act IV of 1938, the mortgaged properties purchased by strangers subject to such mortgage can be proceeded against only for the scaled down amount and no more, though the purchasers are not themselves agriculturists. (*Wadsworth and Patanjali Sastri, JJ.*) NACHIAPPA CHETTIAR *v.* RAMACHANDRA REDDIAR. **203 I.C. 417=15 R.M. 640=55 L.W. 283 (1)=A.I.R. 1942 Mad. 527=(1942) 1 M.L.J. 510.**

——**Ss. 7 and 19**—*Mortgaged property sold and purchased by different persons in parcels—Some purchasers agriculturists and others not agriculturists—Scaling down of debt as against agriculturist purchaser—Right of latter to redeem whole mortgage on payment of scaled down debt—Mortgagor not agriculturist—Effect.*

In execution of decrees obtained by third parties against a mortgagor, a portion of the hypotheca passed to *X*, an agriculturist, and the rest of the hypotheca to *Y*, who was not an agriculturist. The mortgagor a non-agriculturist thus ceased to have any interest in the hypotheca. In a suit by the mortgagee impleading *X* and *Y*, a preliminary decree for sale was passed on 16—8—1937 for Rs. 37,772; when Madras Act IV of 1938 came into force, on an application by *X*, the decree was amended, so far as *X* was concerned, by scaling down the amount declared due to Rs. 6 638-8-3, including costs the rest of the decree being left in tact. A final decree was passed in November, 1939 and the mortgagee thereafter applied for sale against *X* and *Y*. Pending execution, *X* deposited in Court the sum of Rs. 6638-8-3, and the execution costs for payment to the mortgagee on condition that he was allowed to redeem the whole of the mortgage security, so as to enable him to claim contribution from *Y* for a rateable proportion

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of the amount paid. He also filed an application for entering satisfaction of the decree as a whole.

Held, (1) that *X* was not, on payment of the scaled down amount, entitled to redeem the whole mortgage, as the security must be deemed to be split up in such cases in order to give effect to the provisions of Madras Act IV of 1938 which would benefit only agriculturist debtors and would not affect remedies against debtors who were not agriculturists; (2) that the principle, that where an agriculturist debtor redeems the mortgage by paying the mortgage money as scaled down under the Act, a purchaser of a portion of the hypotheca is also benefited under the general law by reason of the whole property being relieved of the incumbrance, although such purchaser is not an agriculturist and cannot himself claim the benefit of the Act, could not be extended to a case like the present where the mortgagor was not an agriculturist, and the question arose between purchasers of different portions of the hypotheca, some of whom were, and others were not, agriculturists; (3) that the mortgagee's right to recover the full amount of the debt from the properties in the hands of *Y* could not be nullified in order to safeguard *X's* possible right of recovering contribution from *Y*; (4) that though in certain circumstances the relief provided in the Agriculturists Relief Act might be of no practical benefit to an agriculturist debtor, the latter could not claim in seeking relief that the creditor's rights should be prejudiced to a greater extent than the provisions of the Act clearly warrant. (*Wadsworth and Patanjali Sastri, JJ.*) SRIRIVASA THATHACHARIAR *v* SIVASUBRAMANIA CHETTIAR **55 L.W. 741=1942 M.W.N. 798=A.I.R. 1943 Mad. 196=(1942) 2 M.L.J. 631.**

——**Ss. 7 and 10**—*Status of agriculturist—Crucial date to decide—Claim to relief made in suit—Material date—Date of suit or date of hearing—Relevancy of.*

Apart from Ss. 13, 19 and 23 of Madras Act IV of 1938, there is nothing in the Act which requires a debtor to prove his agriculturist status as on the date on which the matter is brought to the notice of the Court. Reading Ss. 7 and 10 of the Act together, in the absence of any provision in the Act, requiring proof that the debtor must continue to be an agriculturist also up to the time when the matter comes before the Court, it must be held that the debtor, in cases where his claim to relief is put forward during the trial of the suit, will be entitled to relief if he can show that he was an agriculturist on 1—10—1937 and on the commencement of the Act, 22 3—1938. (*Wadsworth and Patanjali Sastri, JJ.*) PAPAMMAL *v.* RAMASWAMI CHETTIAR. **55 L.W. 635=1942 M.W.N. 809=A.I.R. 1942 Mad. 726 (2)=(1942) 2 M.L.J. 498.**

——**Ss. 7 and 12**—*Scope—Payment after Act in excess of amount properly payable under Act and appropriated to interest—Power to re-appropriate to principal—Right to refund—Procedure.*

Where payments made by a debtor in 1938 and 1939 have been definitely appropriated towards interest at the time, neither the debtor nor the creditor has the right to tear up the appropriations by an unilateral act. The Court has no power to re-appropriate the payments to principal in the absence of any provision for that course in Act IV of 1938. It is not sufficient to show that the creditor cannot by reason of the provisions of S. 7 recover more than the amount as scaled down under the Act, and the excess amount paid towards interest as scaled down cannot be recovered by the powers under Ss. 7 and 12 of the Act. The only way in which a debtor might get back money which he has paid after the Act came into force, in excess of the amount pro-

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perly due under the Act, would be by establishing a right to a refund under the ordinary law on the ground that the payment has been made under a mistake. For this purpose there must be a definite plea of set-off supported by evidence showing that a mistake has in fact been made. (*Wadsworth, J.*) ARUNAGIRI CHETTIAR *v.* KUPPUSAMI CHETTIAR. **203 I C. 596=1942 M.W. N. 541=55 L W. 527=A.I.R. 1942 Mad. 655=(1942) 2 M.L J. 275.**

——S. 8—Applicability—"Hawala"—Debt due by *A* to *B* cancelled and debt to *C* substituted—If "renewal" to same creditor. *See* 1941 Dig., Col. 800. PAPAIAH *v.* RAMAPUNIAH. **199 I C. 290=14 R.M. 577=A.I. R. 1942 Mad. 12=(1941) 2 M L J. 566.**

——S. 8—Applicability—"Interest"— Usufructuary mortgage—Lease back to mortgagor—Decree for rent obtained by mortgagee against mortgagor—If one for interest—Wiping off. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 10 (2) (*i*). **(1942) 1 M.L.J. 448.**

——**Ss. 8 and 9**—*Applicability—Malabar tarwad—Debt incurred by karnavan under promissory note in* 1923—*Subsequent renewals by succeeding karnavans—Scaling down as against karnavan renewing last—Liability if can be traced to original transaction.*

Where there is a family debt due by a Malabar tarwad under a promissory note by the present karnavan of the tarwad executed by him in renewal of earlier promissory notes dating back to 1923, when the debt was originally incurred under a promissory note by the then karnavan, the present karnavan who is liable for the debt, as also the junior members of the tarwad, may get the debt scaled down on the basis of the original liability. There is no warrant for holding that the executant karnavan is not entitled to trace his liability back to the earlier documents under which he was liable not as executant but as a member of the debtor tarwad. Not only the non-executant junior members but also the executant karnavan who has renewed the promissory note can trace back the liability to the original transaction of debt. (*Wadsworth, J.*) KESAVA MENON *v.* ACHUTHAN NAIR. **203 I C. 345=15 R.M. 636=55 L.W. 151=1942 M W.N. 284=A.I.R. 1942 Mad. 482=(1942) 2 M.L J. 41.**

——S. 8—*Applicability—Mortgage executed on* 21—12—1932 *in renewal of earlier promissory notes by mortgagor—Purchaser of mortgaged property undertaking to pay off mortgage—Right to have debt scaled down on basis of original money debt—"Renewal".*

The purchaser of property bound by a mortgage, seeking to scale down his "property liability" can go back to an antecedent mortgage by the same mortgagor over the same property, the date of the "property liability" being regarded as the date when the property originally became bound by the antecedent debt. But where the mortgage which binds the property is traced back only to a simple money debt due from the mortgagor, the antecedent debt cannot in any sense be regarded as binding the property purchased, and the purchaser cannot claim that his liability is a renewal of the previous money debt due from the mortgagor. The liability cannot be scaled down with reference to the antecedent promissory notes evidencing the money debt (*Wadsworth and Patanjali Sastri, JJ.*) NACHIYAPPA CHETTIAR *v.* MARAPPA GOUNDAN. **201 I.C. 709=15 R.M. 375=55 L.W 226=1942 M.W N. 213=A. I.R. 1942 Mad 412=(1942) 1 M.L.J 329.**

——S. 8—*Applicability—Promissory note for interest due under earlier mortgage—Mortgage falling under S. 4 (d)—Promissory note—Liability to scaling down.*

Where it is shown that a previous transaction (a mortgage) is excluded from the operation of Madras Act IV of 1938, by S. 4 (*d*), it follows that a promissory note by the same debtor cannot be scaled down as a renewal of that transaction under S. 8 in so far as it embodies the interest thereon. (*Wadsworth, J.*) RAMACHANDRA RAO *v.* RAMASWAMI. **55 L.W. 609=1942 M.W.N. 744=A.I.R. 1943 Mad. 53=(1942) 2 M.L. J. 420.**

——**Ss. 8 and 9**—Applicability—Promissory note in favour of two persons before 1932—Partition of debt and execution of separate promissory note in favour of each of the sharers after 1932—If renewal of prior one. *See* 1941 Dig., Col. 800. VENKATESWARALU *v.* VENKATARAJU. **198 I.C. 425=14 R.M. 436= (1941) 1 M. L.J. 718.**

——**Ss. 8 and 9**—*Coparcener joining in renewal of promissory note by manager—If entitled to have his liability scaled down as renewal of previous liability.*

Where it was contended that when an individual coparcener makes himself personally liable for a joint family debt, it must be deemed that there are two liabilities due from two persons, one the liability due from the joint family 'person' and the other the liability due from the individual coparcener becoming liable under a subsequent note, and hence he cannot claim that his liability was in renewal of the earlier joint family liability.

Held, that apart from the pious obligation theory, when a junior coparcener joins in the execution of a document in renewal of a family debt for which he was previously liable only as a member of the joint family, he is entitled to have the debt scaled down as a renewal of the previous liability binding on himself. (1940) 2 M. L.J. 786 and (1941) 1 M.L.J. 39, Foll. (*Wadsworth and Patanjali Sastri, JJ.*) VASUDEVAN NAMBUDIRI *v.* UNNIMAYA ANTERJANAM. **55 L W. 27=1942 M W.N. 96=A.I.R. 1942 Mad 298=(1942) 1 M.L.J.88**

——**Ss. 8, 9 and 16**—Decree for rent—Award of costs—Interest on costs—If can be scaled down. *See* 1941 Dig., Col. 801. VENKATARATNAM *v.* SURYA RAO. **199 I.C. 591=14 R.M. 607=(1941) 1 M.L J. 156.**

——**Ss. 8, 9 and 19, Proviso**—Decree on promissory note of 1933 for principal, interest and costs—Execution sale before Act realising more than sufficient to cover all interest and costs and part of principal—Effect—Right of judgment-debtor. *See* 1941 Dig., Col. 802. RAMASWAMI AIYAR *v.* RAMAYYA SASTRIGAL. **200 I.C. 333=15 R M. 75=(1941) 1 M.L.J. 295.**

——S. 8—Mortgage in 1922—Assignment by mortgagee in 1928 for amount higher than principal amount of mortgage—Assignee transferring rights to another—Suit by latter—Decree against heirs of first assignee only—Application for scaling down—Basis for scaling down. *See* 1941 Dig., Col. 802. KUPPAN CHETTIAR *v.* KALIAMMAL. **200 I.C. 163=14 R.M. 719=(1941) 2 M.L.J. 360.**

——**Ss. 8 and 19**—Mortgage of 1914—Payment of more than double the principal—Preliminary decree for redemption—Purchasers of portions of hypotheca parties to suit and decree—Application by mortgagor to scale down—Purchasers not agriculturists—Full satisfaction of decree—If can be entered. *See* 1941 Dig., Col. 803. MARINA AMMAYI *v.* BAKHAR BEG SAHIB. **200 I.C. 245=15 R.M. 20=(1941) 1 M.L.J. 547.**

——**Ss. 8 and 19**—Mortgage—Suit on against mortgagor as well as Court auction purchaser of equity of redemption—Application by mortgagor for scaling down—Right of mortgagee to claim decree for full amount against purchaser—Relinquishment of claim to personal decree—Effect. *See* 1941 Dig., Col. 804.

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——Ss. 8 and 19—*Promissory note of* 1920—*Suit on —Decree in* 1930—*Death of maker in* 1936—*Heirs impleaded in execution—Application for scaling down after Act—Competency—Father disqualified from claiming relief—Effect—Crucial date to determine status—Procedure for scaling down S.* 8.

The petitioners' father executed a promissory note to the respondents on 6—4—1920, and a decree was passed in favour of the respondents on 1—11—1930 in a suit brought on the note. The petitioners were brought on the record as his legal representatives in execution, their father having died on 27—9—1936. After the Madras Act IV of 1938 came into force in March, 1938, the petitioners applied to have the decree scaled down claiming to be agriculturists. It was found that the petitioner's father was not an agriculturist, as before his death he had been assessed to property tax and was therefore disqualified under S. 3 (ii), proviso C.

Held, (1) that the petitioners who were agriculturists were entitled to claim relief under the Act as agriculturists through their father whose liability they had inherited was himself not an agriculturist; (2) that the liability sought to be scaled down was the liability incurred under the promissory note of 1920, and the petitioners' succession to their father's estate on his death in 1936 could not be the basis of any new liability; (3) that it was immaterial whether or not the debtor had the agriculturist character when the debt was actually incurred where it was incurred before 1—10—1937, and the material dates with reference to which such character had to be determined for purposes of S. 19, were 1—10—1937 and 22—3—1938 (date of commencement of the Act) and the date of the application; (4) the decree should therefore be scaled down under S. 8 of the Act. (*Wadsworth and Patanjali Sastri, JJ.*) KONA HASAN FATIMA BIVI *v.* MAHOMED MUHAIDEEN NACHIAR. 55 L.W. 729=A.I.R. 1943 Mad. 87=(1942) 2 M.L.J. 506.

——Ss. 8, 9 and 19, Proviso—Promissory note of 1931—Letter of guarantee in 1933—Compromise decree in suit—Application for scaling down—Liability of surety—If to be scaled down under S. 8 or under S. 9—Scaling down as against principal debtor—Procedure—Costs—If can be allocated. *See* 1941 Dig., Col. 804. NARAYANAN CETTIAR *v.* VEERU GOUNDAR. 201 I.C. 15=15 R.M. 238=A.I.R. 1942 Mad. 133=(1941) 2 M.L.J. 658.

——Ss. 8 and 9—Pronote in favour of *A* the brother of *B* in 1931 when they were undivided—Fresh note of 1933 in favour of *B* in discharge of the earlier one—Partition between *A* and *B* in 1932—Note assigned in 1937 to *A* who sued on it—If suit can be dismissed on failure of *A* to produce the earlier note—Scaling down—Principles. *See* 1941 Dig., Col. 805. MALLAYYA *v.* MALLAYYA. 201 I.C. 284=15 R.M. 295=A.I.R. 1942 Mad. 280=(1941) 2 M.L.J. 1085.

——S. 8—*Renewal—Purchaser of mortgaged property —Fresh mortgage to mortgagee to discharge earlier mortgage and for additional consideration—Inclusion of additional property—Effect—If renewal.*

A person who by reason of purchase of property bound by a mortgage is under a liability to discharge that mortgage and subsequently discharges that liability by the execution of a fresh mortgage can be said to be renewing his own pre existing liability. It is immaterial whether or not the debtor had the character of an agriculturist when the debt was originally incurred if it was incurred prior to 1—10—1937. A person purchasing property subject to a mortgage becomes a debtor to the

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mortgagee to the extent of the liability under the existing mortgage binding that property, and when he discharges that liability by executing a fresh mortgage to the same mortgagee, he can claim that the original principal of the earlier mortgage was included in the principal of the fresh mortgage to the extent to which the amount due under the earlier mortgage contributes to the consideration of the fresh mortgage. The fact that the fresh mortgage comprises other property not covered by the pre-existing mortgage is immaterial. Nor would the question be affected by the fact that the later mortgage comprises an additional consideration besides the discharge of the earlier mortgage. The portion of consideration which is made up of the discharge of the earlier mortgage will be scaled down on the basis of the principal of that mortgage. (*Wadsworth and Patanjali Sastri, JJ.*) VALLIAMMAL *v.* RAMASWAMI GOUNDAR. 1942 M.W.N. 717=55 L.W. 779=A.I.R. 1943 Mad. 127=(1942) 2 M.L.J. 720.

——S. 8—"*Same creditor*"—*Promissory note—Prior note in name of guardian of payee then a minor—Scaling down.*

The term "creditor" as defined in Act IV of 1938 does not include a person beneficially entitled to the amount lent. In the case of a decree of 1931 on a promissory note which can be traced back through a series of renewals in favour of the same persons as far as 1919, when the note discharged was one in favour of another as guardian for the payees under the notes of 1919 and thereafter (who were minors till then), the intervention of the guardian must be held to break the series of renewals, for the guardian is not the same creditor as the payees in the later notes. The debt can therefore be traced back only as far as 1919 and cannot be traced back earlier. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATARAJU *v.* GOVINDAYYA. 1942 M.W.N. 711=55 L.W. 785=A.I.R. 1943 Mad. 168.

——Ss. 8, Expl. and 19—Applicability— Decree against *A* and *B* on basis of contract anterior to 1932—Fresh promissory note in 1933 by *A* and *C*—Scaling down—Rule to be applied. *See* 1941 Dig., Col. 807. GOPALA MALLER *v.* KRISHNAN. 201 I.C. 161=15 R.M. 254=A.I.R. 1942 Mad. 134=(1941) 2 M.L.J 340.

——S. 8, Expl.—Applicability—"Same creditor"—Person beneficially entited in money lent—If creditor—Debt under promissory note by father renewed by mortgage by son—Debtors—If same. *See* 1941 Dig., Col. 808. NARAYANAMMA *v.* VENKATACHALAM. 201 I.C. 67=15 R.M. 202=A.I.R. 1942 Mad. 143=(1941) 2 M.L.J. 703.

——S. 8 (1)—*Applicability—Banker and customer —Interest capitalised at end of each year and resulting balance shown as principal for next year—"If outstanding"—Scaling down.*

Where the mode of dealing between a creditor and a debtor, adopted by the parties, is what is usually followed between a banker and customer, and at the end of each year's operations the account is settled by the parties and the resulting balance is treated as the principal carrying interest during the next year, the interest accruing due each year and dealt with in such manner does not come within the mischief of S. 8 (1) of Madras Act IV of 1938. The interest in such a case must be deemed to have been paid and discharged and to be no longer outstanding to be wiped out under S. 8 (1). (*Wadsworth and Patanjali Sastri, JJ.*) PAZHANIAPPA MUDALIAR *v.* NARAYANA IYER. 1942 M.W.N. 737 =55 L.W. 805=A.I.R. 1943 Mad. 157=(1942) 2 M.L.J. 753.

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——S. 8 (1)—*Construction—"All interest outstanding"—Meaning of—Interest accrued due but not payable till after* 1—10—1937—*If liable to be cancelled.*

The word "outstanding" in S. 8 (1) of Madras Act IV of 1938 is used in its ordinary sense of "unpaid." Although a date is fixed in a document for the payment of interest, it must be deemed to accrue due from day to day. Where in a mortgage deed, interest for year ending March, 1938 was payable on 10th March, 1938, it must be held that interest from 10th March, 1937, up to 1—10—1937 had accrued and was outstanding within the meaning of S. 8 1) of Act IV of 1938 (though it was not payable until 10th March, 1938 and was not overdue) liable to be cancelled under S 8 (1). (*Wadsworth and Patanjali Sastri, JJ.*) NARAYANA BHAT *v.* RAMA. 203 I.C. 598=55 L.W. 201=1942 M.W N. 235=A.I. R. 1943 Mad. 551=(1942) 1 M.L.J 453.

——S. 8 (1)—*Interest outstanding—Evidente of appropriation—Intention—Open payment—Payment of amount far greater than interest then due—Appropriation of part towards principal after satisfying interest—If intended.*

Appropriation is the indication of an intention that the money would be applied in a particular way. The most ordinary way of proving the intention is by proof of a statement made either orally or in writing. But that is not the only kind of proof possible. It may be proved by circumstantial evidence also, as is recognised in S. 60 of the Contract Act. Where a debtor paid his creditor in 1936, a sum of money which was greater by several hundreds of rupees than the interest then due, endorsing the payment generally as paid towards the debt under a promissory note of 1934 executed in renewal of a note of 1931 and there is nothing to suggest that he did not know the extent of his indebtedness or the amount of interest due or that he intended only to pay interest and not principal, it can and ought to be held that the debtor on that occasion did intend to pay off part of the principal of his debt and indicate that intention by the very act of the payment, and the debt has to be scaled down on that basis and not as if the entire amount paid was made in reduction of the principal and as if all the interest was outstanding on 1—10—1937, so as to be wiped out under S. 8 (1) of Madras Act IV of 1928. (*King, J., on a difference of opinion between Wadsworth and Patanjali Sastri, JJ.*) RAGHAVA REDDIAR *v.* DEVARAJULU REDDIAR. 55 L.W. 842=1942 M.W.N. 779=(1942) 2 M.L.J. 724.

——S. 8 (2)—Applicability—Appropriation of open payments made prior to 1st October, 1937—Awarding of counter interest on payment made—Effect. *See* 1941 Dig., Col. 809. VENKAYAMMA *v.* RAMAKOTAYYA. 199 I.C. 704=14 R.M. 621=(941) 1 M.L.J 316.

——Ss. 8 (2) and 10 (2) (i)—*Applicability—Mortgage with possession—Mortgagee to appropriate income and to get further annual payment from mortgagor—Scaling down—Appropriation by mortgagee—If payment by mortgagor.*

S. 10 (2) (*i*) of Madras Act IV of 1938 does not require that the rate of interest per cent. should be specified in the mortgage deed. Where the deed provides not only that the income of the mortgaged properties is to be taken by the mortgagee in possession in lieu of interest without any liability to account but also that the mortgagor should in addition pay annually a certain sum till redemption, the amount cannot be regarded as anything but interest on the principal money. The appropriation by the mortgagee in terms of the bond in such a case cannot however be deemed to be constructive payments by the mortgagor for purposes of S. 8 (2).

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(*Wadsworth and Pataniali Sastri, JJ.*) MANAVALA AYYAR *v.* MAHOMED YOOSAF MARACAIR. 55 L W. 570=1942 M W.N. 635=A.I R. 1943 Mad. 100=(1942) 2 M.L.J. 398.

——S. 8, Expl.—Applicability—Period for determining whether debtor is an "agriculturist"—Promissory note by three persons in 1932 in renewal of earlier one—Subsequent renewal by two out of three—If falls under Explanation to S. 8—Right to claim benefit of Act. *See* 1941 Dig., Col. 807. DEVARAYAN CHETTIAR *v.* SUBRAMANIA IYER. 200 I.C. 321=15 R.M. 77=(1941) 2 M.L.J. 257.

——S. 8, Expl.—Scope—Son estopped from questioning liability under a mortgage after partition by his father which he had attested—Subsequent mortgage by the son of his own property in discharge of father's mortgage debt—If renewal of earlier debt. *See* 1941 Dig., Col. 809. SABHAPATHI MUDALIAR *v.* RAJARATHNA MUDALIAR. 200 I.C. 283=15 R.M. 25=(1941) 1 M.L.J. 302.

——S. 9—*Account commencing after* 1st *October*, 1932—*Settlement at the end of every year—If can be re-opened.*

Unless a debt falling under S. 9 relates back to a debt incurred before 1st October, 1932, so as to invoke the provisions of S. 8, there is nothing in S. 9 to justify the re-opening of settlements or the re appropriation of payments on the basis of a hypothetical original principal. In such a case the creditor is entitled to a decree on the basis of the last settlement with interest thereon at 5 per cent. per annum. (*Wadsworth, J.*) MUTHUSAMIA PILLAI *v.* SANKARA AIYAR. 202 I.C. 149=15 R.M. 475=55 L.W. 33 (1)=1942 M.W N 120 (2)=A.I. R. 1942 Mad. 297=(1942) 1 M.L.J. 86.

——Ss. 9 and 13—Applicability—Fresh debts or debts in discharge of earlier ones incurred after the commencement of the Act—Whether S. 9 or S. 13 applicable. *See* 1941 Dig., Col. 810. THIRUVENGADATHA AYYANGAR *v.* SANNAPPAN SERVAI. I.L.R. (1942) Mad 57=197 I.C. 790=14 R.M. 384=(1941) 2 M L.J. 307.

——S. 9—*Applicability—Promissory note in April*, 1937, *in settlement of accounts of dealings dating back to February*, 1932—*Scaling down—Procedure under S.* 9—*Appropriation of payments.*

A promissory note was executed on 11—4—1937 for Rs. 415-7-3, in settlement on account of dealings going back to 14-2-1932. In 1939 a suit was brought to recover Rs. 232-11-0 being the balance due under that note and subsequent dealings. The indebtedness thus started early in 1932 and by 1—10—1932, a sum of Rs. 327-15-6 had been advanced. Between 1—10—1932 and the commencement of Madras Act IV of 1938, further advances amounting in all to Rs. 792-14-3 had been made. By this time, however, the principal amount due had become reduced to a little more than the amount of principal outstanding on 1—10—1932, thus indicating payments towards the principal amounting to far more than the principal sum outstanding on 1—10—1932.

Held, that applying the general rule that payments towards principal will be deemed to have been appropriated first to the earliest advance, the whole of the sums advanced before 1—10—1932 must be deemed to have been discharged before the Act came into force, and there could therefore be no question of scaling down the debt on the basis of renewals and taking it back to a date anterior to 1—10—1932. For the purpose of the Act, the debt therefore started only on 11—4—1937 and S. 9 of the Act would apply. (*Wadsworth, J.*) SATYANARAYANAMURTHY *v.* KANAKA-

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RAJU. 55 L.W. 458=1942 M.W.N. 445=A.I.R. 1942 Mad. 673.

——S. 9 (1), Proviso—Construction—Promissory note in 1937 for balance due on mortgage executed after 1st October, 1932—Scaling down—Basis of—Original mortgage advance—If can be adopted. *See* 1941 Dig. Col. 811. SESHAYYA *v.* SWAMI REDDI. 201 I.C. 324=15 R.M. 311=A.I.R. 1942 Mad. 204 (2)=(1941) 2 M.L.J. 795.

——S. 10 (2)—Applicability—Usufructuary mortgage in renewal of prior simple mortgage—Clause providing for keeping alive prior mortgage—Mortgagee to be in possession under mortgage in lieu of interest—No rate of interest stipulated—Liability to scaling down. *See* 1941 Dig., Col. 811. RAMA AYYAR *v.* MADHAVA RAO. 200 I.C. 610=15 R.M 100=(1941) 2 M.L.J. 376.

——S. 10 (2) (i)—*Applicability—Mortgagee—If to be in physical possession—Usufructuary mortgagee leasing back property to mortgagor—If in possession—Decree for rent—If one for interest—S.* 8.

It is not necessary for the purpose of S. 10 (2) (1) of Madras Act IV of 1938 that the mortgagee should be in physical possession of the property. A usufructuary mortgagee who leases the mortgaged land to his mortgagor remains in possession of the mortgaged land for purposes of S. 10 (2) (1). The usufructuary mortgage and lease back cannot be regarded as a simple mortgage bearing interest; and a decree for rent or damages for use and occupation is not a decree for interest liable to be wiped out under S. 8 of the Act. (*Wadsworth and Patanjali Sastri, JJ.*) RANGASWAMY AYYAR *v.* JAINABU BIBI AMMAL. 202 I.C. 531=15 R.M. 526 =1942 M.W.N. 232=55 L.W. 247=A.I.R. 1942 Mad. 507=(1942) 1 M.L.J. 448.

——S. 10 (2) (i)—Applicability—Mortgage with possession—Mortgagee to enjoy usufruct for two years in lieu of interest—Mortgagor to pay on expiry of two years—In default mortgagee to continue in possession and also entitled to interest at 3 per cent. in addition—If can be scaled down—Enjoyment of produce—If payment by mortgagor. *See* 1941 Dig., Col. 811. JAGANNATHA IYENGAR *v.* SENNIVEERA CHETTIAR. 199 I.C. 854=14 R.M. 643=(1941) 1 M.L.J. 197.

——S. 10 (2) (ii)—Applicability—Endorsement of promissory note in part payment of price of land purchased—Endorser's right to claim benefit of scaling down. *See* 1941 Dig., Col. 812. RANGIAH CHETTIAR *v.* KARIM SAHIB. 199 I.C. 867=14 R.M. 644=(1941) 2 M.L.J. 453.

——S. 10 (2) (i)—*Applicability—"Rate of interest"—Specification of particular percentage—Necessity—"Interest"—Meaning of—*"Labham" *allowed to lender for further advance—Nature of payment.*

An annual compensation paid by a borrower to a lender for the use of the lender's money is interest, by whatever name it is called; the words "rate of interest" in S. 10 (2) (i) of Madras Act IV of 1938 do not necessarily imply that a particular percentage should need be stipulated in the document, provided that the actual amount of the interest is fixed by the terms of the document. Under a kanom document of 1924, the petitioner demised the land to the respondent under a kanom document, receiving Rs. 300 and the respondent undertook to pay to the petitioner Rs. 36 annually as rent or *michawaram*. In 1927, the petitioner borrowed a further sum of Rs 200, under a *puramkadam* document, whereby a further charge to the extent of Rs. 200 was to be created over the jenm interest in favour of the respondent (kanomdar) and in consideration of the further advance, the petitioner agreed to pay Rs. 20 to the respondent

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annually as *labham*. The respondent was entitled to adjust this sum of Rs. 20 annually towards the rent which he had to pay to the petitioner and to pay only the balance.

Held, that the effect of the *puramkadam* deed was that there was a contract whereby a mortgage was created for a sum of Rs. 200 with an annual interest of Rs. 20, which meant that the loan carried interest at 10 per cent. and the transaction was not therefore protected by S. 10 (2) (*i*) of the Act. (*Wadsworth, J.*) GOVINDAN NAIR *v.* IMBICHI MAMMAD. 55 L.W. 608=1942 M.W.N. 804=A.I.R. 1943 Mad. 31=(1942) 2 M.L.J. 422.

——S. 10 (2) (ii)—*Applicability—Sale of land—Mortgage by vendee to vendor for sale price—Subsequent sale by vendee—Direction in sale-deed for payment of sale price to original vendor—Second purchaser executing fresh mortgage to original vendor—Effect.*

When there is a debt incurred originally for the balance of the purchase price of land, embodied in a mortgage, which undergoes renewals the debt due under the final renewal is a debt in respect of which the protection of S. 10 (2) (*ii*) of Madras Act IV of 1938 can be invoked. The exclusion of such a liability from the operation of the Act depends not on the actual subsistence of the charge but on the question whether in the beginning the liability was one in respect of which a charge is provided under S. 55 (*iv*) (*b*), T. P. Act. Where a person sells land to another and takes a mortgage from him of the land sold for the sale price and the purchaser sells the land in turn to another directing him to pay off the mortgage debt due to the original vendor, the original purchaser and the purchaser from him have notice of the subsistence of the lien, and in the absence of any thing to show that the lien has been terminated by any act of the vendor, when the ultimate purchaser himself executes a mortgage to the original vendor in respect of the amount which he is directed to pay to him under his purchase, he is in fact renewing a liability in respect of which at its inception the vendor's lien subsisted. That liability falls under S. 10 (2) (*ii*) and cannot therefore be scaled down. (*Wadsworth and Patanjali Sastri, JJ.*) VIJAYALAKSHMI AMMAL *v.* RANGACHARIAR. 1942 M.W.N. 751=(1942) 2 M.L.J. 806.

——Ss. 10 (2) (iii) and 1—Applicability—Mortgage suit—Vendee of hypotheca impleaded in suit—Decree—Application by vendee to scale down debt—Maintainability—Liability—If exempted. *See* 1941 Dig., Col. 813. PALANIVEL GOUNDAN *v.* SUBBAROYA GOUNDAN. 199 I.C. 617=14 R.M. 616.

——S. 10 (2) (iii)—*Construction—"Interest not more than 9 per cent."—If covers compound interest.*

S. 10 (2) (*iii*) of Act IV of 1938, which excludes from the purview of Ss. 8 and 9 of the Act any liability in respect of any sum due to a public or scheduled bank if the "interest payable is not more than nine per cent." cannot be read as meaning not more than nine per cent. *simple interest*. Interest, when used without any qualification, is clearly intended to cover both simple and compound interest. (*Wadsworth and Patanjali Sastri, JJ.*) KRISHNASWAMI VANDAYAR *v.* UNION BANK, LTD., KUMBAKONAM. 55 L.W. 560=1942 M.W.N. 552=A.I.R. 1943 Mad. 10=(1942) 2 M.L.J. 346.

——S. 10 (2) (iii)—Liability excluded under—Debt due to public company carrying interest at less than 9 per cent. in renewal of earlier debt carrying interest at higher rate—If can be scaled down. *See* 1941 Dig., Col. 813. SUBRAMANIA IYER *v.* INDIA EQUITABLE

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INSURANCE CO., LTD. 201 I.C. 410=15 R.M. 332 =A.I.R. 1942 Mad. 105=(1941) 2 M.L.J. 509.

——S. 13—Procedure—Deb.—Subject-matter of appeal—Application for scaling down—When to be made—Proper procedure on application in appellate Court. *See* 1941 Dig., Col. 814. SRIRAMA REDDI *v.* SRIRAMA REDDI. I.L.R. (1942) Mad. 346=198 I.C. 117=14 R.M. 385=(1941) 2 M.L.J. 855 (F.B.).

——S. 14 — *Applicability — Marumakkathayam family—Debt due by—Agriculturist and non-agriculturist members—Liability of—Scaling down.*

S. 14 of the Madras Act IV of 1938 applies to a Marumakkathayam Hindu family also, and the word "member" therein is used as equivalent to "members entitled to a share," and a sub-thavazhi, the smaller unit which can claim such a share will thus be a member for purposes of S. 14. The proper procedure, having regard to the section in the case of a Marumakkathayam family will be to find out, first, which members (including any sub-thavazhi entitled to partition) are agriculturists and which are non-agriculturists; secondly, to ascertain how many shares belong to the agriculturist members and how many to the non-agriculturist members; and after scaling down the debt, to hold the agriculturist section of members collectively liable for the proportionate share of the debt as scaled down and the non-agriculturist section of the members collectively liable for the proportionate share of the debt as not scaled down. The creditor will thus have to divide his execution proceedings into two parts, one relating to the scaled down decree and the other relating to the unscaled down decree and so far as the family properties are concerned, each of these parts of the decree will be executable against a composite fraction of the family property. The operation of S. 14 will not in any way affect the personal liability of the executants of the promissory note evidencing the debt and they will be entitled to scale down the decree so far as their personal liability is concerned not by rendering themselves liable for a part only of the debt, but by being liable for the whole of the debt subject to such reduction as they may be entitled to if they are agriculturists (*Wadsworth and Patanjali Sastri, JJ.*) NALANUNNI *v.* DAKSHAYANI AMMA. 202 I.C. 538=15 R.M. 521=1942 M.W.N. 274=A.I.R. 1942 Mad. 456=(1942) 1 M.L.J. 418.

——S. 14—*Scope—"Debt"—"Family debt"—Meaning of.*

S. 14 of the Madras Act IV of 1938 does not confer upon a non-agriculturist the power to get rid of his liabilities in a case in which those liabilities do not necessarily form part of a major liability to which the Act necessarily applies. The term "debt" in the section must be restricted to a debt due from an agriculturist and the term "family debt" therefore necessarily means a debt due from a family which was an agriculturist at the commencement of the Act or at least on 1st October, 1937. (*Wadsworth and Patanjali Sastri, JJ.*) VAIDYANATHA AYYAR *v.* SRINIVASA AYYAR. 55 L.W. 140=1942 M.W.N. 186=(1942) 1 M.L.J. 596.

——S. 15—*Appeal—Decree for rent—Application for scaling down—Order on—Appealability.*

A proceeding under S. 15 of Madras Act IV of 1938 for the amendment or discharge of a decree for rent is not a proceeding in execution, but a special proceeding under a special statute, and in the absence of any provision in that statute for a right of appeal, no appeal lies. (*Wadsworth and Patanjali Sastri, JJ.*) MAHARAJAH OF COCHIN *v.* MADHAVA MENON 202 I.C. 426=15 R.M. 500=55 L.W. 161=1942 M.W.N. 201 =A.I.R. 1942 Mad. 413 (2)=(1942) 1 M.L.J. 366.

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——S. 15—*Applicability—Assignee of right to collect jodi—If landholder—Jodi payable to assignee—If can be scaled down as rent or as debt.*

"Jodi" is rent according to the definition in Madras Act IV of 1938, but an assignee of the right to collect jodi is not a landholder as defined by the Madras Estates Land Act, and since that which can be scaled down under S. 15 of Act IV of 1938 is rent payable to a landholder under the Madras Estates Land Act, S 15 will not cover that which is rent under Madras Act IV of 1938 but is not payable to a landholder as defined by the Estates Land Act. Jodi due to an assignee cannot therefore be scaled down under S. 15 of Act IV of 1938. The payment being in the nature of rent, it is not a debt and cannot be scaled down under any provision of Act IV of 1938. (*Wadsworth, J.*) MUNISAMI GOUNDAN *v.* HANUMANTHA ROYA GOUNDAR. 55 L.W. 526= 1942 M.W.N. 474=A.I.R. 1943 Mad. 8=(1942) 2 M.L.J. 283.

——Ss 15, 16 and 19—*Applicability—Decree for rent, land cess and costs—Land subsequently becoming "estate" under Madras Estates Land Act—Application for scaling down—Procedure—If to be scaled down as rent or as a decree for a debt.*

On 18—3—1936 the appellant obtained a decree for rent or damages for use and occupation in respect of the period from 15—12—1932 to 15—10—1935. He also got a decree for land cess in respect of the same lands for the period from 30—6—1931 to 30—6—1935. When Act IV of 1938 came into force the judgment-debtor applied under Ss. 8, 15 and 19 for scaling down the amount due under the decree. He did not, however, make the deposit of rent as required by S. 15 of Act IV of 1938. In the meantime the Madras Estates Land (Amendment) Act of 1936 came into force and the land in respect of which the decree for rent had been obtained became an estate.

Held, (1) that the decree having been passed for an ordinary contractual rent which alone could be claimed at the time when the Court dealt with the matter, there was no reason for holding that the effect of the Amendment of 1936 to the Madras Estates Land Act would be to change the character of that rent or the relations of the parties as they stood at the time of the previous adjudication, and therefore the decree could be scaled down as a decree for a debt only, as the rent which was decreed was not rent as defined by Act IV of 1938; (2) that S. 15 of Act IV of 1938 had no application and S. 16 which was merely a rider to S. 15 did not also apply; and the decree for land cess had to be scaled down as any other decree for a debt; and the decree for costs should be treated as a debt incurred on the date of the decree. (*Wadsworth and Patanjali Sastri, JJ.*) NARAYANA GAJAPATHIRAJU *v.* NARASIMHULU. 20 I.C. 367=55 L.W. 558=1942 M.W.N. 472=A.I.R. 1942 Mad. 746=(1942) 2 M.L.J. 359.

——S. 15—Applicability—If confined to cases of landlord and tenant under Estates Land Act—Jodi payable by Agraharamdar—If "rent". *See* 1941 Dig., Col. 815. NAVANEETHA KRISHNA YACHENDRA BAHADUR *v.* RAMANUJULU CHETTY. 200 I.C. 881 =15 R.M. 172=A.I.R. 1942 Mad. 56=(1941) 2 M.L.J. 159.

——S. 15—Applicability—Malabar Compensation for Tenants' Improvements Act—Decree for arrears of rent against tenants passed before Act—Subsequent suit for redemption—Set-off of rent decree against value of improvements—Right of tenant to claim scaling down under Act IV of 1938. *See* MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, S. 6 (2). 55 L.W. 18 (3)=(1942) 1 M.L.J. 166.

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——S. 15—*Applicability—Malabar Tenancy Act, S. 3 (i)—Intermediary—Usufructuary mortgage from jenmi- Tenant under perpetual lease from jenmi attorning to mortgagee—Effect of—Rent payable by tenant to mortgagee—Scaling down.*

A usufructuary mortgage of a Malabar jenmi's rights creates in the mortgagee an interest which entitles him to possession, even when the land is in the possession of a tenant under a perpetual lease known as *saswatham*; and where such tenant has attorned to the mortgagee, he must be deemed to have transferred such possession to the tenant. He is therefore an intermediary as defined by S. 3 (*i*). Malabar Tenancy Act, and the tenant is entitled to the benefit of S. 15 of the Madras Agricul turists' Relief Act with reference to the rent payable to such mortgagee. (*Wadsworth and Patanjali Sastri, JJ.*) RANGA IYER *v.* SUBBAVYA GOUNDAR. **1942 M.W N. 788 = 55 L.W 832 = A.I.R. 1943 Mad. 116 = (1942) 2 M L.J. 739.**

——S. 15—Applicability—Mortgage with possession by jenmi —Lease back by mortgagee to jenmi—Right of jenmi lessee to apply for wiping-off of arrears of rent—Rent under lease—If 'interest'. *See* 1941 Dig., Col. 815. KRISHNA MENON *v.* KUNJANDI. **197 I.C. 421 =14 R M. 364 = (1941) 2 M L.J. 351.**

——S. 15—*Date of deposit—Chalan for deposit obtained on* 30—9—1939 *but money actually deposited later—If sufficient.*

Where a challan for the deposit of the amount required under S. 15 of Madras Act IV of 1938 was applied for and obtained on 30—9—1939, but the amount was actually deposited only on 2—10—1939, the deposit has to be treated as having been made on 2—10—1939 and not on 30—9—1939, unless it is proved that the applicant was prevented from making the deposit on 30—9—1939, by some default on the part of the treasury officer, or by the bank or by some delay on the part of the Court in issuing the challan so as to prevent the applicant from making the deposit in time. (*Wadsworth, J.*) SANKARAN NAYAR *v.* GOVINDAN NAYAR. **202 I.C. 14 = 15 R.M. 448 = 55 L W. 283 (2) = A.I.R. 1942 Mad. 534 (2) = (1942) 1 M.L.J 573.**

——S. 15—*Deposit of* kattubadi—*If to include interest thereon—Burden of proof.*

There is no statutory provision as to interest on arrears of *kattubadi*, as in the case of rent under S. 61 of the Madras Estates Land Act. Therefore the ordinary rules of the Interest Act will apply to the case of *kattubadi*, and a demand would be necessary to make such interest payable. Where such interest is payable, it is to be included in the deposit made under S. 15 of Madras Act IV of 1938. A deposit of *kattubadi* without interest is therefore bad when interest is payable, but good when no such interest is payable. The burden of proof is on the landlord to prove that there was such a demand as would make interest payable. (*Wadsworth J.*) NARAYANA GAJAPATHI RAJU *v.* RAMU NAIDU. **202 I C. 88 = 15 R.M 440 = 55 L W 185 = 1942 M W N. 244 = A I R 1942 Mad. 419 (1) = (1942) 1 M L.J. 385.**

——Ss. 15 and 19—*Distinction between- Claim for rent—Order entering up part satisfaction—Appealability—Order as to costs—Whether gives right of appeal—Payment of panava purappad—Whether rent.*

Under S. 19 of the Madras Act IV of 1938, what is contemplated is a complete recalculation of the amount to be decreed with reference to the provisions of Ss. 8 and 9 of the Act, and the result normally is a decree which has a totally different basis from the original decree. If the amount already paid towards the debt is sufficient to wipe off the debt as scaled down, then an order of satisfaction is recorded and against that there is no right of appeal. If, however, the debt as scaled down is not discharged the section contemplates the drafting of a fresh decree capable of execution and this fresh decree gives rise to a right of appeal. But the process contemplated under S. 15 of the Act is different. In such a case there is no question of recalculating the amount due under the decree for rent and all that was to be done is to examine the amount of the deposit and see whether it is sufficient to satisfy the rent as decreed for fasli 1347 and to what extent it is sufficient to satisfy the rent as decreed for fasli 1346 and then to enter up satisfaction of the older arrears under the decree proportionately to the extent to which the arrears for those two faslis have been satisfied. In such a case the whole process is not one of amendment but one of satisfaction and there is no right of appeal. And the mere fact that the Act in such a case safeguards the decree for costs will not make the order appealable. Periodical payments of *panaya purappad* are not rent for the purpose of S. 15 of Madras Act IV of 1938 and an assignee of the right to collect arrears of rent is not a jenmi or intermediary for the purpose of that section. (*Wadsworth and Patanjali Sastri, JJ.*) VIKKARA VELLODI AND BROS *v.* AVARAN KUTTY. **55 L.W. 506 = 1942 M W.N. 469 = A.I R. 1943 Mad. 32 = (1942) 2 M.L.J. 237.**

——S 15—*Rent to be deposited—Assignee of some items of holding from tenant—Division of landlords interest—Claim to relief under S. 15—Rent of entire holding—If to be deposited—Deposit of proportionate part- Sufficiency.*

Where out of an original holding some items of lands come to the hands of an assignee, and the rent of those items have come to be payable not to the original landlord which was a tarwad but to a tavazhi or sub-group of that tarwad, if there has been an attornment by the tenant to the sub-divided landholder, the tenant would be entitled to claim relief as against the person to whom he actually paid his rent on deposit of the rent. If, however, the rent of the holding was still payable to the original landholder (tarwad) who had to make over part of the rent to the subdivided group, the scaling down can presumably be ordered only on payment of the full rent of the holding. (*Wadsworth, J.*) SANKARAN NAYAR *v.* GOVINDAN NAYAR. **202 I C. 14 = 15 R. M. 448 = 55 L.W 283 (2) = A.I.R. 1942 Mad. 534. (2) = (1942) 1 M.L.J 573.**

——S. 15 (4)—*Applicability and scope—Application on behalf of group of individuals—Competency—Malabar tarwad—Partition suit—Preliminary decree—Appointment of receiver—Division by metes and bounds not made—Subsequent coming into force of Act—Application by receiver on behalf of individual sharers—Maintainability.*

There is no authority for holding that an application under S 15 (4) of Madras Act IV of 1938 can be made only by an individual and not by a receiver on behalf of a group of individuals where by a preliminary decree for partition of Malabar tarwad owning a leasehold interest in agricultural lands, a receiver is appointed to hold the properties of the tarwad during the process of partition, if no partition has been effected by metes and bounds on the date of the coming into force of the Act, the position is that the leasehold interest becomes vested in individual sharers as tenants-in-common and the receiver represents all of them. All the tenants-in-common are collectively liable to pay rent and should proceed collectively to get any relief, and if the receiver under the orders of the Court makes the necessary deposit and applies for relief under S. 15 (4) on behalf of

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all the sharers, there is no reason why relief under S. 15 should be refused when the individual sharers are all agriculturists and qualified to apply, although the tarwad originally was disqualified to apply under proviso D to S. 3 of the Act. (*Wadsworth and Patanjali Sastri, JJ.*) MOOPIL NAIR *v.* GOPALAN NAIR. 55 L.W. 236=1942 M.W.N. 305=A.I.R. 1942 Mad. 441=(1942) 1 M.L.J. 495.

——S. 15 (4)—Applicability—Decree for rent by Civil Court—Application under S. 15 (4) to Revenue Court—Competency—Procedure. *See* 1941 Dig., Col. 816. VENKATA RAJAGOPALA KRISHNA YACHENDRA BAHADUR *v.* VENKATASESHACHARLU. 201 I C. 195 =15 R.M. 270=A.I.R. 1942 Mad. 78=(1941) 2 M. L.J. 655.

——S. 15 (4)—*Applicability—Post-settlement* sarva inam *free of jodi—Tenant under inamdar—Right to apply for cancellatin of arrears of rent.*

A post-settlement grant of a *sarva inam* which is expressly free of jodi and not subject to any demand of the zamindar, is a grant of the melwaram, and the grantee of such an inam is a landholder as defined by S. 3 (5) of the Madras Estates Land Act. A tenant under such an inamdar is therefore entitled to make a deposit under S. 15 (4) of Madras Act IV of 1938 and claim relief. (*Wadsworth, J.*) PAPAYYA SASTRI *v.* APPA RAO. I.L.R. (1942) Mad. 944=55 L.W. 400 =1942 M.W.N. 410=A.I.R. 1942 Mad. 677=(1942) 2 M.L.J. 211.

——S. 15 (4)—*Applicability—Suit for redemption of kanom—Decree declaring amount due to tenants for kanom and improvements and providing for delivery of property to plaintiff on his depositing the amounts—Specification of amounts to plaintiff by defendants for arrears of rent, costs, etc.—Provision for set-off—Decree not drawn up in form effecting set-off—Arrears of rent —If can be scaled down.*

In a suit for redemption of a kanom, a decree was passed in 1936, declaring firstly, the amounts due to the tenants for improvements and for the kanom amount, and declaring secondly, that on the deposit by the plaintiff (landlord) of these amounts the defendants should hand over the property and the documents to the plaintiff. Then followed a series of clauses specifying the amount due from the defendants to the plaintiff, *viz.*, for arrears of rent, for costs, commission fee and also the rate at which future rent was payable, and the decree provided that "set-off is allowed." While the decree was still unsatisfied the tenants applied under S. 15 (4) of Madras Act IV of 1938, praying that the deposit towards the arrears of rent for faslis 1347 and 1346 might be taken into consideration and the arrears for the earlier faslis scaled down. The decree holder opposed this on the ground that by reason of the provision for set-off in the decree, no rent was outstanding when Madras Act IV of 1938 came into force. He also contended that this was really a case of two cross-decrees and that the lesser decree must be deemed to be merged in the greater decree.

Held, (1) that until the holder of the greater decree actually executed and set off the amount due from him to the holder of the lesser decree, the latter still had a decree which was unsatisfied and which might become effective if the greater decree were satisfied in some other way; (2) that the decree, not having been drawn up in the form contemplated by S. 6 (2) of the Malabar Compensation for Tenants' Improvements Act after setting off the amount due for rent against the amount due to the tenants for improvements, etc., had become final in the absence of any appeal, and as the decree actually passed took the form of two separate decrees, one of

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rent and the other for the kanom amount and value of improvements, the arrears of rent were due when Act IV of 1938 came into force, and were therefore liable to be scaled down under S. 15. (*Wadsworth, J.*) UKKALI *v.* KELU NAYAR. 55 L.W. 152=1942 M.W.N. 246 =A.I.R. 1942 Mad. 399=(1942) 1 M.L.J. 338.

——S. 15 (4)—*Rate of rent—Duty of Court to decide correct rate of lawful rent—Unlawful enhancement—If can be acted upon.*

A landholder is not entitled in proceedings under S. 15 of the Madras Agriculturists' Relief Act to insist on his ryot depositing rent at a rate which represents an unlawful enhancement. The Court dealing with a deposit under S. 15 (4) must necessarily find out what is the correct rate of rent, and in deciding what is the correct rate of rent, it must be governed by the principles laid down in the particular Act governing the tenancy. (*Wadsworth, J.*) PAPAYYA SASTRI *v.* APPA RAO. I.L.R. (1942) Mad. 944=55 L.W. 400=1942 M.W.N. 410=A.I.R. 1942 Mad. 677=(1942) 2 M.L.J 211.

——S. 15 (4)—*Scope—Decree for rent—Deposit after Act earmarked for rent of holding—Withdrawal by landlord—Appropriation—Procedure.*

Where there is a deposit, after the Madras Agriculturists' Relief Act came into force, an amount of money earmarked for the rent of a particular holding as decreed by a Court, it would have to be drawn out by the landholder only in accordance with the provisions of S. 15 (4) of the Act for credit, firstly, to the two faslis mentioned therein; the landholder so withdrawing the money would presumably be relieved of the necessity of recording satisfaction of the decree for earlier faslis to the extent to which the statutory appropriation is made, the question of the satisfaction of such decree being left to be worked out in accordance with the provisions of S. 15 (4). (*Wadsworth, J.*) APPALASWAMI *v.* APPAMMA. 55 L.W. 575=1942 M.W.N. 563=A.I.R. 1943 Mad. 24=(1942) 2 M.L.J. 319.

——S. 15 (4)—*Scope of inquiry—Tenant's rights to abatement of rent—If can be gone into.*

Although ordinarily in an application under S. 15 (4) of the Madras Agriculturists' Relief Act, a plea that the tenant was entitled to abatement of rent for non-possession of part of the lands in his holding or for failure of irrigation supply would not be available to the tenant, yet in a case where the agricultural tenure is itself based upon a contract which provided for such abatement of rent, the Court would, in an application under S. 15 (4), have jurisdiction to consider pleas based upon the terms in the *patta* (contract) which contemplates fluctuations on certain grounds. (*Wadsworth, J.*) KANAKAYYA GARU *v.* VENKATARANGA ANAHARACHARYULU. 208 I C. 249=15 R.M. 609=55 L.W. 416=1942 M.W.N. 506=A.I.R. 1942 Mad. 649=(1942) 2 M.L.J. 100.

——S. 17—Scope—Suit for arrears of rent for fasli 1344 due from non-agriculturist—If saved. *See* 1941 Dig., Col. 816. NAGORE DURGA *v.* KANNU PILLAI. 201 I C. 164=15 R.M. 253=A.I.R. 1942 Mad. 79=(1941) 2 M.L.J. 604.

——S. 19—*Appeal—Decree amended—Remedy—Revision—Competency.*

When there is an amended decree as the result of an application under S. 19 of Madras Act IV of 1938, an appeal must be preferred against that amended decree; a revision cannot be entertained. (*Wadsworth and Patanjali Sastri, JJ.*) ARUNACHALAM CHETTIAR *v.* GOVINDASWAMI GOUNDAN. 202 I C. 380=15 R.M. 489=55 L.W. 287=A.I.R. 1942 Mad. 519 =(1942) 2 M.L.J. 38.

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——S. 19—*Appeal—Order directing amendment of decree—If can be treated as amended decree without copy of original decree—Appeal against order directing amendment—Production of order directing amendment only—Dismissal on merits—Second appeal—Maintainability—Appeal—If can be treated as one against amended decree on payment of court-fees.*

The appellant's decree was directed to be amended on a petition by the judgment-debtor under S. 19 of the Madras Act IV of 1938. Against the order directing the amendment, the appellant preferred an appeal as provided by the rule framed under the Act, the memorandum of appeal being accompanied by a copy of the decretal order of the trial Court, not by a copy of the amended decree. The lower appellate Court entertained the appeal as an appeal against the order and dismissed it on the merits, holding that the decision under appeal was correct. The appellant then preferred a civil miscellaneous second appeal to the High Court against the appellate decision; the respondent objected to the maintainability of the appeal in the lower Court itself on the ground that the rule providing for a right of appeal had been declared to be *ultra vires*. The appellant then prayed that he might be permitted to pay the deficit court fee both in the lower appellate Court and in the High Court, so that his appeal to the lower appellate Court might be treated as an appeal against the amended decree and his appeal to the High Court as a regular second appeal.

Held, (1) that it could not be said that when the lower Court had wrongly assumed an appellate jurisdiction but had declined to interfere with the trial Court's decree, any right of second appeal was conferred by such wrongful assumption of jurisdiction, although the position would be different if the lower appellate Court assuming a jurisdiction which was not in fact vested in it had amended the trial Court's decree; (2) that the order directing the amendment of the decree was not in itself a sufficient substitute for the amended decree without attaching to that order a copy of the original decree even assuming that O. 41, R. 1, C. P. Code, would be sufficiently complied with, if an appeal against the amended decree were accompanied by a copy of the original decree together with a copy of the order directing amendment of the decree according to the practice in the mofussil Courts; (3) that there was therefore no valid appeal against the amended decree in the lower appellate Court, and the present appeal to the High Court could not properly be treated as a regular second appeal by merely recovering the deficient court-fee to give the appeal a character which legally it could not possess. (*Wadsworth and Patanjali Sastri, JJ.*) SITARAMAMURTHI *v.* LAKSHMINARAYANAMURTHI 55 L.W. 668=1942 M.W.N. 824=A.I.R. 1943 Mad 185=(1942 2 M.L.J. 568.

——Ss. 19, 20 and 21—Applicability and scope—Sale by Official Receiver of property subject to mortgage—Scaling down of mortgage debts—Stay of sale—Procedure—Application to Official Receiver to stay sale and application to Insolvency Court to scale down mortgage debts without impleading Official Receiver—Competency. *See* 1941 Dig., Col 817. KRISHNA RAO *v.* OFFICIAL RECEIVER, EAST GODAVARI. 200 I.C. 784=15 R.M 152=A.I.R 1942 Mad. 254=(1941) 2 M.L.J. 698.

——S. 19—Applicability—Decree in Privy Council appeal—If can be scaled down—If decree of foreign Court. *See* 1941 Dig., Col 817. SANTHAPPA *v.* ESWARAPPA. 200 I.C. 503=15 R.M. 68=(1941) 2 M.L.J 295.

——S. 19—Applicability—Decree in Privy Council appeal—If can be scaled down—If decree of foreign Court. *See* 1941 Dig., Col. 817. SUBBAYYA *v.* VENKATA HANUMANTHA BUSHANA RAO. I.L.R. (1942) Mad. 60=200 I.C. 520=15 R.M. 69=(1941) 2 M.L.J. 125.

——S. 19—Applicability—Decree in suit by trial Court before Act came into force—Appeal—Appellate decree after Act confirming decree of trial Court—Subsequent application to trial Court for scaling down—Competency. *See* 1941 Dig., Col. 818. VEERAPPA CHETTIAR *v.* SIVAGAMI ACHI. 201 I.C. 378=15 R.M 324=1942 M.W.N. 385=55 L.W. 180=A.I.R. 1942 Mad. 291=(1941) 2 M.L.J. 1064

——S. 19—Applicability—Execution sale held before 1st October, 1937—Purchase by decree holder—Sale when becomes complete—Sale not confirmed owing to pendency of application to set aside sale—Application to scale down decree—Maintainability. *See* 1941 Dig., Col. 818. NATARAJA PILLAI *v.* RANGASWAMI KARAMUNDAR. 201 I.C 229=15 R.M. 279=A.I.R. 1942 Mad. 119=(1941) 2 M.L.J. 682.

——S 19—Applicability—"Judgment-debtor"—Surety for defendant in application to set aside *ex parte* decree—Liability of—Application to scale down decree—Competency—Extent of right available to surety. *See* 1941 Dig., Col. 819. MUTHYALU *v.* CHINNAYYA. 201 I.C 79=15 R.M 204=1942 M.W.N. 61=A.I.R. 1942 Mad. 149=(1941) 2 M.L.J. 1010.

——Ss. 19 and 20—*Applicability—Mortgage suit—Preliminary decree before Act—Final decree after Act came into force—Omission to raise plea under Act in final decree stage—Subsequent application—If barred.*

Where in a mortgage suit the preliminary decree was passed before Madras Act IV of 1938 came into force and the final decree is passed after the Act came into force, the omission on the part of the debtor to raise a plea under the Act in the final decree proceedings would not bar the debtor from taking advantage of the special procedure laid down in the Act for scaling down the decree debt. (*Wadsworth and Patanjali Sastri, JJ.*) ERRAMMA REDDI *v.* SOORAPPA 201 I.C. 721=15 R.M. 384=55 L.W. 157=1942 M.W.N. 141=A.I.R. 1942 Mad. 418=(1942) 1 M.L.J. 314.

——Ss. 19 and 20—Applicability—Partnership—Debt due by—Personal decree against partner who is an agriculturist—Right of latter to relief. *See* 1941 Dig., Col. 819. PITCHAYYA *v.* SUBBAYYA. 199 I.C. 436=14 R.M 579=(1941) 1 M.L.J. 609.

——S. 19—*Applicability—Second appeal pending at time of coming into force of Act—Dismissal subsequently—Application to scale down decree to trial Court by person party to suit but not party to appeal or second appeal—Maintainability—Procedure.*

Where a decree has been the subject-matter of an appeal, the decree of the appellate Court supersedes the decree of the Court below, even though the appellate decree is one of affirmance of the decree of the Court below and does not reverse or modify it. It makes no difference to this principle whether the particular defendant affected was or was not a respondent in the appeal. Where a second appeal pending at the time when Madras Act IV of 1938 came into force is subsequently dismissed and the trial Court's decree is thereby confirmed, and an application is made under S. 19 of the Act for scaling down the decree by a person who was a party to the suit but not a party to the appeal and second appeal, it cannot be entertained. The only decree to be executed being the appellate decree the trial Court has no longer any jurisdiction to alter the superseded decree under S. 19. Nor can the High Court alter its own decree under S. 19, as that section applies

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only to decrees passed before the commencement of the Act. If a party is entitled to any benefit under the Act which came into force during the pendency of the appeal, it is his duty to get himself impleaded in the pending appeal and ask for that relief before the appellate decree is passed. (*Wadsworth, J.*) PALANI MUDALI *v.* ATHIAPPA GOUNDAN. 1942 M.W.N. 681=55 L.W. 840=A.I.R. 1943 Mad. 160=(1942) 2 M.L.J. 599.

——S. 19—*Decree—Scaling down—Uncertified payment—If can be taken into account.*

If for the purpose of scaling down a debt embodied in a decree, the Court finds it necessary to ascertain what payments have been made towards the decree in question, the bar in O. 21, R. 2, C. P. Code, would not prohibit the proof of payments which have not been certified. (*Wadsworth and Patanjali Sastri, JJ.*) RAJU *v.* MAHALAKSHAMMA. 203 I C. 481=15 R M 645=1942 M.W.N. 494=55 L.W. 491=A.I.R. 1942 Mad. 597=(1942) 2 M.L.J. 185.

——S. 19—Final decree in mortgage suit before 1—10—1937—Private sale of part of hypotheca—Vendee paying part of sale price to decree-holder—Application by mortgagor to scale down—Competency—Vendee not agriculturist—Effect of. *See* 1941 Dig., Col. 820. SATYANARAYANAMURTHI *v.* GANGISETTI. 200 I.C. 388=15 R.M. 42=(1941) 1 M.L.J. 223.

——S. 19—"*Judgment-debtor*"—*Mortgage of* 1913—*Decree final in* 1919—*Puisne mortgagee becoming such in April*, 1939—*Sale of property in* 1939—*Decree not scaled down and no application pending—Sale if vitiated by material irregularity—Puisne mortgagee after decree—Right to apply to scale down decree.*

Where in execution of a final decree passed in 1919 in a suit on a mortgage of 1913, a sale is held and the properties are sold in 1939 without applying the provisions of Act IV of 1938, the mere holding of the sale without first applying the provisions of Act IV in favour of a person interested in the hypotheca would not amount to a material irregularity such as would justify the setting aside of the sale at the instance of a puisne mortgagee who became a mortgagee in April, 1937, when there is no application filed or pending under Act IV of 1938 at the time of the sale, and when it is not clear that the decree-holder brought the properties to sale with the knowledge that the puisne mortgagee was entitled to the benefits of the Act. But such a puisne mortgagee having, by reason of his mortgage, acquired before 1—10—1937, an interest in property bound by the mortgage decree, and having therefore become liable to discharge the debt decreed, must be deemed to be a judgment-debtor entitled to apply under S. 19 of the Madras Agriculturists' Relief Act to scale down the decree if he is an agriculturist. (*Wadsworth and Patanjali Sastri, JJ.*) MADHURAKAVI AYYANGAR *v.* CHINNASAMI CHETTI. 1942 M.W.N. 736=55 L.W. 812=A.I.R. 1943 Mad. 134.

——S. 19—*Proceedings under—If proceedings in suit or separate proceedings—Decree of Presidency Small Cause Court in uncontested suit—Amendment under S. 19 of Act IV of* 1938—*Right to apply for new trial.*

Though the initial stages of a proceeding under S. 19 of the Madras Act IV of 1938 may properly be regarded as proceedings outside the suit and not in any way ancillary to the decree, when once it has been decided to reopen the suit and to give effect to the defence under Act IV of 1938 so as to pass an amended decree, these later stages of the proceedings may properly be regarded as proceedings in the suit resulting in a decree in the suit, and the party who is dissatisfied with such an amended decree can properly file a new trial application

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under S. 38 of the Presidency Small Cause Courts Act notwithstanding that the original suit was uncontested.

Quaere.—Whether S. 38 of the Presidency Small Cause Courts Act confers a right to ask for a new trial when an order is passed in contested proceedings which proceedings cannot be described as a suit though analogous to a suit. (*Wadsworth and Patanjali Sastri, JJ.*) MUNUSWAMI CHETTI *v.* VENKATASWAMI CHETTI. 202 I C. 771=15 R.M 590=55 L.W. 73=1942 M.W.N. 110=A.I.R. 1942 Mad. 610=(1942) 1 M.L.J. 213.

——S. 19—*Scope—Application under after execution sale—Subsequent application to set aside sale and deposit under O. 21, R. 89, C. P. Code—Decree found discharged on scaling down—Right to return of deposit.*

A judgment-debtor is entitled to apply for relief under S. 19 of Madras Act IV of 1938 so long as the decree continues to subsist except in the circumstances contemplated in S. 20 of the Act; and he is equally entitled to avert a sale of his property by making a deposit under O. 21, R. 89, C. P. Code, before the sale is confirmed. Where, pending an application for scaling down a decree debt after a sale in execution has taken place, the debtor deposits the decretal amount under O. 21, R. 89, C. P. Code, to get the sale set aside, and ultimately, as a result of the scaling down, the decree debt is found discharged, satisfaction of the decree can be entered up, and the deposit returned to the debtor. (*Patanjali Sastri, J.*) KRISHNAN CHETTIAR *v.* NACHIMUTHU GOUNDAR. 202 I.C. 94=15 R.M. 444=55 L.W. 260=1942 M.W.N. 333=A.I.R. 1942 Mad. 453=(1942) 1 M.L.J. 500.

——S. 19—*Scope—Suit on mortgage—Payment made pending suit—Appropriation in decree before 1st October, 1937, towards interest without objection—Re-appropriation—Permissibility.*

There is no provision in Madras Act IV of 1938 for re-appropriation of payments made before 1st October, 1937, excepting the proviso to S. 19, which deals with payments made under a decree. Where pending a suit on a mortgage, the defendant makes a payment which is appropriated in the decree (dated 3—10—1936) to the interest due on the mortgage without objection, it is not open to the defendant to urge in second appeal that the payment should be appropriated towards the principal. The appropriation made by the Court is just as binding on the parties who do not object to it as if it were made by one of the parties before the decree was drafted. There is nothing in the Act which permits the re-opening of such an appropriation which is not in respect of a payment made under the decree. (*Wadsworth, J.*) NATESA MUDALIAR *v.* RAJAMANICKA CHETTIAR. 204 I C. 373=1942 M W.N. 790=55 L.W. 607=A.I.R. 1942 Mad. 729=(1942) 2 M.L.J. 424.

——Ss. 19 and 20—*Scope and effect—Execution sale after Act—Purchase by decree-holder with leave to set off—Application by judgment debtor under Ss. 20 and 19—Stay—Procedure—Duty of Court—Confirmation of sale—Conditions for.*

A Court has no power to treat as satisfied a decree which at the time of the stay under S. 20 of the Madras Act IV of 1938 was unsatisfied and to allow a set-off by the decree holder to be completed on the basis of the decree which the Court has to scale down under S. 19. When execution proceedings are stayed and the petition under S. 19 is filed when there is a subsisting decree-debt, the Court is obliged to apply the procedure laid down in S. 19 and scale down that decree. There is clearly no procedure under the Act for setting aside a sale held after the Act; but that does not mean that the sale has to be confirmed regardless of the effect of the

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scaling down application. Where the decree holder is the purchaser and has leave to set-off against the purchase price the amount due to him under the decree, if the scaling down of the decree results in the decree-debt being reduced to something below the purchase price, clearly the decree-holder has to put into Court the balance before the sale can be confirmed. (*Wadsworth and Patanjali Sastri, JJ.*) PERIYA PERUMAL AMMAL *v.* VELUCHAMI REDDY. **A.I.R. 1943 Mad. 25 = (1942) 2 M.L.J. 484.**

——**S. 19 Proviso**—Decree on mortgage—Payment under—Re-appropriation towards costs—Principles. *See* 1941 Dig., Col. 822. SREENIVASACHARIAR *v.* KRISHNAYYA CHETTY. **199 I.C. 449 = 14 R.M. 580 = (1941) 1 M.L.J. 833.**

——**S. 20**—*Discretion to refuse stay or to impose conditions—Delay or obstructive tactics of debtor—If ground for refusal of stay*

S. 20 does not allow the Court a discretion to refuse a stay in a case in which the conduct of the debtor has been obstructive; nor does it contain any provision for imposing conditions for the grant of stay. S. 23 contains no time limit within which the setting aside of a sale in execution has to be followed by an application under S. 19. There is nothing in the Act to prevent the debtor waiting after a sale in execution has been set aside to the last possible minute and then filing a stay petition under S. 20 just at the time when a fresh sale is being held. (*Wadsworth, J.*) DHARMAYYA *v.* YANADI REDDI. **204 I.C. 147 = 55 L.W. 721 = 1942 M.W.N. 664 = A.I.R. 1942 Mad. 731 = (1942) 2 M.L.J. 585.**

——**S. 20**—*Period of 60 days—Starting point—* Interim *stay followed by stay absolute—If contemplated.*

The procedure of an executing Court in granting an *ad interim* stay followed by an absolute order is not contemplated by S. 20 of Madras Act IV of 1938; when once a stay has been granted limitation for an application under S. 19 begins to run. (*Wadsworth, J.*) NATARAJA GRAMANI *v.* SIVAKOLUNDU GRAMANI. **1942 M.W.N. 789 = 55 L.W. 844 (1) = (1942) 2 M.L.J. 735.**

——**S. 20**—*Proceedings under O. 21, R. 90, C. P. Code—Stay of—Duty of Court.*

Proceedings under O. 21, R. 90, C. P. Code, are clearly proceedings in execution, which must necessarily be stayed when an order under S. 20 of Madras Act IV of 1938 has been passed, until the disposal of a pending application under S. 19 of the Act. The fact that a sale held before 1—10—1937 cannot be set aside under the Act does not justify the Court in going on with proceedings relating to such a sale when all execution proceedings have been stayed. (*Wadsworth and Patanjali Sastri, JJ.*) VELAYUDHA MUDALI *v.* CHENGANNA NAIDU. **204 I.C. 256 = 1942 M.W.N. 550 = A.I.R. 1942 Mad. 727 = (1942) 2 M.L.J. 311.**

——**S. 20**—*Scope—Duty of Court—Delay in applying for stay—If ground for dismissal on ground of waiver—Conditional order of stay—Permissibility.*

Madras Act IV of 1938 does not compel a judgment-debtor to make an application under S. 20 of the Act for stay of execution at an early stage, and simply because he failed to ask for stay in a prior application for execution, he cannot be deemed to have waived his right to apply for a stay later. He can make his application at any stage, and even though it be made not in good faith, the terms of S. 20 leave no discretion to the Court to reject it or to make a conditional order. The section does not permit of a conditional order. (*Horwill, J.*) SAMBANDA CHETTY *v.* MUTHU CHETTIAR. **202 I.C 67 = 15 R.M. 429 = 55 L.W. 251 = 1942 M.W.N. 185 = A.I.R. 1942 Mad. 398 (1) = (1942) 1 M.L.J. 335.**

MADRAS AGRI. RELIEF ACT (1938), S. 23.

——**S. 20, proviso**—*Construction—"Decree shall be executed as it stands"—"Notwithstanding anything contained in the Act to the contrary"—Meaning—Scaling down on application made more than 60 days after stay—Execution — Basis of—Decree as amended or before amendment.*

The words "the decree shall be executed as it stands" in the proviso to S. 20 of Madras Act IV of 1938, have reference to the frame of the decree at the time of the execution having regard to any changes which it may have undergone in the trial Court, and not to the frame of the decree as it stood at the time of the stay order. The words "notwithstanding anything contained in the Act to the contrary" in the proviso to S. 20 have no application when the decree has in fact been amended, though erroneously, before execution has actually taken place but have reference presumably to the provisions of S. 7 which prohibit the execution of a decree against an agriculturist in so far as a decree is for an amount in excess of the sum as scaled down under Ch. II of the Act. Where an application is made by a judgment-debtor for scaling down after the lapse of sixty days from the grant of stay and the decree is scaled down in spite of the objection of the decree-holder, it is not open to the latter to urge before the executing Court that the decree to be executed is the decree as it stood before the amendment. The decree-holder being bound by the amendment, though wrongly made, execution can proceed only on the basis of the decree as amended. (*Wadsworth, J.*) CHINNASWAMI CHETTY *v.* PARVATHAIAH CHETTY. **55 L.W. 718 (2) = 1942 M.W.N. 694 = A.I.R. 1942 Mad. 757 = (1942) 2 M.L.J. 589.**

——**S. 21**—*Applicability—Conditions—Continuance of insolvency at time of application—If essential.*

S. 21 of Madras Act IV of 1938 is intended to provide for pending insolvencies, and to lay down that when a dividend has been paid in such an insolvency, the Act would not apply but that if there had been no dividend, the Act would apply and the debts payable in insolvency would be liable to be scaled down if the insolvent was a person who, but for his insolvency, would have been an agriculturist. S. 21 cannot properly apply to the case of a person who has at some time in the distant past been adjudicated an insolvent, if he is not an insolvent during the relevant period. In order to come under S. 21, the applicant should be an insolvent at the time of his application. (*Wadsworth and Patanjali Sastri JJ.*) VENKATARAMAYYA *v.* PUNDAREEKAKSHUDU. **202 I.C. 298 = 15 R.M. 478 = 1942 M.W.N. 279 = 55 L.W. 242 = A.I.R. 1942 Mad. 523 = (1941) 1 M.L.J. 491.**

——**S. 21**—Insolvency of mortgagor and declaration of dividend in the insolvency—Purchaser of equity of redemption—Right to have mortgage decree scaled down. *See* 1941 Dig., Col. 822. SUBBARAYADU *v.* SOMAYYA. **201 I.C 316 = 15 R.M. 300 = (1941) 1 M.L.J. 304.**

——**S. 21**—Scope—Application by insolvent—Parties—Official Receiver—Necessity for impleading. *See* 1941 Dig., Col. 822. JAGANNATHA IYENGAR *v.* SENNI VEERA CHETTIAR. **199 I.C 854 = 14 R.M. 643 = (1941) 1 M.L.J 197.**

——**S. 23**—Applicability—Agriculturist parting with interest long before sale. *See* 1941 Dig., Col. 822. RAMAYYA *v.* KOTAYYA. **201 I.C. 400 = 15 R.M. 345 = A.I.R. 1942 Mad. 102 = (1941) 2 M.L.J. 557.**

——**S. 23**—Applicability—Decree for arrears of rent—Sale held in execution—If wipes off arrears of rent.

MADRAS AGRI RELIEF ACT (1938), S. 23.

See 1941 Dig., Col. 822. VENKATARATNAM *v.* SURYA RAO. **199 I C. 591=14 R.M. 607=(1941) 1 M.L J. 156.**

——**S. 23**—Applicability—Decree of Foreign Court—Execution sale of properties in British India—Liability to be set aside. *See* 1941 Dig., Col. 823. PARAMESWARA MENON *v.* NARAYANA MENON. **200 I C. 848=15 R.M. 144=A.I.R. 1942 Mad. 204 (1)=(1941) 2 M.L J. 580.**

——S. 23—Applicability—Mortgage decree for sale—Mortgagor parting with equity of redemption even before preliminary decree—Right to apply to set aside sale in execution. *See* 1941 Dig., Col. 823. NAGARAJAN *v.* KRISHNA AIVAR. **200 I C 861=15 R.M. 143=A I R. 1942 Mad. 296=(1941) 2 M.L J. 298.**

——S. 23—*Applicability—Purchaser of property from judgment debtor after attachment and before execution sale—Right to apply to set aside sale.*

A purchaser of property from the judgment-debtor after it has been attached in execution of a decree against him and before the execution sale is not a person liable to pay the decree debt, and he is not therefore entitled to apply under S. 23 of Madras Act IV of 1938 to have the execution sale set aside. (*Wadsworth and Patanjali Sastri, JJ.*) RANGANAYAKULU *v.* GOPAYAMMA. **1942 M W N. 137=55 L.W. 170 (2)=A.I. R. 1942 Mad. 323=(1942) 1 M.L.J. 341.**

——**S. 23**—*Applicability—Sales under Madras Estates Land Act.*

S. 23 of the Madras Act IV of 1938 applies to sales held under any decree of Court, including sales under the Madras Estates Land Act. (*Wadsworth, J.*) KALLAI AGAR DEVASTHANAM, MADURA *v.* BASKARAM PILLAI. **1942 M.W.N. 632=A.I.R. 1942 Mad 741=(1942) 2 M.L J. 450.**

——S. 23—Application—Sale in execution of decree for rent under Madras Estates Land Act—If can be set aside. *See* 1941 Dig., Col 823. VENKATARATNAM *v.* SURYA RAO **199 I.C. 591=14 R.M. 607=(1941) 1 M.L.J. 156.**

——S. 23—Not applicable to sales held after the Act came into force. *See* 1941 Dig., Col. 824. SESHAYYA *v.* VENKATARAMAYYA. **200 I C. 765=15 R.M 126=A.I.R. 1942 Mad. 278=(1941) 2 M L J. 309.**

——**Ss. 23 and 24**—Profits on land after purchase at sale in execution and before setting aside under S. 23—Liability of purchaser to account to judgment debtor. *See* 1941 Dig., Col. 824. CHINA KONDAYYA *v.* RAMALINGA REDDI. **200 I C 876=15 R.M 167=1942 M.W N 27=55 L W 33 (2)=A.I.R. 1941 Mad. 271=(1941) 2 M L J. 1060.**

——S. 23—*Right to apply—Application by wrong person within 90 days—Objection to maintainability—Application after 90 days to transpose as petitioner respondent having right—Power of Court to transpose.*

Where an application under S 23 is filed by a wrong person within the period of 90 days prescribed, and an objection is raised that the applicant is not a judgment-debtor entitled to apply under the section, it is not open to the applicant after the expiry of the period of 90 days to apply to the Court to transpose as petitioner a respondent who has the necessary qualification to so apply. The Court has no jurisdiction to order the transposition in order to enable the original applicant to overcome a valid objection to maintainability of the petition. (*Wadsworth, J.*) VENKATANARASIMHAM *v.* GOVINDA SURYANARAYANA. **1942 M.W N. 558=55 L.W. 577=A I R 1942 Mad. 708=(1942) 2 M L.J. 412.**

——S 28—*Rules framed under G. O. No. 2634 (Development), dated 27th October, 1939—Rule 2—Application by debtor for declaration of amount of debt having regard to the provisions of Act IV of 1938—Averment in the application that debt was barred by limitation—Proper procedure.*

Whatever may be the position, when a debtor is seeking to resist an application by the creditor under the rules framed under Madras Act IV of 1938, he cannot ask the Court for a declaration under the rules, of the amount of the debt unless he concedes that there is a debt upon which the provisions of Act IV can operate. Though under sub-rule (2) of rule 2 the Court may inquire into a petition in which the debtor asserts that the debt has been discharged by the provisions of Act IV of 1938, itself, there is no occasion for the Court under the rules to go into a claim by the debtor to scale down a debt which has been discharged in full or has become unenforceable by the operation of some other law than Act IV (for instance the law of limitation) for to do so would be to give an adjudication on hypothetical facts. (*Wadsworth and Patanjali Sastri, JJ.*) SUBBA RAO *v.* SESHAYYA. **55 L W. 693 (1)=1942 M W.N. 696=A.I.R 1943 Mad. 7=(1942) 2 M.L.J. 551.**

——**S. 28**—*Rules under R. 2—Scope—If* ultra vires.

R. 2 of the Rules (prescribing the procedure whereby either a creditor or a debtor can apply to the Court for a declaration of the amount of a non-decretal debt) framed under S. 28 of the Madras Act IV of 1938 is neither *ultra vires* the Provincial Government nor in contravention of any provision of law. (*Wadsworth and Patanjali Sastri, JJ.*) SWAYAMBRABHAI AMMAL *v.* MUTHUKRISHNA PADAYACHI. **I L R (1942) Mad. 647=1942 M.W N. 151=55 L W 136=A.I.R. 1942 Mad 362=(1942) 1 M L J. 303.**

——S. 28—R 7—Scope—If *ultra vires. See* 1941 Dig., Col 824. ISWARIAH *v.* KANNAPPA CHETTY. **198 I.C. 843=14 R M. 502=(1941) 1 M.L.J. 605.**

——S. 28—Rules—R. 8—Scope—If *ultra vires*—Order on application under S. 19—Appeal—Matter—If relates to execution of decree. *See* 1941 Dig., Col. 825. NAGAPPA CHETTIAR *v.* ANNAPOORANI ACHI. **198 I.C. 760=14 R M. 487=(1941) 1 M.L.J 164 (F.B.).**

——**S. 28 (2)**—*Rules* (1939), *R 9—Appeal—Decision holding that debt falls under S. 10 (2) (ii) and therefore exempt—Appeal—Maintainability.*

Under R. 9 of the Rules of 1939 framed under S. 28 (2) of Madras Act IV of 1938, a right of appeal is given against an order declaring the amount of a debt under R. 7 Where the Court holds that a debt which is sought to be scaled down was one falling within the purview of S. 10 (2) (*ii*) of the Act and therefore exempt from the operation of the Act, the decision is a decision that the debt is immune from reduction under the Act and is not a declaration of the amount of the debt. No appeal therefore lies against such a decision. (*Wadsworth and Patanjali Sastri, JJ.*) VIJAYALAKSHMI AMMAL *v.* RANGACHARIAR. **1942 M.W.N. 751=(1942) 2 M.L.J. 806.**

——**S. 28, R. 9**—*Scope—If* ultra vires—*Tests to determine validity of rules under statute.*

The validity of a rule framed under a statute is to be determined not so much by ascertaining whether it confers rights or merely regulates procedure, but by determining whether the rule is in conformity with the powers conferred under the statute and whether it is consistent with the statute, reasonable and not contrary to general principles. R. 9 of the new rules framed under S. 28 of Madras Act IV of 1938, and promulgated in G. O. No. 2634, dated 27-10-1939 providing for an appeal and second appeal from an order under R. 7 of the Rules, as if it were a decree in an

original suit, is a reasonable and convenient qualification of the procedure for giving effect to the substantive provisions of the Act, not offending against any principle of law and not inconsistent with anything in the Act. The rule is properly framed and not *ultra vires* the Provincial Government. (*Wadsworth and Patanjali Sastri, JJ.*) VENKAYYA *v.* PULLAYYA. I.L.R. (1942) Mad. 654=55 L.W 186 =1942 M.W N. 230=A.I.R. 1942 Mad. 466=(1942) 1 M.L.J 390.

MADRAS BOARD OF REVENUE STANDING ORDERS, O. 15 (18)—Communal land—Wrong grant by Tahsildar—Jurisdiction of Collector to interfere—Civil Courts—Jurisdiction of. *See* 1941 Dig., Col. 825. VARADIA CHETTY *v.* PROVINCE OF MADRAS. 201 I C. 160=15 R.M. 252=A.I.R. 1942 Mad. 121 =(1941) 2 M.L J 564

MADRAS BORSTAL SCHOOLS ACT (V OF 1926) *—Applicability—Adolescent girl offender—Order for detention in Borstal School—Legality.*

An adolescent girl offender cannot be ordered to be sent to a Borstal School, as the Act has been made applicable only to adolescent offenders of the male sex (*Horwill, J.*) PUBLIC PROSECUTOR *v.* RAJAM AMMAL. I L.R. (1942) Mad 963=203 I.C. 177= 15 R.M 613=43 Cr.L.J. 924=55 L.W 457 (2)= 1942 M.W.N. 442=A.I.R. 1942 Mad. 674=(1942) 2 M.L.J. 132.

MADRAS CHILDREN ACT (IV OF 1920), S. 22—Applicability—Accused guilty of murder — Accused being 16 or above 16 years of age—If ground for not inflicting sentence of death. *See* CRIMINAL TRIAL—SENTENCE. 55 L.W. 552=(1942) 2 M.L.J. 312.

——S. 39—*Scope — Child offender — Conviction—Previous convictions—If can be taken into account—Penal Code, S.* 75.

S. 39 of the Madras Children Act does not prohibit the taking into consideration of the previous convictions of an accused person under S. 75, I. P. Code. The scope of S. 39 of the Children Act is not so extensive It only says that the conviction of a child shall not be regarded as a conviction for the purpose of any *disqualification*. S. 75, I P. Code, does not impose any disqualification on persons with previous convictions. It only makes permissible a sentence which exceeds the normal sentence for an offence. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* RAJAM AMMAL. I L.R (1942) Mad. 963=203 I C 177=15 R M. 613=43 Cr L.J 924= 55 L.W. 457 (2)=1942 M.W.N. 442=A.I.R. 1942 Mad. 674=(1942) 2 M.L.J. 132.

MADRAS CITY MUNICIPAL ACT (IV OF 1919), S. 54 (1)—*Councillor ceasing to hold office by absence at meetings for more than three months—Election to fill up vacancy—Councillor challenging validity of election—Proper remedy—Application for writ of* certiorari *—Competency.*

A Councillor of the Madras Corporation having failed to attend the council meetings for more than three months owing to her having been imprisoned under the Defence of India Act, the Commissioner reported the matter to the council which passed a resolution refusing to restore her. In reply to a notice from the Commissioner, she admitted that she had ceased to hold office, and the Commissioner took steps to fill up the vacancy by election The admission was afterwards retracted, but acting on the earlier statement the Commissioner proposed to hold the election as arranged. An application was preferred to the Chief Judge of the Court of Small Causes under S. 54 of the Madras City Municipal Act by the councillor in question, and the Judge eventually

decided against her. The election had in the meanwhile been held. An application to the High Court for a writ of *certiorari* to quash the proceedings was granted by a single Judge of the High Court.

Held, in appeal under Cl. 15 of the Letters Patent, that the writ should not have been issued, the proper procedure to challenge such an election was for the aggrieved party to file an election petition and not to apply for a writ of *certiorari* to quash the proceedings. A writ of *certiorari* can only be granted when there is no other suitable remedy available to the party aggrieved. (*Leach, C.J. and Happel, J.*) SUNDARA RAO NAIDU *v.* COMMISSIONER, CORPORATION OF MADRAS. 203 I.C 607=55 L.W. 311=1942 M.W.N. 94=A I.R 1942 Mad. 348=(1942) 1 M.L.J 70.

——Ss. 73 and 103—*Applicability and scope—Suit for arrears of tax—Sale of property under S.* 103—*Mortgagee not party to suit—Right to payment of surplus sale proceeds.*

S. 73 of the Madras City Municipal Act can apply only to sales in which property is sold free of all mortgages. S. 103 does not give the Corporation the right to sell property free of encumbrances. Where the Corporation files an ordinary suit for arrears of property tax and proceeds to sell the property in question in enforcement of the first charge given to it under S. 103 of the Madras City Municipal Act, the sale cannot affect the rights of a mortgagee who is not a party to the suit and whose mortgage is not at all mentioned in the sale proclamation. The rights of a mortgagee who is not so impleaded are not transformed into the lesser rights granted by S. 73. The mortgagee purchasing the property at such sale cannot therefore claim payment of the surplus sale proceeds after satisfying the arrears of tax due to the Corporation under the decree, on the ground that the sale was free of his mortgage, and he cannot rely on S. 73 of the Act in support of his claim. (*King, J.*) PATTAMMAL *v.* CORPORATION OF MADRAS. 1943 M W.N. 39=56 L.W. 62=A.I.R. 1943 Mad. 138=(1942) 2 M.L.J. 789.

——S. 80—*Power of Corporation to enter into contract with house owner to construct flush-out latrine for him—Ss.* 380 *to* 384—*If bar to such contract—Schedule V, Rr.* 1 *and* 3.

S. 80 read with Rr. 1 and 3 of Sch. V of the Madras City Municipal Act gives the Corporation of Madras full power to enter into a contract with the owner or occupier of a house under which the Corporation can carry out works, such as the construction of a flush-out latrine for the owner or occupier and claim the cost thereof from him. There is no warrant for holding that S. 80 and Rr. 1 and 3 of Sch. V do not apply because of Ss. 380 to 384 of the Act. Ss. 380 to 384 of the Act do not preclude the Corporation from entering into a contract with the owner or occupier of the property to do the work for him. The Corporation can follow the procedure laid down in Ss. 380 to 384, but it does not need to do so if the owner or occupier who is required to do the work agrees to the Corporation doing it for him. (*Leach, C.J. and Lakshmana Rao, J.*) RASHYAM *v* CORPORATION OF MADRAS. 55 L.W. 804=1942 M.W.N. 709=A I.R. 1943 Mad 90= (1942) 2 M.L J. 684.

——S. 100—*Scope—Powers of Commissioner—Single building owned by one and the same person—Power to split up into portions for assessment to tax.*

The Commissioner of the corporation of Madras has no authority to split up a single house or property belonging to the same person into two separate numbers merely because the building has two doors facing two streets with different door numbers. Merely because

different portions of it are occupied by different persons, there is no authority under S. 100 of the Madras City Municipal Act to separately assess the different portions of the same building owned by one and the same person (*Burn, J.*) PACHAI AMMAL *v.* CORPORATION OF MADRAS. 202 I.C. 21=15 R.M. 419=55 L.W. 97 =1942 M.W.N. 108=A.I.R. 1942 Mad. 346=(1942) 1 M.L.J. 233.

——S. 101 (b)—(as amended in 1936)—Applicability—Conditions—"Choultry". *See* 1941 Dig., Col. 826. DEIVASIGAMANI PONNAMBALA DESIGAR *v.* CORPORATION OF MADRAS. 200 I.C. 139=14 R.M. 717 =(1941) 2 M.L.J. 544.

——S. 103—Scope—Sale under—If free of encumbrances—Mortgagee of property not made party to suit—Rights of—If affected. *See* MADRAS CITY MUNICIPAL ACT, SS 73 AND 103 (1942) 2 M.L.J. 789.

——Ss. 380 to 384—Scope—If limits powers of Corporation under S. 80 and Sch. V, Rr. 1 and 3. *See* MADRAS CITY MUNICIPAL ACT, S. 80. 1942 M.W.N. 709=(1942) 2 M.L.J. 684.

MADRAS CITY POLICE ACT (III OF 1888)

S. 3—"*Common gaming house*"—*Person in possession of house keeping betting slips for profit—House—If 'Common gaming house'.*

Where, in a raid on a house, betting slips were discovered therein, and it was found that the person in possession as lessee of the house kept the betting slips for his profit.

Held, that the premises constituted a "common gaming house" within the meaning of the Madras City Police Act. (*Horwill, J.*) VITTAL *v.* EMPEROR. 200 I.C. 735=43 Cr.L.J. 710=15 R.M. 147=55 L.W. 144=1942 M.W.N. 164=A.I.R. 1942 Mad. 357 (2) =(1942) 1 M.L.J. 360.

——Ss. 37 (2) and (3), 45 and 46—*Raid on Common gaming house—Persons found making calculations of amounts payable to punters but not shown to have been there for betting—Offence.*

Where it is found that persons discovered in a common gaming on a raid were there not for the purpose of gaming or betting on horse races but for the purpose of making arithmetical calculations of the amounts which might be payable to punters who had already made their bets.

Held that since such calculations were not a necessary ingredient of the work of a common gaming house, the calculators cannot be convicted under S. 37 (2), 37 (3), 45 or 46 of the Madras City Police Act. (*Horwill, J.*) VITTAL *v.* EMPEROR. 200 I.C. 735=43 Cr.L.J. 710=15 R.M. 147=55 L.W. 144=1942 M.W.N. 164=A.I.R. 1942 Mad. 357 (2)=(1942) 1 M.L.J. 360.

——S. 37 (3)—"*Betting*"—*Delivery of money by person receiving bets from punters to another alleged to be keeping common gaming house—Offence.*

Where all that the evidence discloses is that *A* who had presumably received moneys from punters in respect of bets on horse races paid the money into the hands of *B* who is accused of keeping a common gaming house there can be no conviction for betting under S. 37 (3) of the Madras City Police Act. The delivery of the money by *A* to *B* or the receipt of the money by *B* is not part of the betting itself. (*Horwill, J.*) GANAPATHI SA *v.* EMPEROR. 202 I.C. 468=43 Cr.L.J. 851=15 R.M. 532=55 L.W. 255=1942 M.W.N. 161 =A.I.R. 1942 Mad. 354=(1942) 1 M.L.J. 357.

——S. 45—*Applicability—Charge against one accused of keeping common gaming house and against others of assisting in keeping same—Former found not to be keeping common gaming house—Conviction of others of assisting—Sustainability.*

In a prosecution on a charge against the 1st accused of keeping a common gaming house and against the other accused of assisting the 1st accused in conducting the common gaming house, if it is held or found that the 1st accused was not keeping a common gaming house, the fact that the other accused helped him in the making of arithmetical calculations as to what amounts may be payable to punters would not make such calculators abettors in the keeping or running of a common gaming house. (*Horwill, J.*) GANAPATHI SA *v.* EMPEROR. 202 I.C. 468=43 Cr.L.J. 851=15 R.M. 532=55 L.W. 255=1942 M.W.N. 161=A.I.R. 1942 Mad. 354=(1942) 1 M.L.J. 357.

——S. 47—Common gaming house—Money found on persons convicted of gaming—Forfeiture—Rule as to. *See* 1941 Dig., Col. 827. REX *v.* JAGGOPAL PRASAD. 43 Cr.L.J. 88=(1941) 2 M.L.J. 397.

——S. 51—*Applicability—Offence—Essentials of—Betting before winning of race—Failure after race to pay money to person making bet—Offence.*

What is punishable under S. 51 of the Madras City Police Act is fraud, unlawful device, or malpractice in betting or gaming, *i.e.*, the fraud must be during the betting or gaming and not prior to or subsequent to it. The fraud or malpractice must be in the actual betting or gaming itself. Where it was alleged by the complainant that he betted with the appellants, that the horse on which he had bet won and that though he thereby became entitled to be paid the money promised by the appellants on the bet, they did not pay him.

Held, that the betting having taken place before the race was won and the paying over of the money being no part of the betting, the failure to pay the money that was due to the complainant was not a malpractice or fraud at all—still less an unlawful device, and could not therefore constitute an offence under S. 51 of the City Police Act. (*Horwill, J.*) VITTAL, *In re*. 200 I.C. 171=43 Cr.L.J. 594=15 R.M. 1=55 L.W. 179= 1942 M.W.N. 221=A.I.R. 1942 Mad. 437=(1942) 1 M.L.J. 369.

MADRAS CITY TENANTS' PROTECTION ACT (III OF 1922)—*Applicability to area included in the municipal limits after the Act came into force—Single ejectment suit against defendants holding possession under different demises—Common questions of fact involved—No multifariousness.*

In view of S. 3 (5) of the Madras General Clauses Act defining the term "City of Madras" to mean such local area as is so declared from time to time under any Act relating to municipal affairs, the Mambalam extension area included by a notification of the Government in 1934 in the City limits under S. 3 (9) of the Madras City Municipal Act will be covered by the expression "City of Madras" and the Madras City Tenants' Protection Act is applicable to that area and tenants in the area are entitled to the benefits of the Act. It may be stated as a general rule that where substantial common questions of fact are involved in different claims against different parties, their joinder in one suit will not be regarded as multifarious. Accordingly where the trustees of a temple had in 1882 demised the suit land in four equal parcels to four brothers who were the ancestors of the defendants under four separate muchilikas on the same terms for a fasli, but the lessees had continued in possession thereafter as tenants from year to year paying the same rent and on being asked to vacate had claimed permanent rights of occupancy, etc., and it was clear on the facts that there would be common questions arising for determination even if separate suits had been brought

MAD. CITY TEN. PROT. ACT (1922), S. 11.

against the several defendants, a single suit by the trustees against all of them for ejectment from possession of the lands in their respective occupation will not be vitiated by misjoinder of parties and causes of action. (*Patanjali Sastri, J.*) RANGANATHAM CHETTIAR *v.* MARIAPPA MUDALI 1942 M W.N. 97=55 L.W. 82=A.I.R. 1942 Mad. 334=(1942) 1 M.L.J 92.

[Affirmed on L. P. Appeal. *See* (1943) 1 M.L.J. 102.]

——S. 11—*Notice under—Mandatory.*

S. 11 of the Madras City Tenants' Protection Act is mandatory and imposes an unqualified obligation upon the Court not to entertain a suit in ejectment in the absence of compliance with its provisions. The fact that the applicability of the Act to the case was itself being challenged makes no difference. (*Patanjali Sastri, J.*) RANGANATHAM CHETTIAR *v.* MARIAPPA MUDALIAR. 1942 M.W.N. 97=55 L.W. 82=A.I.R. 1942 Mad. 334=(1942) 1 M.L.J. 92.

[Affirmed on L. P. Appeal. *See* (1943) 1 M.L.J. 102.]

——S. 12—Applicability — Right to benefit of act—Conditions—Sub-tenant under tenancy created before Act—Tenant evicted and lease granted to various lessees from time to time—Sub-tenant becoming sub-tenant of each succeeding tenant—Right to benefit of Act. *See* 1941 Dig., Col. 827. A. V. VISWANATHA SASTRI *v.* A. R. MURUGAPPA CHETTY. 200 I.C. 124=14 R.M. 715=(1941) 2 M.L.J. 115.

MADRAS CIVIL COURTS ACT (III OF 1873), S. 14—Scope—Jurisdiction—Valuation of property for purposes—Court, if bound by prior valuation made for purposes of Court-fee—Court-Fees Act, S. 12 (1). *See* COURT FEES ACT, S. 12 (1). 55 L.W. 173=(1942) 1 M.L.J. 400.

MADRAS CO-OPERATIVE SOCIETIES ACT (VI OF 1932), S. 48—Applicability—Sale at instance of Co-operative Society in execution of decree—Claim to property—Rejection by sale officer—Suit to set aside order—Leave of Registrar—Necessity—R. 22 (17) (*a*) to (c)—Scope. *See* 1941 Dig., Col, 828. RAMAYYA *v.* LIQUIDATOR OF BOLLANKA CO-OPERATIVE CREDIT SOCIETY. 199 I.C. 599=14 R.M 610=(1941) 2 M L.J. 72.

——S. 52—Applicability—Decree in favour of Co-operative Society—Execution—Sales officer going to house to seize property—Wife of debtor shutting door in his face—Offence—If falls under S. 52 or S. 186, I. P. Code—Jurisdiction of second class Magistrate. *See* PENAL CODE, S. 186. (1942) 1 M.L.J. 583.

——S. 57 and R. 22 (10) (iii) — *Scope—Award—Execution—Sale of wrong property and confirmation—Power of Deputy Registrar to set aside sale—Subsequent execution of award by society after repayment of money to purchaser at invalid sale—Suit by stranger for declaration that award cannot be executed—Maintainability.*

The 2nd defendant mortgaged the properties in suit and another item of property to the 1st defendant, a co-operative society, and subsequently sold the properties to the plaintiff-appellant without disclosing the above mortgage, as if there was no encumbrance. An award having been made in favour of the 1st defendant in respect of the mortgage, the Deputy Registrar of Co-operative Societies acting as the sale officer, put up, in execution of the award an item of property which did not belong to the 2nd defendant and which was not comprised in the mortgage. The sale was duly confirmed and out of the sale proceeds, the 1st defendant society was paid the amount due under the award and the balance was paid to the 2nd defendant as if he were the

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owner of the same. The purchaser subsequently found that the 2nd defendant had no title to the property and moved the Deputy Registrar to set aside the sale on the ground that there was a mistake in the sale, and the sale was set aside. The society thereupon moved for execution of the award by sale of the properties comprised in the mortgage and the award, and the plaintiff (appellant) who had purchased the properties sued for a declaration that it was not open to the society to take out execution against the properties as the award had been fully satisfied by payment of money realised by the sale, and that the order setting aside the sale was illegal and without jurisdiction, and for an injunction restraining execution of the award by sale.

Held, (1) that the Deputy Registrar had no power under the proviso to Cl. (*iii*) of R. 22(10) of the Rules to set aside a sale after it had been confirmed, (2) that the suit was not barred by the provisions of S. 57 of the Act, as he could not move the Registrar under S. 57, not having been a party to the execution proceedings and not being a person who derived an interest subsequent to those proceedings from a party to those proceedings; (3) that as the purchaser at the invalid sale had succeeded in recovering his money from the society, the latter became entitled to execute the award, (4) that it would therefore be improper for the Court to grant the plaintiff an injunction, which was a discretionary relief, as the 1st defendant had subsequent to the filing of the suit acquired a right to execute the award by reason of the re-payment of the money it had got out of the invalid sale proceeds to the purchaser at that sale; (5) that the Court having refused relief to the appellant on account of the events which transpired subsequent to the suit the society could not be awarded costs in the suit or appeal (*Kuppuswami Ayyar, J.*) RATTAYYA *v.* MODUMUDI CO-OPERATIVE CREDIT SOCIETY. 55 L.W 702=1942 M.W.N 669=(1942) 2 M.L.J. 603.

——Rules, R. 22 (10) (iii), proviso—Scope and effect—Sale—Power to set aside after confirmation. *See* MADRAS CO-OPERATIVE SOCIETIES ACT, S. 57 AND R. 22 (10) (*iii*). (1942) 2 M.L.J. 603

MADRAS CRIMINAL RULES OF PRACTICE R. 82—Advocate accused of crime along with others—Right to appear as counsel for co-accused. *See* 1941 Dig., Col. 828. SUBRAMANYA SARMA, *In re.* I.L.R. (1941) Mad. 1019=43 Cr.L.J. 43=(1941) 2 M.L.J 156.

MADRAS DEBT CONCILIATION ACT (XI OF 1936), Ss. 7 and 17—Applicability and Scope—Application in order—Board proceeding under S. 8—Jurisdiction to dismiss application thereafter under S 7 on the expiry of 12 months—Duty of Board to act under S. 17. *See* 1941 Dig., Col. 829. SUBBARAYA CHETTIAR *v.* DEBT CONCILIATION BOARD, CUDDALORE. I.L.R. (1942) Mad. 220=200 I.C. 884 =15 R.M. 169=A.I.R. 1942 Mad. 26=(1941) 2 M. L.J. 581.

——S. 9—*Duty of Debt Conciliation Board—Creditor appearing and stating that settlement is impracticable and opposing settlement—Procedure—Notice under S. 10 (2)—Propriety of.*

Where on the date fixed for hearing the objections to a debtor's application for settlement of his debts, a creditor to whom more than 50 per cent. of the total amount owed by the debtor is due, appears before the Debt Conciliation Board and objects to any settlement by the Board, making it clear that a settlement is impracticable, the duty of the Board is to apply S. 9 of the Act and dismiss the debtor's application at the outset, and not to direct notice under S. 10 (1) directing the creditors to file statements giving a long period for the

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same. (*Leach, C.J. and Lakshmana Rao, J.*) ASIATIC GOVERNMENT SECURITY LIFE ASSURANCE CO. LTD. *v.* DEBT CONCILIATION BOARD, ERODE. **1942 M.W.N. 675=55 L.W. 717=A.I.R. 1943 Mad. 42=(1942) 2 M.L.J. 601.**

——S. 9 (a)—*Scope—Application by one member of joint family for settlement of his debts—Dismissal—Subsequent application by joint family for settlement of all family debts—If barred.*

The dismissal under S. 9 (*a*) of the Debt Conciliation Act of an application by one member of a joint family for the settlement of his own debts does not prejudice the joint family subsequently applying for a settlement of all the debts of the family. (*Leach, C. J. and Kuppuswami Ayyar, J.*) SESHAMMA *v.* DEBT CONCILIATION BOARD, NANDYAL. **202 I.C. 81=15 R.M. 438=55 L.W. 210=1942 M.W.N. 236=A.I.R. 1942 Mad. 405 (1)=(1942) 1 M.L.J. 370.**

——Ss. 10 and 23—Jurisdiction of Board—Creditor filing statement of claim—Order declaring debt discharged for absence of creditor and failure to produce accounts—Legality—Writ of *certiorari*—Issue of—If justified. *See* 1941 Dig., Col. 829. RAMALINGAM CHETTIAR *v.* DEBT CONCILIATION BOARD, DHARMAPURI. **198 I.C. 811=14 R.M. 496=(1941) 1 M.L.J. 108.**

——S. 10 (1) and (2)—Scope—Creditor filing statement and taking time to produce accounts—Failure to appear and to produce accounts on date fixed—Order cancelling debt—Legality. *See* 1941 Dig., Col. 830. SUBBA RAO *v.* SATYANARAYANAMURTHI. **197 I.C. 299=14 R.M. 354=(1941) 2 M.L.J. 170.**

——Ss. 10 (2), 14 and 18—Duties and powers of Board—Objection raised to maintainability of petition and to inclusion of false debts—Board not deciding same and proceeding to settlement without preparing schedule of assets and liabilities—Order under Ss. 10 (2), 14 and 18—Sustainability. *See* 1941 Dig., Col. 830. VEERARAGHAVA RAO *v.* DEBT CONCILIATION BOARD, BEZWADA. **199 I.C. 769=14 R.M. 681=(1941) 2 M.L.J. 366.**

——S. 10 (2)—Scope—Creditor requesting Debt Conciliation Board to summon deed as evidence of debt—Refusal and order discharging debt—Legality. *See* 1941 Dig., Col. 831. VENKATASWAMI *v.* PEDDA MADDULETI. **199 I.C. 596=14 R.M. 611=(1941) 2 M.L.J. 155.**

——S. 10 (2)—*Scope and effect—If confined to debts mentioned in debtor's application.*

S. 10 (2) of the Act is not limited to debts shown by the debtor in his application under S. 4. Even a debt not included in the statement, is to be deemed to have been discharged. (*Byers, J.*) SIDDAPPA CHETTIAR, *In re.* **55 L.W. 694=1942 M.W.N. 666=A.I.R. 1942 Mad. 738=(1942) 2 M.L.J. 616.**

——Ss. 14 and 18—Decree obtained by non-consenting creditors before settlement—Right to execute against all the assets of the creditor—Certificate under S. 18—Effect. *See* 1941 Dig., Col. 831. MUNI REDDY *v.* MUNI REDDY. **200 I.C. 659=15 R.M. 106=(1941) 1 M.L.J. 499.**

——S. 14—*Scope and effect—Agreement between debtor and creditor reducing debt due under decree—Attachment of decree by stranger prior to agreement—Execution by attaching decree-holder—If barred.*

On 6—11—1939, petitioner applied to attach a decree obtained by his debtor against second respondents. On 11—11—1939, second respondent filed an application under the Madras Debt Conciliation Act, and notice was ordered to the decree-holder. On 20—12—1939, the attachment of the decree was ordered. On 22—1—1941, an agreement was entered into under S. 14 (1) of the Act, between the second respondent and his creditor whereby the debt was considerably reduced. Petitioner put in an application to execute the attached decree, but he was met by the plea that the agreement under S. 14 (1) superseded the decree.

Held, that the agreement under S. 14 (1) was only an agreement which bound the parties to it, and did not supersede the decree obtained by the creditor in the Civil Court, and could not be pleaded in bar of execution of the attached decree by the stranger attaching decree-holder. (*Horwill, J.*) KRISHNAN *v.* KRISHNAN. **55 L.W. 747 (1)=1942 M.W.N. 677=A.I.R. 1943 Mad. 171=(1942) 2 M.L.J. 612.**

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——S. 17—*Date of filing of petition—Application presented and returned for rectifying debt—Re-presentment after rectification—Period of twelve months—Starting point—Date of original presentation or date of re-presentation.*

Where a debtor's petition under S. 4 of the Debt Concillation Act, dated 3-6-1940 and actually presented on that date was returned as the father of the petitioners who was joint with them had not joined in the petition, and was re-presented on 14-6-1940, with the omission rectified, the period of twelve months after which the petition must be dismissed under S. 17 of the Act if no conciliation had taken place, must be computed as commencing from 14-6-1940, when only the petition was in order, and not on the date on which the petition was originally made. (*Leach, C.J. and Kuppuswami Ayyar, J.*) SESHAMMA *v.* DEBT CONCILIATION BOARD, NANDYAL. **202 I.C. 81=15 R.M. 438=55 L.W. 210=1942 M.W.N. 236=A.I.R. 1942 Mad. 405 (1)=(1942) 1 M.L.J. 370.**

——S. 25—*Power of the Court to call upon judgment-debtor to furnish security while ordering stay of execution proceedings.*

S. 25 of the Debt Conciliation Act necessitates only that execution proceedings should be stayed when the Court is apprised of an application to the Debt Conciliation Board and can have no prohibitive effect upon the power of the Court to make provision for continuing execution proceedings in case necessity should arise in the future, *e.g.*, by calling upon the debtor to furnish security for his appearance. (*King and Lakshmana Rao, JJ.*) GADDEN NAIDU *v.* CHINA RAMANNA. **201 I.C. 758=15 R.M. 401=1942 M.W.N. 91=55 L.W. 23=A.I.R. 1942 Mad. 389=(1942) 1 M.L.J. 90.**

——S. 25—*Scope—Application by one creditor to stay proceedings in respect of debt due to another creditor—Competency—Jurisdiction of Court.*

Applications by a creditor under the Madras Debt Conciliation Act are intended to be made with regard to his own debts, and not with regard to the debts of third parties. Where an application is made by a single creditor with reference to a single debt, there is nothing in S. 25 of the Debt Conciliation Act to authorize the staying of proceedings regarding other debts due by the same debtor to other creditors, although those other debts may be taken into consideration by the Debt Conciliation Board. The Court has therefore no jurisdiction under S. 25 to stay proceedings in respect of a debt due to one creditor at the instance of another creditor. (*Mockett, J.*) VENKATASUBBAYYA *v.* VENKAYYA. **202 I.C. 728=15 R.M. 573=1942 M.W.N. 144=A.I.R. 1942 Mad. 612=(1942) 1 M.L.J. 413.**

——S. 25—Scope—Dismissal of application under S. 9 after eight months of its presentation—Liberty to file fresh application granted by board—Second application beyond 12 months of original application—Stay of execution—If can be granted. *See* 1941 Dig., Col.

MAD. DEBTORS' PROT. ACT, S. 6-A.

832. RAMANATHAN CHETTIAR *v.* SUBRAMANIAM CHETTIAR. 197 I.C. 425=14 R.M. 363=(1941) 1 M.L.J. 123.

MADRAS DEBTORS' PROTECTION ACT (as amended in 1935), S. 6-A—*Scope—Retrospective operation.*

S. 6-A of the Madras Debtors' Protection Act as amended in 1935 is applicable only to transactions entered into after the commencement of the amendment and cannot apply to a transaction effected before its commencement. (*Wadsworth and Patanjali Sastri, JJ.*) INDIRA DEVI *v.* AUDINARAYANA MURTHY. 55 L.W. 636=1942 M.W.N. 752=A.I.R. 1943 Mad. 35=(1942) 2 M.L.J. 486.

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920), S. 69 and Sch IV, R. 61—*Lease of Municipal Farm—Formal contracts not taken—Loss to Municipality—Surcharge against chairman—When proper.*

The chairman of a Municipality held an auction and leased out to the highest bidders the sewage farm belonging to the Municipality for a period of two years. As required by the rules the successful bidders signed unstamped muchilikas as soon as their bids were accepted. According to S. 69 of the Madras District Municipalities Act it was necessary that subsequently formal written contracts should have been drawn up and executed by the successful bidders and also signed by two Municipal Councillors. These contracts were not however taken in respect of the lease of the sewage farm. Subsequently the lessees committed default in paying the rent and the Municipality filed suits against them based on the contracts entered into by them or in the alternative on the basis of their liability to pay damages for use and occupation of the farm. The suits were originally dismissed for the reason that the contracts could not be proved, the formal documents prescribed by the statute not having been executed by the parties. The cases were taken up in revision to the High Court and they were remanded for trial on the alternative prayer for damages for use and occupation. The suits were thereupon partially decreed. The Examiner of Local Fund Accounts surcharged the chairman of the Municipality for the difference between the amounts decreed and the amounts claimed by way of rent, and also for the stamp duty and penalty paid into Court for proving the unstamped muchilikas. It was proved that an application for refund of the stamp duty paid was preferred to the Board of Revenue long after and that the same was dismissed as barred by limitation. It was also proved that according to the routine of procedure prevailing in the office of the Municipality the manager was responsible for taking the formal contracts from the successful bidders.

Held, that the chairman of the Municipal Council could not under the circumstances be said to have acted negligently in the matter of not taking formal contracts for the leases, and that the order of surcharge was not justified either as regards the stamp duty and penalty paid, or as regards the portion of the rent that was lost to the Municipality as a consequence of the formal contracts of lease not having been taken. (*Krishnaswamy Ayyangar and Kunhi Raman, JJ.*) R. S. NAIDU *v.* AUDITOR AND EXAMINER OF LOCAL FUND ACCOUNTS, MADRAS. 55 L.W. 673=A.I.R. 1943 Mad. 97=(1942) 2 M.L.J. 538.

——**S. 69 (1)**—*Construction—Contract falling under proviso to S. 69 (1)—Validity when signed by Commissioner alone.*

The wording of the proviso to S. 69 (1) of the Madras District Municipalities Act indicates that in the case of Municipalities falling within its scope, it would be sufficient if a contract is signed by the commissioner alone and it need not be signed by two councillors as well as the Commissioner. (*Kunhi Raman, J.*) MUNICIPAL COUNCIL, NELLORE *v.* SABASHKHAN SAHEB. 202 I.C. 84=15 R.M. 442=1942 M.W.N. 429=55 L.W. 285=A.I.R. 1942 Mad. 481=(1942) 1 M.L.J. 554

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——**Ss. 81 (3) and 354 (2)**—Scope—Vacant sites owned by Railway Company—Taxation—Basis—Rules not framed by Local Government—Tax levied on basis of value fixed by committee appointed with consent of assessee—Legality—Suit for refund—Maintainability. *See* 1941 Dig., Col. 832. M. & S. M. RAILWAY CO., LTD. *v.* MUNICIPAL COUNCIL, BEZWADA. 199 I.C. 577=14 R.M. 598=(1941) 2 M.L.J. 189.

——**S. 82, Cl. (2)**—Cost of constructing compound walls—It can be taken into consideration in fixing the annual value of the premises for taxation. *See* 1941 Dig., Col. 833. TIRUMALAI TIRUPATHI DEVASTHANAMS *v.* TIRUPATHI MUNICIPAL COUNCIL. 200 I.C. 895=15 R.M. 170=1942 M.W.N. 267=A.I.R. 1942 Mad. 256=(1941) 2 M.L.J. 1093.

——**S. 83**—Applicability—Building used by lessee for a School—Owner's right to claim exemption from property tax. *See* 1941 Dig., Col. 833. SURYANARAYANAMURTHI *v.* CHAIRMAN, MUNICIPAL COUNCIL COCANADA. 199 I.C. 472=14 R.M. 583=(1941) 2 M.L.J. 338.

——**S. 83 (1)**—*Construction—"Set apart for public worship, etc."—Shops and stalls inside temple compound—Sale of commodities not such as are used for purposes of worship in temple only—Exemption from property tax—No right to.*

When there are a large number of shops and stalls inside the compound of a temple, in which all kinds of commodities are being sold, as long as the commodities are not such as can only be used for purposes of worship in the temple, or in other words, as long as the shops and stalls are not being used only for purposes subservient to the worship in the temple, the shops and stalls must be held to be taxable; as they cannot be said to be set apart for public worship or actually used for that purpose within the meaning of S. 83 of the Madras District Municipalities Act, they are not exempt from payment of property tax. (*Venkataramana Rao and Abdur Rahman, JJ.*) MADURA MUNICIPAL COUNCIL *v.* MADURA, ETC., DEVASTHANAMS. 203 I.C. 233=15 R.M. 606=1942 M.W.N. 528=55 L.W. 528=A.I.R. 1942 Mad 658=(1942) 2 M.L.J. 269.

——**S. 93 (1) (a) (i) and (b)**—Applicability and construction—Government servant holding appointment within Municipality for part of half year but residing outside—Liability to tax—Extent and basis of calculation. *See* 1941 Dig., Col. 833. AUSTEN BYERS *v.* MUNICIPAL COUNCIL, TRICHINOPOLY. 200 I.C. 113=14 R.M. 713=(1941) 1 M.L.J. 620.

——**S. 145**—Construction and scope—Public latrine constituting nuisance to private person—If authorised under Act. *See* 1941 Dig., Col. 833. MADURA MUNICIPALITY *v.* NATARAJA PILLAI. 200 I.C. 729=15 R.M. 121=(1941) 1 M.L.J. 768.

——**S. 181 (2)**—*Applicability—"Encroachment"—Meaning—Panels of window passing six inches beyond road boundary when being opened—No projection when fastened back or closed—Offence.*

An encroachment generally means something that hangs more or less permanently over the road and not something which momentarily passes over some portion of the road. What S. 181 of the Madras District Municipalities Act prohibits is the erecting without

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licence of a window, door, gate, or bar that, when in its normal open position, projects over the street. If the position of a window when open is parallel or almost parallel to the wall, it is not hit by S. 181 which deals with windows, etc., which in their normal open position project over the road. The petitioner constructed a window, the panels of which, when swung open, passed six inches beyond the road boundary; it was, however, found that when the window was fastened back, it did not project over the road; nor did it when it was shut. The petitioner was called upon by the executive authority of the Municipality under S. 181 (2) of the District Municipalities Acts to alter the window, but as he did not do so he was prosecuted and convicted.

Held, that the petitioner had not committed any encroachment falling within the mischief of S. 181 of the Act and he was therefore not liable to conviction under S. 181. (*Horwill, J.*) KANDASWAMY PILLAI *v.* MUNICIPAL PROSECUTOR, PALGHAT. 202 I.C. 610=15 R.M. 541=1942 M.W.N. 481 (1)=43 Cr.L.J. 866=55 L.W. 466=A.I.R. 1942 Mad. 601=(1942) 2 M.L.J. 145.

——S. 182—*Applicability—Private street—Acquittal by lower Court on evidence—Interference by High Court in appeal.*

S. 182 of the District Municipalities Act applies to all streets, private as well as public. Where there is a *bona fide* dispute as to the ownership of a private lane and the part of the lane alleged to have been encroached upon by the accused is situated near the house of the accused and the lower Court has acquitted the accused after having come to a finding on the evidence which cannot be said to be altogether unreasonable, the High Court will be reluctant to interfere with the acquittal in appeal and to convict the accused. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* CHINNALAL CHUMANA NAIDU. 201 I.C. 440=15 R.M. 342=1942 M.W.N. 370=55 L.W. 366=43 Cr.L.J. 665=A.I.R. 1942 Mad. 531=(1942) 1 M.L.J. 586.

——Ss. 249 and 313—*Licence for hotel—Refusal of application for renewal—Prosecution for keeping hotel without licence—Acquittal on ground that order refusing renewal is not valid—Sustainability.*

Where an application under S. 249 (5) of the Madras District Municipalities Act for renewal of licence to keep a hotel is refused by the executive authority of a municipality, but the applicant continues to run the hotel and is prosecuted under S. 313 of the Act for doing so, it is not open to the Magistrate to acquit the accused on the ground that order of refusal to renew the licence is not valid. The validity or otherwise of the order of refusal cannot be gone into in such a prosecution. (*Lakshmana Rao, J.*) COMMISSIONER, DINDIGUL MUNICIPALITY *v.* V RAJAMANI IYER. 1941 M.W.N. 1073 (2)=A.I.R. 1942 Mad. 279 (2).

——Ss. 249 and 313—*Prosecution for running hotel without a licence—Accused stating that he had deposited licence fee and applied for renewal—Conviction on ground of admission of guilt—Sustainability.*

In prosecution under S. 313 of the Madras District Municipalities Act read with S. 249 of the Act for running a hotel without a licence, the accused appeared and stated that he had applied for renewal of his licence and had deposited the licence fee. But as he did not produce a licence, the Magistrate thought that he had no defence and convicted him under Ss. 249 and 313 of the Act, holding that the accused admitted his guilt.

Held, that the plea of the accused was misunderstood and the conviction was therefore unsustainable. (*Lakshmana Rao, J.*) PICHUMANI AYYAR *v.* EMPEROR, 198 I.C. 104=14 R.M. 455=43 Cr.L.J. 368=1941 M.W.N. 1074=A.I.R. 1942 Mad. 281 (1).

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——S. 267-A—Scope and effect—Owner of private market—Right to prevent Municipality from opening new market. *See* 1941 Dig., Col. 834. HAMEDIA MADRASA SCHOOL *v.* MUNICIPAL COUNCIL, TIRUVARUR. 197 I.C. 304=14 R.M. 358=(1941) 2 M.L.J. 347.

——Ss. 270 B and 270-D—*Construction and scope—Parking place and shed for buses—"Use of"—Meaning of—Liability for fees—Seizure of bus for arrears of fees effected by contractor to whom right to collect fees is farmed—Legality of.*

It is quite an untenable proposition that a person cannot be said to use a cart-stand or car park because he is compelled to use a certain place for that purpose and not allowed to park his cart or car where he pleases. A parking place for motor buses and shed with waiting rooms and other conveniences provided by a Municipality are not merely intended for the convenience of the buses but also for the convenience of passengers; and if, in order to pick up passengers, a bus has to go to and stand in a certain place, it clearly "uses" that place within the meaning of S. 270-B of the District Municipalities Act for the purpose of its business, *viz.*, the transportation of passengers. There is no question of voluntary or involuntary use of the parking space. If the owner wishes to ply his bus for hire he has to conform to the rules made in that behalf under the Motor Vehicles Act. He is therefore liable to pay the fees prescribed by a Municipality for the use of the parking place or shed. And a contractor to whom the right to collect the fees has been farmed can be directed and has power, to seize a bus under S. 270-D of the Act for arrears of fees which have not been paid by the owner. The fact that a Municipality does not itself seize the bus but directs the contractor to seize it does not render the seizure illegal or invalid. (*Mockett and Happell, JJ.*) UNITED MOTORS (COIMBATORE), LTD. *v.* PALGHAT MUNICIPAL COUNCIL. A.I.R. 1943 Mad. 122=(1942) 2 M.L.J. 472.

——S. 270 D—*Scope—Recovery under S. 270-D instead of by suit—If improper.*

A Municipality cannot be said to act indiscreetly or improperly in recovering its dues under S. 270-B, in the manner provided by S. 270-D of the District Municipalities Act instead of by filing a suit. On the contrary it is clearly the duty of the Municipality to utilise the cheap and expeditious method of recovery provided by the Act. (*Mockett and Happell, JJ.*) UNITED MOTORS (COIMBATORE), LTD. *v.* PALGHAT MUNICIPAL COUNCIL. A.I.R. 1943 Mad. 122=(1942) 2 M.L.J. 472.

——S. 306 (28)—Construction and scope—Bye-law authorising levy of licence-fees for advertisements—If *ultra vires*. *See* 1941 Dig., Col. 834. M S. AYYAR & CO *v.* SRINIVASALU NAIDU. I.L.R. (1942) Mad. 73=43 Cr.L.J. 78=(1941) 2 M.L.J. 145.

——S. 313—Prosecution for keeping hotel without licence—Validity of order refusing to renew licence—If can be gone into—Acquittal on ground that order of refusal is not valid—Sustainability. *See* MADRAS DISTRICT MUNICIPALITIES ACT, SS. 249 AND 313. 1941 M.W.N. 1073 (2).

——S. 321—*License-fee on trade or industry—Charge—Principles in assessing—If to be levied on basis of tax—Power of Court to declare* ultra vires.

A license fee for carrying on a particular trade or industry should not be regarded as a form of taxation the extent of which is to be governed purely by revenue considerations. The license-fee should bear as nearly as possible a relation to the cost of issuing the license and

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the cost of supervising the trade or of any special measures rendered necessary by the character of the trade. It is doubtful whether a Municipality would be justified in increasing the license fee chargeable upon a particular industry merely because of the cost of ordinary municipal services to which that industry is entitled by virtue of its position as a tax-payer in the Municipality. But if the industry involves special sanitary precautions, a special supervising agency or such like expenditure, it is reasonable to take this expenditure into account in fixing the amount of the fee. So long as the apportionment is made on a reasonable basis it is not for the Courts to interfere with the way in which it has been achieved. The matter is within the competence of the Municipal Council which is of course always subject to the control of the Government; and the Courts certainly should not declare a fee or a levy to be *ultra vires* merely because it is somewhat higher than might be thought necessary on a different view of the facts. (*Wadsworth and Patanjali Sastri, JJ.*) INDIA SUGARS AND REFINERIES, LTD. *v.* MUNICIPAL COUNCIL, HOSPET. **1942 M W.N. 714=55 L.W. 783 =A I.R. 1943 Mad. 191=(1942) 2 M.L.J. 663.**

——**S. 347**—*Scope—Prosecution under S.* 197—*Complaint—Special authorization—Form—If to be express.*

A complaint of an offence under S. 197 of the Madras District Municipalities Act need not necessarily show on the face of it that there was any express authorization by the Commissioner or executive authority of the Municipality. Where a printed form of complaint in general use is filed with all the particulars of the offence and the signature of the person who is to conduct the prosecution, and the form also contains the recommendation of the Health-Officer and the order of the Commissioner sanctioning the prosecution, it must be held that the special authorization required by S. 347 has in fact been given and that the provisions of S 347 have been complied with. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* GOPALAKRISHNA PILLAI. **198 I.C. 182=14 R. M. 412=43 Cr.L.J. 318=1942 M.W.N. 123=A.I.R. 1942 Mad. 347 (2).**

——**S. 354 (2)**—*Applicability—Double taxation—Refusal to give relief under S.* **93 (4)**—*Effect—Suit to recover tax paid under protest—Maintainability.*

Where a Municipality refuses to grant relief to a person assessed to profession tax under S. 93 (4) of the District Municipalities Act to which on the facts proved he is entitled, in respect of double taxation, takes the case outside the provisions of the Act, and therefore S. 354 (2) cannot operate as a bar to a suit by him to recover the tax levied from him and paid by him under protest. (*Byers, J.*) KASI VISVANADHAM CHETTIAR *v.* DEVAKOTTAI MUNICIPAL COUNCIL. **203 I.C. 235 =15 R.M. 608=1942 M.W.N. 570=55 L.W. 514= A.I.R. 1942 Mad. 661=(1942) 2 M.L.J. 265.**

——**Sch IV. R. 62**—*Right of appeal against order of District Judge—If retrospective.*

The right of appeal created by a new rule (rule 62 of Sch. IV of Madras Act V of 1920 against an order of the District Court to set aside a surcharge order) will not affect orders passed on petitions instituted before the rule came into force (July 1939) though the orders on such petitions were passed later. There is no logical distinction between a right of appeal and the right to a final judgment without an appeal. Both are vested rights and cannot be deemed to be affected by later enactments or rules retrospectively unless such an enactment or rule is given retrospective operation either expressly or by necessary intendment, 56 M.L.J. 369=52 Mad. 361 (F.B.), applied. (*King and Kuppuswami Ayyar, JJ.*) EXAMINER OF LOCAL FUND ACCOUNTS, MADRAS *v.* SUBRAMANIA MUDALIAR. **55 L. W. 778 =1942 M.W.N 755=A.I.R. 1943 Mad. 208 (1)= (1942) 2 M.L.J. 667.**

MADRAS ESTATES LAND ACT (1908), S. 6.

MADRAS DISTRICT POLICE ACT (XXIV OF 1859), S. 21—*Applicability—If confined to Police Officers* inter se.

The Police Act does not deal with administrative matters of the police as a department but with matters and duties which they in their official capacity are called upon to undertake and discharge. There is no warrant for the contention that S. 21 of the Police Act is applicable between Police Officers *inter se* and has no application when they are dealing with private individuals. (*Abdur Rahman and Somayya, JJ.*) MAHARANI GURUCHARAN KAUR OF NABHA *v.* PROVINCE OF MADRAS. **I.L.R. (1942) Mad 696=203 I.C. 45= 15 R.M. 614=5 F.L.J. (H.C.) 103=1942 M.W.N. 602=44 Cr.L.J. 45=A.I.R. 1942 Mad. 539=(1942) 2 M.L.J. 14.**

——**S. 53**—Applicability—Police officers acting in discharge of statutory duty—Suit for damages against. *See* GOVERNMENT OF INDIA ACT, S. 270. **(1942) 2 M.L.J 14.**

——**S. 53**—Applicability—Police Officers detaining passengers and preventing them from entraining—Suit for damages—Limitation. *See* GOVERNMENT OF INDIA ACT, S. 270. **(1942) 2 M.L.J. 14.**

——**S. 53, Proviso**—*Applicability—Bar under—Conditions for operation of—"Act"—Meaning of.*

Before the bar mentioned in the proviso to S. 53 of the Madras District Police Act can apply, the act for which the prosecution had been launched must be found to be an act contemplated by the statute itself. The "act" complained of and referred to in S. 53, is an act done "under the provisions of this Act." There is no warrant for holding that "act" in the proviso is more comprehensive than the word "act" in the body of the section itself. (*Chandrasekhara Iyer, J.*) K.V. MAHOMED *v.* CHAKKAPPAYAN KANNAN. **1942 M.W.N. 725.**

MADRAS ELECTORAL RULES, R. 48—Claim for return of deposit by unsuccessful candidates for election to a seat in the Legislative Council—Forfeiture of deposit and rejection of claim by returning officer affirmed by Local Government—Suit in Civil Court for recovery of amount—Maintainability. *See* 1941 Dig., Col. 835. PANCHAPAKESA IYER *v.* SECRETARY OF STATE. **199 I.C. 366=14 R.M. 5 3=(1941) 1 M.L. J. 310.**

MADRAS ESTATES LAND ACT (I OF 1908 as amended in 1936), S. 3 (2) (d)—Scope—Decree for rent or damages for use and occupation—Subsequent coming into force of Amendment Act—If alters character of rent or relations of parties. *See* MADRAS AGRICULTURISTS' RELIEF ACT, SS. 15, 16 AND 19. **1942 M.W.N. 472.**

——**S. 3 (5)**—Proceedings under—Nature of—Deputy Collector acting under—If Court. *See* C. P. CODE, S. 115. **(1942) 2 M.L.J. 511.**

——**Ss. 3 (5), 77-A and 112**—Proceedings initiated by one co-sharer without joining others—Invalid. *See* 1941 Dig., Col. 835. ETHIRAJA MUDALIAR *v.* MURUGESA MUDALIAR. **201 I.C. 275=15 R.M. 297= A.I.R. 1942 Mad. 282=(1941) 2 M.L.J. 1088.**

——**S. 3 (15)**—Ryot—Liability of for local cess under Madras Local Boards Act, S. 88—Local Boards Act, S. 3 (22)—"Tenant". *See* MADRAS LOCAL BOARDS ACT, S. 88. **(1942) 2 M.L.J. 565.**

——**S. 6 (1) (as amended in 1936), Expls. 1 and**—"*Estate*"—*Grant of lands in village in main*—

MADRAS ESTATES LAND ACT (1908), S 6.

Grant not of whole village—Entry in inam register and statement filed before Inam Commission—Construction of—Right of tenancy to claim occupancy.

An inam was granted to the head of a Math in 1763. The original grant was lost; the statement filed in 1861 by the Math before the Inam Commission stated in Col. VI that "the former zamindars who had jurisdiction over the village granted the land comprised within the *chekunama* (document describing the boundaries), for the Nitya Nivedya Deeparadhana and other Kainkaryams in the Math . . . . There is no sanad. As it was destroyed by fire it is not known in which fasli it was granted." In Cols. VII to IX, there was no entry under the heading "particulars of the inam", but under the heading "Gudicat" (total area of the village) was the entry 158·23 acres from which were deducted 25·10 acres described as private lands and 5·4 acres "inams of other persons", leaving 128·6 acres on the area cultivated by the grant. The particulars in Col. X stated that there was no *chekunama*, and gave boundaries which were admittedly the boundaries of the whole village. In the Inam Register the acreage was given as 128·22 acres and it was stated that "old inams disposed of as a distinct case—5·6 acres." There was overwhelming evidence to show that only 121·28 acres out of the total area of 158·23 acres, which formed the village, were dedicated to the deity of the Math."

Held, that Col. X of the statement must be read with the earlier columns and the entries in the Inam Register, and the grant therefore was not of the whole village but only of a part of it, and being less than a whole village did not constitute an "estate", so as to give the tenant of the lands a permanent right of occupancy under S. 6 of the Madras Estates Land Act (as amended in 1936).

Quaere:—Whether the grant was a grant for service?

(*Leach C.J. and Kuppuswami Ayyar, J.*) ADEMMA *v.* SATYADHYANA THIRTHA SWAMIGAL. **(1942) M.W.N. 700=56 L.W. 30=A.I.R. 1943 Mad. 187.**

——Ss. 6 (1), Expl. 2 (as amended in 1934 and 1936), and 127—*Relative scope and effect of—Proviso to S. 127 (2), proviso—If overrides S. 6 (1), Expl. (2).*

There is nothing in S. 127 of the Madras Estates Land Act as amended in 1934, which overrides anything said in Expl 2 to S. 6 (1) which was inserted in the Act by a later amendment (Third Amendment Act of 1936), and the amendments made by the latter Act finally settled the right of parties. The appellant, an inamdar, obtained a decree against the respondents who were in occupation of the land in dispute, declaring that he held both the melwaram and kudiwaram rights in the land. This decree became final on 26—1—1934. On 22—1—1937, the appellant applied for possession of the land in execution of the decree.

Held, that the appellant not having obtained a final decree till after 1—11—1933, the date mentioned in the proviso to S. 127 (2) of the Act as amended in 1934, his case did not come within that proviso, and as the respondents were admittedly in possession on 30—6—1934 as provided by Expl. (2) to S. 6 (1) of the Act, the appellant was not entitled to possession.

(*Leach, C.J. and Lakshmana Rao, J.*) KALYANASUNDARAM AYYAR *v.* CHINNA GOUNDAN. **1942 M W.N. 733=55 L.W. 802 (2)=A.I.R. 1943 Mad. 83 =(1942) 2 M.L.J. 689.**

——S. 13 (3)—*Scope—Second crop raised on single crop land—Ryot using water from wells dug at his expense—Claim by landlord for additional rent—Validity.*

A claim by a landholder for additional rent, in respect of a second crop raised on registered single crop land with the aid of water from wells dug by the ryot at his own expense, will be valid only if there is a contract between the landholder and the ryot, entered into before the date of the Madras Estates Land Act, undertaking to pay such additional rent alleged and proved.

MADRAS ESTATES LAND ACT (1908), S. 74.

(*Somayya, J.*) SRI VAITHINATHASWAMI DEVASTANAM, SRIVILLIPUTHUR *v.* ANANTHARAMA AIYAR. **55 L.W. 611 (2)=1942 M.W.N. 805=A.I.R. 1942 Mad. 747=(1942) 2 M.L.J. 414.**

——S. 20—*Scope—Order by Collector—Finality—Suit under C.P. Code—When barred.*

An application under S. 20 of the Madras Estates Land Act must be confined to the question whether the land in question is or is not of the description mentioned in S. 3 (16), (*a*) (*b*) or (*c*), or a question with regard to customary rights in the user of the land. The Collector's decision on such questions is final subject to the decision in a suit filed under sub-S. (2). But a landholder is not precluded from filing a suit under the C.P. Code to establish a right which does not fall within the contemplation of S. 20 of the Estates Land Act, and there is no reason why a person who files a suit under S 20 (2) to challenge an order passed by the Collector under S. 20 (1) should not advance a plea that he possesses the right claimed on another ground as well.

(*Leach, C.J. and Lakshmana Rao, J.*) RAMASWAMY GOUNDAR *v* RAMASAMI GOUNDAR. **1942 M.W.N. 618=55 L.W. 641=A.I.R. 1943 Mad. 59=(1942) 2 M.L.J. 595.**

——Ss. 20 and 21—*Scope—Landholder's right to cultivate tank beds—If affected—Right of ryots.*

When the proprietary rights of the landholder in the bed of the tank is unaffected by custom, he is entitled to cultivate such parts of the bed of the tank as become exposed when the water recedes in the dry season, provided that the cultivation does not prevent the water from spreading when the rains come. The ryots of the village have no interest in these lands apart from the right to use, for the purpose of cultivating their holdings, the water contained on that land. The proprietary rights of the landholder can only be cut down by a statutory provision expressed in unambiguous language.

(*Leach, C. J. and Lakshmana Rao, J.*) RAMASWAMY GOUNDAR *v* RAMASWAMI GOUNDAR. **1942 M.W.N. 618=55 L.W. 641=A.I.R. 1943 Mad. 59=(1942) 2 M.L.J. 595.**

——S. 25—Agreement by ryot to pay a premium—Ryot let into possession—Landlord, if can recover the premium afterwards. *See* 1941 Dig., Col. 836. RAJA OF VIZIANAGARAM *v.* NARAYANA RAJU. **200 I.C. 67=14 R.M. 697=(1941) 1 M.L.J. 314.**

——S. 31—Apportionment of compensation—Windfall resulting in heavy rise in value of land—Right of melvaramdar to benefit of increase. *See* 1941 Dig., Col. 836. NARAYANA GAJAPATI RAJU *v.* ANNAPURNAMMA. **198 I.C. 732=14 R.M. 485=(1941) 1 M.L.J. 527.**

——S. 52 (3)—Scope—Patta for one year—Holder remaining as pattadar after expiration of period—Suit to eject trespasser after one year—Landlord not made party at inception but impleaded in second appeal—Effect of—Decree for possession with landlord's assent—Validity—Registration Act, S. 17. *See* 1941 Dig., Col. 837. BANGARIGADU *v.* ATCHUTARAMAYYA **198 I.C. 805=14 R.M. 499=(1941) 1 M.L.J. 384.**

——S. 56—Scope—Joint holding—Pattas not tendered to all ryots—Suit for acceptance of pattas—Maintainability. *See* 1941 Dig., Col. 837. SYED GHOUSE SAHIB *v.* MAHOMED KHAN SAHIB. **198 I C. 600=14 R.M. 477=(1941) 1 M L.J. 550.**

——S. 74—Decision of Collector—Second appeal—Maintainability—Decision of Collector and of District

MADRAS ESTATES LAND ACT(1908), S. 77.

Court on appeal—If decree—C. P. Code, S. 100. *See* 1941 Dig., Col. 837. PANTHANAM *v.* MAHOMED ABDUL RAHIMAN MARAKAYAR. **I L.R. (1942) Mad. 236=201 I.C. 97=15 R.M. 214=A.I.R. 1942 Mad. 73=(1941) 2 M.L.J. 529.**

——**Ss. 77 and 112**—*Scope—Suit by tenant contesting landlord's right of sale for rent—If bars suit by landlord for recovery of same rent.*

The pendency of a suit by a tenant contesting his landlord's right of sale under S. 112 of the Madras Estates Land Act for arrears of rent is no bar to the institution of a suit by the landlord for recovery of the same rent under S. 77. Rent is a first charge upon the holding under S. 5 and the landlord's attempt to enforce the charge by bringing the holding to sale cannot suspend his right of suing for the rent. The Act does not say that these remedies cannot be exercised simultaneously, and in the absence of any such provision in the Act it is not for the Court to impose any such restriction on the landlord's rights and remedies. (*Patanjali Sastri, J.*) SRINIVASA RAJAGOPALA AIYANGAR *v.* SANTHANA RAMASAMI KOIL **55 L.W. 723=1942 M.W.N 698=A.I.R. 1943 Mad. 183 =(1942) 2 M.L.J. 565.**

——**S. 112**—*Applicability—Decree of Revenue Court for arrears of rent—Execution sale—Absence of notice—Effect on sale.*

S. 112 of the Madras Estates Land Act is not applicable to sales held under decrees of Revenue Courts for arrears of rent. The absence of a notice under S. 112 does not therefore render a sale held in execution of such a decree invalid. (*Somayya, J.*) ANNAMALAI CHETTIAR *v.* GENGANNA. **203 I.C. 513=15 R.M. 654= 55 L.W. 139=1942 M.W.N. 184=A.I.R. 1942 Mad. 398 (2)=(1942) 1 M.L.J 336.**

——**S. 112**—Scope of—Landlord's attempt to bring holding to sale—If suspends right of suit under S. 77. *See* MADRAS ESTATES LAND ACT, SS. 77 AND 112. **(1942) 2 M.L.J. 565.**

——**S. 125 (as amended in 1934)**—*Scope and effect of—Change under S. 5—If available in respect of arrears of rent between date of suit and execution sale.*

S. 125 of the Madras Estates Land Act, as amended in 1934, has not effected any change in the law but has merely made the pre-existing law clearer. In a case governed by S. 5 of the Act before the amendment, the charge will not operate in respect of the arrears of rent which have accrued due between the date of the landholder's suit and the sale of the property when it is sold in execution of the decree for rent. A.I.R 1942 Mad. 84=(1941) 2 M.L.J. 947, affirmed (*Leach, C.J. and Byers, J.*) APPARAO BAHADUR *v.* APPANNA SASTRI. **1942 M W.N. 557=55 L.W. 566=A.I.R. 1943 Mad. 29=(1942) 2 M L J. 340.**

——**S. 127 (2), Proviso (as amended in 1934),**—Applicability and scope—If overrides S 6 (1), Expl. (2) as amended in 1936. *See* MADRAS ESTATES LAND ACT (AS AMENDED IN 1934 AND 1936), SS. 6 (1), EXPL. (2) AND 127. **55 L.W. 802 (2)=(1942) 2 M. L.J. 689.**

——**S. 151**—Construction—Action under section—Grounds for—Building compound wall to prevent trespass of cattle—Digging land and laying foundations for erecting structure—Effect of. *See* 1941 Dig., Col. 839. NARAYANA GAJAPATI RAJU *v.* JAGGAYYA. **198 I.C. 512=14 R M. 441=(1941) 1 M.L.J. 523**

——**Ss 163 and 164 A**—Applicability and scope—Landlord purchasing holding at revenue sale—Remedies open for rent and damages—Landlord obtaining possession without suit—Subsequent suit for mesne profits between date of sale and date of possession against occupant—Maintainability—S. 124. *See* 1941 Dig., Col. 840. MAHARAJAH OF PITHAPURAM *v.* MANGAMMA. **201 I.C. 272=15 R.M. 294=A.I.R. 1942 Mad. 148 =(1941)2 M.L.J. 781.**

MAD. GEN. SALES TAX ACT (1939).

——**S. 190**—*Application under S. 20-A—Appeal to District Judge from decision of Collector—Second appeal—Competency—C. P. Code, S. 100.*

The right of second appeal in the case of applications under the Madras Estates Land Act is limited, under S. 190 of the Act, to orders passed on appeal by a District Collector under specified sections of which S. 20-A is not one. The decision of the District Judge in an appeal from the decision of the Collector on an application under S. 20-A of the Act is only an appealable order and not a decree within the meaning of S. 100, C. P. Code, and no second appeal lies to the High Court from the decision of the District Judge. (*Byers, J.*) PROVINCE OF MADRAS *v.* KANNIVADI ZAMINDAR. **I.L.R. (1942) Mad. 959=203 I.C. 475 =15 R.M. 642=55 L.W. 463=1942 M.W.N. 446= A.I.R. 1942 Mad. 599=(1942) 2 M.L.J. 162.**

——**S. 213**—Applicability—Suit by person other than tenant or registered pattadar—"Any person aggrieved." *See* 1941 Dig., Col. 842. SATTIRAJU *v.* VENKATARATNAM. **200 I C. 639=15 R.M. 95=(1941) 2 M.L.J. 646.**

——**S. 213**—Scope—Sale of holding for decree for amount not due to zemindar—Suit to recover money paid to set aside such sale—Claim against zemindar and against tenants who were bound to pay alleged dues—Jurisdiction of Civil Courts. 1941 Dig., Col. 842. SATTIRAJU *v.* VENKATARATNAM. **200 I.C. 639=15 R.M. 95=(1941) 2 M.L.J. 646.**

MADRAS FOREST ACT (V OF 1882), S. 56—Presumption under—Application of. *See* 1941 Dig., Col. 843. V. RAMI REDDY, *In re.* **14 R.M. 369= 43 Cr.L.J. 161=A.I.R. 1942 Mad. 25.**

MADRAS GAMING ACT (III OF 1930), S. 3—"Common gaming house". *See* 1941 Dig., Col. 843. PERIYA VELUMALAI CHETTI, *In re.* **I.L.R. (1942) Mad. 153=43 Cr L.J. 81=(1941) 2 M L.J. 353.**

——**Ss. 5 and 10**—*Magistrate satisfied that seizure of money was on reasonable suspicion and that money was intended to be used for gaming—Can order confiscation.*

Under S. 5 of the Gaming Act, there is no necessity on the part of the prosecution to prove that money seized from persons in a gaming house was used or even intended to be used for gaming, because the police are entitled to seize on reasonable suspicion. If the Magistrate, under S. 10 of the Act, considers that the money was seized on reasonable suspicion, he is entitled to order it to be confiscated. Where the Magistrate brings his mind to bear on the question and is satisfied that the persons found in a common gaming house intended to use the money found on their persons for the purpose of gaming, he is justified in ordering confiscation. (*Horwill, J.*) RAMESWARA SARMA, *In re.* **201 I.C. 385=15 R.M. 343=43 Cr.L.J. 660=1942 M.W.N. 289 (1)=55 L.W. 128 (1)=A.I.R. 1942 Mad. 287= (1942) 1 M.L J. 202.**

MADRAS GENERAL SALES TAX ACT (IX OF 1939)—Scope—If *ultra vires*—Tax on first sales of goods produced in province—Power of Provincial Legislature to authorise levy—Government of India Act, S. 100 and Sch. VII, List I (45) and List II (48). *See* 1941 Dig., Col 843. PROVINCE OF MADRAS *v.* B. PAIDANNA & SONS. **199 I.C. 366=14 R.M. 567 =(1941) 2 M.L.J. 607.**

—— *Validity—Levy of tax on first sales—Conflict between powers of Federal and Provincial Legislatures—*

MAD. GEN. SALES TAX ACT (1939), S. 15.

Government of India Act, Sch. VII, List I, Entry No. 45 ; *List II, Entry No.* 48.

The Madras General Sales Tax Act is not *ultra vires* in so far as it purports to levy a tax on first sales, that is, sales by the manufacturer or producer. Under the Government of India Act, the Federal Legislature has an exclusive power (List I, entry No. 45) to impose duties of excise, and the Provincial Legislature an exclusive power (List II, entry No. 48) to impose taxes on the sale of goods, and this power extends to sales of every kind including first sales. The expression "duty of excise" is wide enough to include a tax on sales, but where power is expressly given to another authority to levy a tax on sales, "duty of excise" must be given a more restricted meaning than it might otherwise bear. A tax levied on the first sale of goods must in the nature of things be a tax on the sale by the manufacturer or producer, but it is levied upon him *qua* seller and not *qua* manufacturer or producer. If a taxpayer who pays a sales tax is also a manufacturer or producer of commodities subject to a central duty of excise he may have to pay two taxes, but the two taxes are economically separate and distinct imposts. It is natural when considering the ambit of an express power in relation to an unspecified residuary power to give a broad interpretation to the former at the expense of the latter but where, as in the Government of India Act, there are two complementary powers each expressed in precise and definite terms there can be no reason for giving a broader interpretation to one power rather than to the other. The American and Australian decisions should not therefore be blindly adopted in India. (*Gwyer, C.J., Varadachariar and Beaumont, JJ.*) PROVINCE OF MADRAS *v.* BODDU PAIDANNA & SONS. I.L.R. (1942) Kar. (F.C.) 72=200 I.C. 551=8 B.R. 735=15 R.F.C. 1=55 L.W. 337=23 Pat.L.T. 463=46 C.W.N. (F.R.) 38=1942 M.W.N. 574=5 Fed. L.J. 61=A.I.R. 1942 F.C. 33=(1942) 2 M.L.J. 327.

——S. 15—*Power of magistrate—Imposition of fine in anticipation of commission of offence after date fixed for payment—Legality.*

S. 15 of the Madras General Sales Tax Act confers no power on a magistrate to impose a fine in anticipation of an offence being committed. Where on a conviction for an offence under S. 15, in respect of the accused's failure to pay the tax due from him within the time allowed, the magistrate sentences the accused to a fine with simple imprisonment for a month in default of payment and at the same time he is directed to pay a fine of Rs. 5 for every day of default after the date fixed for payment of the tax, that part of the order relating to the imposition of the fine at the rate of Rs. 5 per day of default is illegal and must be set aside. (*Byers, J.*) ABDUL SATHAR SAHIB, *In re.* 56 L.W. 46=1942 M.W.N. 820 (1)=A.I.R. 1943 Mad. 128 =(1942) 2 M.L.J. 790.

——S. 15 (a)—Applicability—Ignorance of rules under Act—If saves liability—Failure to submit return—If to be wilful. *See* 1941 Dig., Col. 844. SWAMINATHA AYYAR, *In re.* 198 I.C. 195=14 R.M. 423=55 L.W. 758=1942 M.W.N. 425=43 Cr.L.J. 327=A.I.R. 1942 Mad. 290=(1941) 2 M.L.J. 1045.

——S. 15 (a)—*Turnover and assessment rules, R.* 11—*Amendment during pendency of prosecution—If can make failure to submit a return an offence retrospectively.*

By an amendment of the rules in one year an act or omission in the previous year cannot be made an offence. Where at the time the charge was laid against the accused that he had failed to submit a return under the Madras General Sales Tax Act and evaded payment of tax, he was not required by the Act to make a return but during the course of the hearing the Provincial Government made an amendment to R.11, which if made on the 1st April, 1940, would have meant that the accused would have been liable to make a return.

Held, that the amendment of the rules could not create an offence retrospectively and the accused cannot be lawfully convicted of offences falling under S. 15 (*a*) and (*d*) of the Act. (*Leach, C.J. and Happell, J.*) PATTABIRAMA AYYAR, *In re.* 204 I.C. 12=55 L.W. 507=1942 M.W.N. 586=A.I.R. 1942 Mad. 736 (1 =(1942) 2 M.L.J. 248.

MAD. H. C. (O.S.) RULES, O, 18, R.8.

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895), S. 5—Scope—Assignment of standing crops on main land—If prohibited. *See* 1941 Dig., Col. 844. PUNYA RAULO *v.* KHETRA GANDA. 197 I.C. 655=14 R.P. 329=8 B.R. 275=A.I.R. 1942 Pat. 133.

——Ss. 13 and 21—Jurisdiction of Civil Court—Suit by claimant to office by right of succession—Defendant alleged to be appointed in violation of S. 10 (2)—Suit in Civil Court to declare defendant's appointment invalid—Maintainability. *See* 1941 Dig., Col. 845. NARASIMHA RAO *v.* VENKATRAMANA RAO. 197 I.C. 761=14 R.M. 378=(1941) 2 M.L.J. 439.

——Ss. 13 and 14 (1)—Scope and effect—Suit for recovery of lands attached to office of village blacksmith—Mesne profits for more than 3 years—Power to award—Plaintiff's minority—If ground for extension of limitation. *See* 1941 Dig., Col. 845. KRISHNA REDDI *v.* PEDA SATYAM. 200 I.C. 38=14 R.M. 670=(1941) 2 M.L.J. 91.

——S. 21—Applicability and scope—If controlled by S. 13—Assignment of Rajabhogam by holder of office—Suit by assignee against tenant of holder—Jurisdiction of Civil Court. *See* 1941 Dig., Col. 845. PUNYA RAULO *v.* KHETRA GANDA. 197 I.C. 655=14 R.P. 329=8 B.R. 275=A.I.R. 1942 Pat. 133.

——S. 21—Scope—Suit to declare that claimant to village office is not the adopted son of prior holder—Jurisdiction of Civil Court. *See* 1941 Dig., Col. 845. KAMESWAR RAO *v.* JAGANNADHA SASTRY. 199 I.C. 15=14 R.M. 553=(1941) 1 M.L.J. 12.

——S. 23—Scope—Dismissal of village officer under S. 27—Remedy—Separate suit—Maintainability. *See* 1941 Dig., Col. 846. RAMI NAIDU *v.* SECRETARY OF STATE. 201 I.C. 126=15 R.M. 228=A.I.R. 1942 Mad. 127=(1941) 2 M.L.J. 577.

MADRAS HIGH COURT (ORIGINAL SIDE) RULES—Company Rules, R. 91—Construction and scope—Power of Court to excuse delay in filing affidavit of proof of claim—Grounds—Desirability of amendment of rule. *See* COMPANIES ACT, SS. 191 AND 229 AND MADRAS COMPANY RULES, RR. 83 AND 91.
(1942) 1 M.L.J. 182.

——O. 13, R. 19—*Appeal—Order of Master granting leave to bid under O.* 18, *R.* 8—*If judicial or administrative—Right of appeal.*

In granting leave to bid under O. 18, R. 8 of the High Court Original Sides, Rule, the Master is not exercising a judicial, but merely an administrative or ministerial function, and O. 13, R. 19 of the Original Side Rules does not therefore permit of an appeal from an order granting leave to bid. (*Krishnaswami Ayyangar, J.*) EMBARU *v.* VEDAVALLI AMMAL. 203 I.C. 187=15 R.M. 594=1942 M.W.N. 449=A.I.R. 1942 Mad. 595=(1942) 2 M.L.J. 148.

——O. 18, R. 8—*Function of Court under—If judicial or ministerial—Leave to bid—Grant of—Considerations.*

MAD. H. C. (O.S.) RULES, O. 45. R.1.

The general rule, in cases of applications for leave to bid, is that leave to bid is not to be granted unless the decree-holder is prepared to bid for not less than the amount due to him for principal, interest and costs, and that that course should be followed unless the Court otherwise orders. Before the Court otherwise orders, the Court has of course to take into account the facts and circumstances of the case; but the mere fact that when a Court, in granting or refusing leave to bid is acting in a ministerial capacity has to take into account certain considerations before making its order, is not a good reason for holding that the order becomes a judicial order. Even when a Court acts in a ministerial capacity, it does not mean that the Court is entitled to act arbitrarily. (*Krishnaswami Ayyangar, J.*) EMBARU *v.* VEDAVALLI AMMAL. **203 I.C. 187=15 R.M. 594=1942 M.W.N. 449=A.I.R. 1942 Mad. 595=(1942) 2 M.L.J. 148.**

———**O. 45, R. 1 (d)**—Applicability—Order under—Conditions for making of. *See* 1941 Dig., Col. 846. VENUGOPALA MUDALIAR *v.* EMBARU NAIDU. **I.L.R. (1942) Mad. 137=200 I.C. 353=15 R.M. 30=(1941) 2 M.L.J. 378.**

MADRAS HIGH COURT (ORIGINAL SIDE) INSOLVENCY RULES (1933), O. 17, R. 19—*Payments made under composition —Right of Official Assignee to charge commission.*

It is the settled practice of the Madras High Court to allow the Official Assignee to charge commission on payments made under a composition, and R. 19 of O. 17 of the Original Side (Insolvency) Rules is wide enough to permit of this. (*Leach, C. J. and Lakshmana Rao, J.*) SUBRAMANIA AIYAR *v.* OFFICIAL ASSIGNEE, MADRAS. **1942 M.W.N. 630=55 L.W. 615=A.I.R. 1943 Mad. 12=(1942) 2 M.L.J. 448**

MADRAS HINDU RELIGIOUS ENDOWMENTS ACT (II OF 1927), Ss. 9 (5) and (6)—Scope—Cl. (6) if to be read into Cl. (5)—Temple trustee succeeding by nomination by predecessor—If temple 'excepted.' *See* 1941 Dig., Col. 847. BHASHYAKAR *v.* MADRAS H. R. E. BOARD. **199 I.C. 822=14 R.M. 638=(1941) 1 M.L.J. 250.**

———**S. 43 (1)**—*Trustee—Power to dismiss archaka of temple—Dismissal without framing charge and without giving opportunity to explain conduct or to show cause.*

Where a trustee dismisses an archaka of a temple without framing any charge and without giving him any opportunity to explain his conduct or to show cause, such dismissal is high handed and opposed to the principles of natural justice, and is therefore unsustainable. (*Abdur Rahman and Somayya, JJ.*) KALLALAGAR DEVASTHANAM *v.* THIRUMALAI NAMBIAR. **1942 M.W.N. 769**

———**S. 43 (2) and (3)**—*Applicability—Trustee's order confirmed by Hindu Endowments Board—Finality—Conditions—Jurisdiction of Civil Court.*

It is only in cases where the trustee has actually acted for the reasons given in S. 43 (1) of the Madras Hindu Religious Endowments Act and enumerated in the last paragraph that the provisions of S. 43 (2) and (3) can be attracted. There is no doubt that a trustee can exercise the powers mentioned in S. 43 (1) only when the reasons given in that clause are found by him to have existed and not merely because he purports to seek shelter behind them on grounds which could not be brought within the ambit of S. 43 (1). A Civil Court is not a court of appeal; but it is open to the Civil Court to examine the grounds on which the trustee has acted and to ascertain whether they could or they could not be brought under the section. The Civil Court has the power to go into the question and ascertain whether any of the reasons did in fact exist which would confer jurisdiction on the trustee to act under S. 43, and if it be found that they did not exist, he must be held to have exceeded the powers conferred on him by S. 43, and the decision of the Board confirming the trustee's acts cannot be regarded as final. In the absence of the finality of that decision the jurisdiction of the Civil Court is not ousted. (*Abdur Rahman and Somayya, JJ.*) KALLALAGAR DEVASTHANAM *v.* THIRUMALAI NAMBIAR. **1942 M.W.N. 769.**

MAD. H.R. ENDOWMENTS ACT (1927), S. 65-A.

———**S. 44 B (2) (d) (1)**—*Powers of Collector in appeal—Notice to respondent—If condition precedent to issue of—Order without notice—Writ of* certiorari—*Issue of.*

Notice to respondents is a condition precedent to the exercise of appellate powers by the District Collector under S. 44-B (2) (*d*) (i) of the Madras Hindu Religious Endowments Act. Before he exercises his power to reverse an order passed by the Revenue Divisional Officer under S. 44-B (2), he must serve notice on the respondents and give them an opportunity of being heard. An order passed wthout such notice is without jurisdiction and is liable to be set aside by the High Court by the issue of a writ of *certiorari*. The fact that the order is substantially correct is no ground for not issuing a writ. (*Leach, C. J. and Lakshmana Rao, J.*) VALLIAPPA CHETTIAR *v.* ARANDI. **55 L.W. 616=1942 M.W.N. 806=A.I.R. 1942 Mad. 706=(1942) 2 M.L.J. 470.**

———**S. 60 (a)**—*Applicability—Temple Committee not constituted at all—Powers of Board and president to exercise powers and perform duties.*

S. 60 (*a*) of the Madras Hindu Religious Endowments Act is not confined in its application to a temporary absence of the temple committee, but also applies when the committee contemplated by that sub-clause had never been appointed at all. The words of S. 60 (*a*) are quite general and provide for the exercise of the right by the Board and its president in all cases where a committee such as is referred to in S. 43 (2) of the Act has not been constituted or is not in existence. (*Abdur Rahman and Somayya, JJ.*) KALLALAGAR DEVASTHANAM *v.* THIRUMALAI NAMBIAR. **1942 M.W.N. 769.**

———**S. 63 (as amended in 1935)**—*Powers of Board to appoint managing trustee.*

Under S. 63 of the Madras Hindu Religious Endowments Act, as it now stands (after the amendment in 1935), the Board of Commissioners has power to appoint any trustee, whether hereditary or non-hereditary, to be the managing trustee for a period. If the Board, however, purport to confer on one of the trustees all the powers of the general body of trustees, that would no doubt be exceeding their powers. (*Leach, C.J. and Lakshmana Rao, J.*) KRISHNAMACHARLU *v.* RANGACHARLU. **1942 M.W.N. 735=55 L.W. 802 (1)=A.I.R. 1943 Mad. 136=(1942) 2 M.L.J. 687.**

———**S. 65-A (1)**—*Notice under—Service on managing trustee and Commissioner—Sufficiency.*

Where the notice under S. 65-A (1) of the Madras Hindu Religious Endowments Act is served on the managing trustee of a temple who has charge of all its endowments, and also on the Commissioner who is an inspecting and supervising officer in relation to the temple, such service is sufficient and valid and is not defective on the ground that it is not served on the *Athivadars* who have appointed the managing trustee. (*Leach, C.J. and Byers, J.*) SUBRAMANIA PANDARASANNADHI *v.* H. R. E. BOARD, MADRAS. **1942 M.W.**

MAD. H. R. ENDOWMENTS ACT (1927), S. 69.

N 555=55 L W. 550=A.I.R. 1943 Mad. 104=(1942) 2 M.L.J. 403.

——**S. 69**—*Endowment for* nitya nivedya *and deeparathana in temple—If special or general—Liability to be proceeded against as temple property.*

An endowment for *nitya nivedya* and deeparadhana in a temple is a general endowment to the temple and is not a special endowment. It is temple property and can, as such, be proceeded against for the contribution payable by the temple under S. 68 of the Madras Hindu Religious Endowments Act. (*Kuppuswami Ayyar, J.*) HINDU RELIGIOUS ENDOWMENTS BOARD, MADRAS *v.* RAMIAH. **204 I.C 241=1942 M.W.N. 808=55 L.W. 631=A.I.R. 1942 Mad. 722=(1942) 2 M.L.J. 493.**

——**S. 69**—*Limitation — Contribution—Right of Board—If limited to current year—Right to collect arrears.*

There is no time limit for the levy of contribution under S. 69 of the Madras Hindu Religious Endowments Act. There is nothing in the Act to suggest that the levy under the section should be in the year for which it is levied or in the next year. The Board can therefore claim and collect contribution not only for the current year but arrears for several faslis prior to the year in which it is claimed. (*Kuppuswami Ayyar, J.*) HINDU RELIGIOUS ENDOWMENTS BOARD, MADRAS *v.* SITARAMA CHARYULU. **55 L W. 849=1942 M.W.N. 753=A.I.R. 1943 Mad. 193=(1942) 2 M.L.J. 732.**

——**S. 69 (2)**—*Temple committee ceasing to function—Duties of Committee performed by Board—Right to contribution under S. 69 (2).*

Where a temple committee ceases to function, and the Hindu Religious Endowments Board which has general superintendence of all religious endowments in the province performs all the duties of the committee under S. 60 A of the Madras Hindu Religious Endowments Act in addition to its own duties, the Board is entitled to the contribution contemplated by S. 69 (2) in addition to the contribution under S. 69 (1) of the Act. (*Leach, C.J. and Lakshmana Rao, J.*) HINDU RELIGIOUS ENDOWMENTS BOARD MADRAS *v* SINGARACHARYULU. **1942 M.W.N. 734=55 L W. 782=A.I.R. 1943 Mad. 131=(1942) 2 M.L.J. 705.**

——**S. 73**—*Scope of—Suit by trustees against ex-trustees of temple for accounts—Previous consent of Board—Necessity.*

A suit by the present trustees of a temple against the past trustees for a general account of their trusteeship with allegations of misfeasance, malfeasance and non-feasance is maintainable under the general law. To such a suit the previous consent of the Hindu Religious Endowments Board is not necessary under S. 73 of the Madras Hindu Religious Endowments Act. The general scope of S. 73 is the same as that of S. 92, C. P. Code, and the last paragraph of the former section (S. 73) is meant to refer only to the classes of cases referred to in S. 73 (1) and other sections of the Act. Suits which do not fall within the scope of these sections can be tried under the general law (*Horwill, J.*) MANJESHWAR SRIMAD ANANTHESHWAR TEMPLE *v.* VAIKUNTA BHAKTA. **1943 M.W.N. 17=(1942) 2 M.L J. 757**

——**S. 73 (3)**—*Scope—Administration or management—Order by trustee dismissing archaka confirmed by Board—Suit by archaka to declare orders* ultra vires *and illegal—If barred.*

The words "administration or management" in S. 73 (3) of the Madras Hindu Religious Endowments Act cannot possibly be taken to cover or include the case of a dismissal of an archaka of a temple by the temple trustee. The administration or management must be

MAD. IMP. ESTATES ACT (1904), S. 4.

with reference to the "religious endowment," *i.e.*, with reference to the property mentioned in the definition of the expression "religious endowment" in S. 9 (11) of the Act and not with respect to the dismissal of an archaka. A suit by an archaka to set aside his dismissal by the trustee relates to a personal right and as long as there is no question relating to the administration or management of the endowed property, the suit cannot be held to be barred under S. 73 (3). S. 73 cannot therefore bar a suit by an archaka for a declaration that the orders passed by the trustee dismissing him and the orders by the Board confirming the same are *ultra vires* and wholly illegal and unjust. (*Abdur Rahman and Somayya, JJ.*) KALLALAGAR DEVASTHANAM *v.* THIRUMALAI NAMBIAR. **1942 M.W.N. 769.**

——**S. 84 (2)**—Appeal—Competency—Revision. *See* 1941 Dig., Col. 848 BHASHYAKAR *v.* MADRAS H. R. E BOARD. **199 I.C. 822=14 R.M. 638=(1941) 1 M.L.J. 250.**

——**Ch VI**—Applicability—Temple managed under scheme settled by Court under S. 92, C. P. Code—Powers of Board. *See* 1941 Dig, Col. 848 DEIVASIKAMANI PONNAMBALA DESIKAR *v.* BOARD OF COMMISSIONERS FOR H. R.E., MADRAS. **200 I.C. 459=15 R.M. 46=(1941) 2 M.L.J 175.**

——**Ch. VI-A**—*Notice to managing trustee under S. 65-A—Failure to file objections—Defects pointed out well-founded—Plea that managing trustee was not responsible for some defects—If available.*

Where most of the grounds of complaint against the management of a temple are well-founded, the mere fact that the managing trustee is not responsible for some of the defects disclosed is no ground for the Board not taking action under Ch. VI-A of the Madras Hindu Religious Endowments Act; and the High Court will not interfere with the order of the Board removing the trustee and framing a scheme, unless it is shown to be perverse. Where, further, the managing trustee who is given an opportunity to file objections fails to do so, the Court may refuse to allow objections to be raised in the suit filed by him to get rid of the order. (*Leach, C.J. and Byers, J.*) SUBRAMANIA PANDARASANNADHI *v.* H R. E BOARD, MADRAS. **1942 M W.N. 555=55 L W. 550=A.I.R. 1943 Mad. 104=(1942) 2 M.L.J. 403.**

MADRAS IMPARTIBLE ESTATES ACT (II OF 1904)—*Holder of impartible estate—Position of—Legatee of debt payable out of estate succeeding to estate—Effect—Merger—Debt—If extinguished.*

After the passing of the Madras Impartible Estates Act, the holder of an impartible estate in Madras, is in the same position as the manager of a Hindu joint family. He is an owner subject to limitations and is not an absolute owner. Where a person succeeding to such an ancestral impartible estate also happens to be the recipient of a legacy consisting of monies and outstandings due by that estate, there is no merger and the legacy is not extinguished. He has a dual capacity; in respect of the legacy he is absolute owner and in respect of the impartible estate, he is not. (*Bell, J.*) VISWESWARA GAJAPATHI RAJ *v.* RAJAH OF VIZIANAGARAM. **204 I.C. 343=1942 M.W N. 810=55 L.W. 638=A.I.R. 1942 Mad. 743=(1942) 2 M.L.J. 496.**

——**S. 4**—*Scope—Property incorporated into impartible zamindari after* 1904—*Liability to be sold in execution of personal decree against last holder—Incorporation by manager—If effective.*

The holder of an impartible estate can, if he wishes, incorporate into it any other immovable property which he owns, and where there has been such an incorporation of fresh items of properties after 1904 into an impartible

MADRAS INAMS ACT (1869).

ble estate, those items also cannot be alienated, and therefore cannot be proceeded against in execution of a personal decree against the late holder of the estate after it has passed to his successor. The incorporation, however, must be the act of the owner himself and not of a person managing the estate for him. (*King and Lakshmana Rao, JJ.*) RAMIER *v.* RAMASWAMI PANDIA THALAVANAR **1942 M.W.N. 285=55 L. W. 317=A.I.R. 1942 Mad. 815=(1942) 1 M.L.J. 41.**

MADRAS INAMS ACT (VIII OF 1869)—*Scope—Right of Government to derogate from its own grant.*

While the Act extends a certain protection to holders and occupiers of the lands it contains no provision entitling Government to derogate from its own grant or from the grant which it has recognised and confirmed. On the other hand if once it appears that a grant carries no right to the land but only a right in the revenue from the village the proceedings of the inam commission will have no effect to change its character or to vest in the inamdar a subject-matter not belonging to him. (*Sir George Rankin,*) SECRETARY OF STATE *v.* VARADA THIRTA. **69 I. A. 22=I. L. R. (1942) Kar. (P.C.) 49=I.L.R. (1942) Mad. 893=14 R.P.C. 140=200 I. C 1=55 L.W. 356=8 B.R. 685=1942 M.W N. 509 =A.I.R. 1942 P.C 21=(1942) 2 M.L.J. 367 (P.C.).**

MADRAS IRRIGATION CESS ACT (VII OF 1865) S. 1—*Inamdar's right to water—Measure of.*

The limit or measure of the inamdar's right to water is not the extent of land cultivated as wet, but is set by the physical conditions such as the size of the channels and the nature and extent of the sluices or weirs, if any, governing the amount of water which enters the channels. But this does not mean that at all seasons he is entitled to a volume of water amounting to the full capacity of the channels. It is only meant that up to the measure of that capacity he is entitled to such water as can flow into them, the condition of the "river" or "upper channel" being what it is from time to time. (*Sir George Rankin.*) SECRETARY OF STATE *v.* VARADA THIRTA. **69 I. A. 22=I.L.R. (1942) Kar. (P.C.) 49=I.L.R. (1942) Mad. 893=14 R.P.C. 140=200 I.C 1=8 B.R. 685=55 L.W. 356=1942 M.W.N. 509=A.I.R. 1942 P.C. 21=(1942) 2 M.L.J 367 (P.C.).**

——**S. 1**—*Power to levy water cess—Cess—If in nature of land tax.*

Water cess levied under the Madras Irrigation Cess Act of 1865 is in the nature of a land tax. Where under a grant or a treaty no land tax is leviable in respect of certain lands, the Government has no power to levy a water cess at all, whether it be in respect of the first or the second crop. (*Byers, J.*) PROVINCE OF MADRAS *v.* LADY OF DOLOURS CONVENT, TRICHINOPOLY. **204 I.C. 393=1942 M.W.N. 461=55 L.W. 482=A.I.R. 1942 Mad. 719=(1942) 2 M.L J 150.**

——**S. 1, Proviso**—"*Entitled to irrigation*"—*Meaning.*

The inamdar is entitled to irrigation without separate charge if he has a right to the water by virtue of his inam and as one of the rights covered by the jodi which it bears. (*Sir George Rankin.*) SECRETARY OF STATE *v.* VARADA THIRTA. **69 I. A 22=I. L. R. (1942) Kar. (P.C.) 49=I.L.R. (1942) Mad. 893=14 R.P.C. 40=200 I.C. 1=8 B.R. 685=55 L.W. 356=1942 M.W.N. 509=A.I.R. 1942 P.C. 21=(1942) 2 M.L.J 367 (P C.).**

——**S. 1 (b)**—*Liability to cess—Lands of ryot irrigated with water from tank formed in ryot's patta land—Tank supplied with water flowing through government channel—Right of government to levy water-cess.*

MADRAS LOCAL BOARDS ACT (1920).

Where the lands of a ryot are irrigated with water taken from a tank or *kuttai* formed in the patta land of the ryot himself, and it is found that the water flowing through a *vari* or channel belonging to the government is the main source of water-supply to the said tank or *kuttai*, the government is entitled to levy irrigation cess under S. 1 (*b*) of the Madras Irrigation Cess Act. The ryot is liable to pay cess when it is neither claimed nor shown that he is entitled to take the water flowing through the *vari* and irrigate his lands or that the water flowing through the channel which empties itself into the tank is a recognised source of irrigation for his land. (*Kuppuswami Ayyar, J.*) MARIMUTHU PILLAI *v.* PROVINCE OF MADRAS. **1943 M.W.N. 74 =A.I.R 1943 Mad. 132=(1942) 2 M.L.J. 781.**

MADRAS LAND ENCROACHMENT ACT (III OF 1905), S. 6—Scope—Grant of site by Government — Cancellation — Subsequent assignment by Government to another—Suit by latter for possession from first grantee in Civil Court—If barred. *See* 1941 Dig., Col. 849. KRISHNAMACHARIAR *v.* LAKSHMI AMMAL. **201 I.C. 348=15 R.M. 315=A.I.R. 1942 Mad. 76=(1941) 2 M.L.J. 507.**

——**S. 9**—Sale for recovery of penal assessment —If prevails over prior encumbrances. *See* 1941 Dig., Col. 849: SECRETARY OF STATE *v.* JODARAJ DHUPAJEE. **201 I.C. 335=15 R.M. 312=1942 M.W.N. 268 =A.I.R. 1942 Mad. 344=(1941) 2 M.L.J. 993.**

——**S. 14, Expl.**—"*Cause of action*"—*Notice claiming penal assessment—Suit for declaration of title and injunction to restrain penal assessment—Limitation—Limitation Act, Art.* 120.

S. 14 of the Land Encroachment Act does not apply to a suit for declaration of his title and for an injunction to restrain the Government from levying penal assessment brought by a person who has received a notice from the Government claiming penal assessment. "Levied" in the explanation to S. 14 means "collected" and therefore the mere sending of the notice does not constitute any grievance at all. The limitation applicable is not S. 14 of the Act but Art. 120 of the Limitation Act. (*King, J.*) SUBRAMANIA IYER *v.* PROVINCE OF MADRAS. **203 I.C. 271=15 R.M. 629= 1942 M.W.N. 633=A.I.R. 1942 Mad. 660=(1942) 2 M L.J. 223.**

MADRAS LOCAL BOARDS ACT (XIV OF 1920)—*Surcharge—Panchayat Board—Surcharge order against—Conditions of validity.*

An order of surcharge can be rightly levied against the president of a Panchayat Board only when loss to the Board has been clearly established. If the Board is left without any legal remedy in regard to sums payable to them then, such loss has been clearly established. But if all that can be said is that when a legal remedy is resorted to, it is probable that there will be difficulties in realizing the fruits of the decree, or that the Court will not award the actual costs which the Board may incur, then no present loss can be taken to be proved. Where owing to the indifference of the president of a Panchayat Board certain leases were not taken in writing, although the Board is precluded from filing suits for rent specifically so called, still a suit can be filed for damages for use and occupation, *held*, the amounts due to the Board from the lessees could not be surcharged against the president. Where certain persons are permitted to carry on trades without ever being called upon to take out licences and pay the requisite licence fees, it cannot be said that any licence fees are legally due from such persons; and as there is no right of suit available to the Panchayat Board in the matter, there can be a valid surcharge order against the

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president of the Board. Where, due to the negligence of the President, house-tax due by certain persons fort a particular year was not demanded and became time-barred and was written off as irrecoverable, a surcharge order against the president would be proper, especially where there was no evidence as to the liability of the persons from whom the tax was due to pay such tax. (*King and Byers, JJ.*) RAMASWAMY MUDALIAR *v.* DARGAN. **55 L W. 188=1942 M.W.N. 249=A.I.R. 1942 Mad. 463=(1942) 1 M.L.J. 394.**

——**S. 3 (22)**—Ryot under Madras Estates Land Act—If tenant—Liability for local cess. *See* MADRAS LOCAL BOARDS ACT, S. 88. **(1942) 2 M.L.J. 565.**

——**S. 19 and R. 1**—Scope and effect—Declaration—If final as to factum of election—Power of Court to adjudicate as to whether election was held or not *See* 1941 Dig., Col 849. RAMAMURTHY *v.* VENKATANARAYANA. **200 I.C. 612=15 R.M. 99=(1941) 1 M.L.J. 190.**

——**S. 67 and proviso**—*Scope—Resolution reducing salary retrospectively—Validity—Resolution reducing salary—Omission to state whether immediate effect will be given—Effect—Right to three months' notice—R.* 19.

The validity of a resolution passed under the proviso to S. 67 of the Madras Local Boards Act is not dependant upon the validity or the invalidity of a resolution passed under Cl. (1) of S. 67. S. 67 (1) is general and it does not follow that a resolution for a general reduction in establishment charges necessarily involves the reduction of the salary of any particular officer There is no jurisdiction in a Taluk Board to give retrospective effect to a resolution for reduction of salaries from a date anterior to the date of the passing of the resolution. The fact that the Local Board seeks to give retrospective effect to it does not, however, render the resolution illegal *in toto*; only it cannot give effect to it from an anterior date. Unless it has been expressed in the resolution itself that order effecting reduction of salaries would be given immediate operation, *i.e.*, trom the date of the service of notices, a servant whose salary is reduced is entitled to three months' notice under R. 19 of Rules under the Act (*Venkataramana Rao, J.*) MANICKAM *v* DISTRICT BOARD, TRICHINOPOLY. **1942 M.W.N. 77=A.I.R. 1942 Mad. 321=(1942) 1 M.L.J. 195.**

——**S. 78**—Tank in Zamindari—Owner letting right to fish in tank—Liability to land cess. *See* 1941 Dig., Col. 849. ZAMINDAR OF NUZVID *v* SECRETARY OF STATE. **199 I.C. 20=14 R.M. 508=(1941) 1 M.L.J. 479.**

——**Ss. 88 and 89**—Cess paid by zamindar—Suit in Revenue Court for recovery from under-tenure holders—Claim for six years—Sustainability. *See* 1941 Dig., Col. 850. VENKATASURYANARAYANA *v.* TIRUPATAYYA. **199 I.C. 474=14 R.M. 586=(1941) 1 M.L.J. 779.**

——**S. 88**—"*Tenant*"—*Ryot under Madras Estates Land Act—Liability for local cess—Local Boards Act, S.* 3 (22)—*Madras Estates Land Act, S.* 3 (15).

A ryot as defined in S. 3 (15) of the Madras Estates Land Act is a tenant within the meaning of S. 88 of the Madras Local Boards Act having regard to the definition of tenant in S. 3 (22) of the Madras Local Boards Act. A ryot is therefore under a statutory liability to pay to the landlord the local cess paid by the latter to Government. The fact that the pattas issued to the tenant do not provide for the payment of any local cess does not absolve of the ryot of such liability. (*Patanjali Sastri, J.*) SRINIVASA RAJAGOPALA AIYANGAR *v.* SANTHANA RAMASWAMI KOIL. **55 L.W. 723=1942 M.W.N. 698=A.I.R. 1943 Mad. 183=(1942) 2 M.L.J. 565.**

MADRAS LOCAL BOARDS ACT (1920), S. 157.

——**S. 93 (1) and Sch. IV, R 10**—"*Transacts business*"—*Meaning of—Place of employment—Company—Liability to pay profession tax.*

The expression "transacts business" in S. 93 (1) of the Madras Local Boards Act means "carries on business," and a company carries on business only at the place where it enters into contracts in connection with its business. Where a company, formed outside the jurisdiction of a District Board, "to acquire estates in any part of the world on which rubber or other produce has been planted or which are suitable for the cultivation of rubber or other produce either in its prepared or raw state, and either wholesale or retail" grows rubber trees and obtain rubber from them within the jurisdiction of the Board, it cannot be said that the company transacts business within the jurisdiction of the Board when no contracts are entered into within it; and when the company has no office within the jurisdiction of the Board, the growing of rubber trees and obtaining rubber from them can only be regarded as ancillary to the business of selling rubber. Such a company is not therefore liable to pay profession tax to the Board under S. 93 and Sch. IV, R. 10 of the Madras Local Boards Act. Nor can it be said that the company has a place of employment within the meaning of R. 10 of Sch. IV within the local area of the Board by reason of its employing labour within the area. "Place of employment" means the place of employment of a person who is employed and by reason of his employment is liable to pay profession tax. It cannot be said that the company is employed within the area. (*Leach, C.J. and Lakshmana Rao, J.*) MALABAR DISTRICT BOARD, CALICUT *v* COCHIN MALABAR ESTATES. LTD. **1942 M.W.N. 786=55 L.W. 833=A.I.R. 1943 Mad. 107 =(1942) 2 M.L.J 722.**

——**Ss 157 and 323**—*Specific Relief Act (I of 1877), S.* 56 (*e*)—*Special officer restraining petitioner from constructing a well on a public road—Complaint filed—Suit by accused in Munsiff's Court and injunction obtained against special officer from proceeding with criminal case—Civil Court's rights to grant injunction.*

A special officer of a Panchayat Board acting under S. 157 of the Local Boards Act filed a complaint against the petitioner for constructing a well and a structure on a public road. The petitioner thereupon filed a suit for establishing his right to the property and applied for an injunction to restrain the special officer from proceeding with the prosecution of the criminal case. The injunction was granted. But as the District Magistrate felt he could proceed with the case under S. 223 of the Local Boards Act, the Public Prosecutor intervened and sought to continue the prosecution on behalf of the Government. On revision,

Held, that the order of the Civil Court was improper in view of the provisions of S. 56 (*e*) of the Specific Relief Act. The Civil Court could not stay the criminal proceeding directly. Even if the Court had the power of staying the proceeding, it ought not to have exercised it in this case and interfered with the course of justice in another Court. The fact that the special officer had not done anything to have the order of the Civil Court set aside did not however mean that the Magistrate could not poceed with the trial. All that the special officer had been ordered with regard to the criminal case was that he should not further prosecute it. That would mean that he might not himself take any active steps in the further prosecution of the matter. That did not prevent him from appearing and giving evidence if he was so ordered by the Magistrate. But the order of

the District Magistrate in continuing the proceeding in this case by permitting the Government to proceed with the prosecution was wrong as the Magistrate did not take cognisance of the offence upon information received or upon his knowledge or suspicion. (*Horwill, J.*) ESAPPA CHETTIAR, *In re.* **204 I.C. 30=55 L.W. 697=1942 M.W.N. 745=44 Cr.LJ. 135=A.I.R. 1942 Mad. 756=(1942) 2 M L.J. 543**

——**S. 159**—Applicability—If depends on encroachment being objectionable—Powers of President of Local Board—Failure to obey president's order for removal of encroachment—Offence. *See* 1941 Dig., Col. 850. PRESIDENT, PANCHAYAT BOARD, MANGALAGIRI *v.* KOTAYYA. **198 I.C. 649=1942 M W.N. 160=14 R. M. 492=43 Cr.L.J. 411=A.I.R. 1942 Mad. 279 (1) =(1941) 2 M.L J. 1034.**

——**S. 164 (1)**—Applicability—Lease under S. 160 (3)—Expiry of lease—Lessee continuing and refusing to obey notice to quit—Offence—Notice issued under S. 159 (1) and not under S. 164 (2)—If saves lessee from liability. *See* 1941 Dig., Col. 850. MURTHUZA SAHIB *v.* EMPEROR. **199 I.C. 316=14 R.M. 589=43 Cr.L. J. 547=1942 M W N. 36=A.I.R. 1942 Mad. 269= (1941) 2 M L J. 1042.**

——**S. 166 (4)**—*Scope—Plying motor bus clandestinely without licence and without paying licence fee—Right of District Board to recover more than proper licence fee.*

It is not open to a District Board to recover from a person who plys a motor bus without licence a larger sum than what is permissible under the Madras Local Boards Act for granting a licence. If a larger amount than what can be legally levied under the Act is recovered, it is open to the party who has made such a payment to come to a Court of law and ask for redress. Though the conduct of a person in plying a bus clandestinely without obtaining a licence and without paying the licence fee cannot certainly be regarded as correct or honourable, those considerations cannot justify collection of a larger amount as licence fee than what is permitted by the statute. (*Kunhi Raman, J.*) MALABAR DISTRICT BOARD, CALICUT *v.* UNITED MOTOR (COIMBATORE), LTD. **55 L W 63=1942 M W.N. 350=A.I.R. 1942 Mad. 319 (2)=(1942) 1 M.L J. 203.**

——**Ss. 193 and 207**—*Applicability—"Owner" or "occupier"—Manager not entitled to collect rents and profits—Liability to prosecution for failure to take out licence.*

A mere manager, who is appointed for the purpose of seeing that the business is satisfactorily worked and who presumably is not entitled to collect the rents and profits of the business, is neither the owner nor the occupier of the place where the business is carried on, so as to render himself liable under S. 193 read with S. 207 of the Madras Local Boards Act. S. 193 read with S. 207 makes punishable failure to take out a licence only by the owner or occupier. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* BHASKER KAMATH. **1942 M.W.N. 757=55 L.W. 827 (1)=A.I.R. 1943 Mad. 208 (2)= (1942) 2 M.L J. 628.**

——**S. 193 and Sch. VII**—*Selling of firewood or hay without licence—If offence.*

Schedule VII of the Local Boards Act, unlike Sch. V of the District Municipalities Act, and Sch. VI of the City Municipalities Act, does not include either firewood or hay. Nor can these articles be brought under clause (*n*) of Sch. VII, as 'combustible material'. The latter expression should be confined only to things that burn spontaneously or with great readiness like explosives. Accordingly the selling of firewood and hay without licence are not offences under S. 193 of the

Local Boards Act. (*Horwill, J.*) HARIAPPA PATLA. *In re.* **55 L.W. 712 (2)=1942 M.W.N. 765=A.I.R. 1943 Mad. 135=(1942) 2 M.L.J. 555.**

——**Ss. 197, 203 and Sch. VII**—Storing and selling firewood within Panchayat Board—Failure to take out licence—Offence. *See* 1941 Dig., Col. 851. VENKATARAGHAVA IYER, *In re.* **54 L.W. 767=43 Cr.L. J. 80=(1941) 2 M.L.J. 348.**

——**S. 199**—Surcharge Rules, Rr. 5 and 6—Scope—Powers of auditor and powers of Civil Courts—Jurisdiction to go into merits of surcharge order. *See* 1941 Dig., Col. 851. EXAMINER OF LOCAL FUND ACCOUNTS, MADRAS *v.* RAMASWAMI CHETTIAR. **200 I. C. 592=15 R.M. 87=(1941) 2 M.L.J. 403.**

——**S. 207 (1)**—*Successive prosecutions—If barred—Order under S. 159 (1)—Disobedience of—Complaint by District Board—Acquittal—Finding on question of title that there was no encroachment—Effect—Subsequent order and disobedience—Fresh complaint—Propriety and legality of.*

A District Board is not debarred from preferring a complaint under S. 159 (1) read with S. 207 (1) of the Madras Local Boards Act on the ground that on a prior complaint in respect of a similar disobedience by the same person of a prior order for removal of an encroachment, the accused had been acquitted on the ground that there had been no encroachment. The offences are not in respect of the same order, and so the previous acquittal is not bar to the subsequent complaint. But it is not proper for a responsible body like a District Board, after an adverse finding by a criminal Court on a question of title, to prefer a criminal complaint again and harass the same person again, instead of seeking to establish its title in a Civil Court, where it would be better decided. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* MURTHUJAKHAN SAHIB. **204 I.C. 306=1942 M.W.N. 818 (2)=55 L.W. 711= A.I.R. 1943 Mad. 33=(1942) 2 M.L.J. 581.**

——**S 219 and Sch. VII, Cl. (k)**—*Coffee-house—Sale of coffee in place—When makes it a coffee-house.*

It is a question of fact to be decided in each case whether the circumstances under which a person sells coffee would indicate whether the place of sale is a coffee-house or not. The distinction would seem to be in the formality or informality under which the coffee is sold. (*Horwill, J.*) SESHAMMA, *In re.* **198 I.C. 207=14 R.M. 422=1942 M.W N. 56=55 L.W. 373=43 Cr. L.J. 331=A.I.R. 1942 Mad.293=(1942) 1 M L.J. 34.**

——**S. 225**—Scope—Death caused by fall of tree on cart passing along road—Suit for damages for negligence under Fatal Accidents Act—Limitation—Suit after six months—Bar of—Liability of public bodies. *See* 1941 Dig., Col. 853. SUBRAMANYAM *v.* DISTRICT BOARD, NARASAPUR. **200 I.C. 119=14 R.M. 709.**

——**S. 227-A**—*Applicability—"Acting or purporting to act in the discharge of his official duty"—Meaning of—President of superseded Board refusing to hand over records to special officer—Prosecution—Sanction—If necessary.*

Where an ex-president of a superseded Panchayat Board refuses to hand over the records of the Board which are with him to the special officer appointed by Government to conduct the affairs of the Board, when demanded by the latter, he commits an offence under S. 208 (1) of the Madras Local Boards Act and a prosecution of the ex president is not bad for want of sanction as required by S. 227-A. S. 227-A does not apply, because the ex-president is neither a president nor a member at the time, nor can he be said to be acting or purporting to act in the discharge of his official duty within the meaning of S. 227-A. (*Horwill, J.*) ORENGIAH

MADRAS LOCAL BOARDS ACT (1920), S. 229.

CHETTI, *In re.* 204 I.C. 152=1942 M.W.N. 759=55 L.W. 755=A.I.R. 1942 Mad. 745 (2)=(1942) 2 M.L.J. 576.

——S. 229—Applicability—"Molest"—Meaning—Person served with notice of demand by Bill collector of Panchayat Board—Abuse by of unnamed person for giving information leading to exaggerated assessment—Offence. *See* 1941 Dig., Col. 854. SEHU MAHOMED MARAIKAYAR, *In re.* 43 Cr.L.J. 72=(1941) 2 M.L.J. 356.

——Sch. IV, R. 10—"Place of employment"—Company—Place of employment. *See* MADRAS LOCAL BOARDS ACT, S. 93 (1) AND SCH. IV, R. 10. 55 L.W. 833=(1942) 2 M.L.J. 722.

——Sch. IV, R. 11-A—*Income-tax demand—When to be produced.*

Under the explanation to R. 11-A of Schedule IV to the Madras Local Boards Act which contemplates the production of an income tax demand as an alternative to furnishing a return of income under R. 11-A (1), the production should be within the time fixed by the president of the Local Board for the return in the prescribed form. (*Byers, J.*) PANCHAYAT BOARD, SIVAGANGA *v.* VEERABADRAN CHETTIAR. 55 L.W. 848=1942 M.W.N. 718=A.I.R. 1943 Mad. 84=(1942) 2 M.L.J. 712.

——Sch. IV, R. 11-A—*Scope—Failure to issue notice—Effect on assessment proceedings.*

Where a Local Board fails to follow the procedure laid down in R. 11-A of Sch. IV to the Local Boards Act, *e.g.*, fails to issue a notice under the rule, the assessment proceedings must be held to be irregular. (*Byers, J.*) PANCHAYAT BOARD, SIVAGANGA *v.* VEERABADRAN CHETTIAR. 55 L.W. 848=1942 M.W.N. 718=A.I.R. 1943 Mad. 84=(1942) 2 M.L.J. 712.

MADRAS MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (I OF 1900).

S. 6 (2)—*Construction—Arrears of rent due by tenant to landlord—Barred decree for—Landlord's right to se off against value of improvements due to tenant.*

A decree for arrears of rent, even if it has become barred by limitation, can be set off by the landlord in taking accounts in a suit for redemption under S. 6 (2) of the Malabar Compensation for Tenants' Improvements Act against the value of improvements decreed in favour of the tenant defendant. Limitation in such cases bars only the remedy but does not extinguish the right. In cases of such equitable set-off the Court is not necessarily confined to the limits introduced in O. 8, R. 6, C. P. Code, which allows a set-off only as regards the amount legally recoverable. In the case of such a decree for arrears of rent passed before the Madras Act IV of 1938 came into force S. 15 of that Act, not being retrospective, can have no application, as the rent wiped off by the set-off against the value of improvements cannot be regarded as being due or payable after the Madras Act IV of 1938 came into force. (*Venkataramana Rao and Abdur Rahman, JJ.*) ELETATH *v.* CHATHUKUTTI NAYAR. I.L.R. (1942) Mad. 550=55 L.W. 18 (3)=A.I.R. 1942 Mad. 307=(1942) 1 M.L.J. 166.

——S. 6 (2)—Decree in suit for redemption not drawn up setting off arrears of rent and costs against amount payable to tenants for kanom and value of improvements—Effect—Subsequent coming into force of Madras Act IV of 1938—Arrears of rent—Scaling down—Permissibility. *See* MADRAS AGRICULTURISTS' RELIEF ACT S. 15 (4). (1942) 1 M.L.J. 338.

MADRAS MALABAR TENANCY ACT (XIV OF 1930), S. 3 (g)—*"Garden land"—Test to find out.*

MAD. MALABAR TENANCY ACT (1930), S. 20.

S. 3 (*g*) of the Malabar Tenancy Act which defines "garden land," requires that the land should be used principally for growing fruit-bearing trees. The principal user of the land as a whole is the test. A plot which is principally used as a residential house cannot be called a garden land merely because there are in a portion of it a few coçoanut trees and a few plantain trees. It would be a misuse of the language to say that the plot as a whole is used principally for growing fruit trees. (*Somayya, J.*) KUNHAMMAD KOYA *v.* GOPALA MENON. 1942 M.W.N. 667=55 L.W. 824=A.I.R. 1943 Mad. 181=(1942) 2 M.L.J. 744.

——S. 3 (j)—*"Has transferred possession to others"—Interpretation of.*

The words "has transferred possession to others" in the definition of "intermediary" in S. 3 (*j*) of the Malabar Tenancy Act must be read so as to include the person who stands in the shoes of the original transferee and to whom the tenant has attorned. (*Wadsworth and Patanjali Sastri, JJ.*) RANGA AIYAR *v.* SUBBAYYA GOUNDAR. 1942 M.W.N. 788=55 L.W. 832=A.I.R. 1943 Mad. 116=(1942) 2 M.L.J. 739.

——S. 3 (j)—"Intermediary"—Usufructuary mortgage from jenmi—Tenant under perpetual lease from jenmi attorning to mortgagee—Effect of—Mortgagee—If intermediary. *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 15. 55 L.W. 832=(1942) 2 M.L.J. 739.

——Ss. 3 (v) and 33—*Applicability—Usufructuary mortgagee—Status and rights of—If "tenant."*

A usufructuary mortgagee is not a tenant entitled to the benefits of S. 33 of the Malabar Tenancy Act. The definition of "tenant" in S. 3 (*v*) of the Act is not intended to cover a usufructuary mortgagee. (*Happell, J.*) KUNHOLAN *v.* KRISHNAN. 203 I.C. 325=15 R.M. 634=1942 M.W.N. 465=55 L.W. 441=A.I.R. 1942 Mad. 652=(1942) 2 M.L.J. 154.

——S. 14 (5)—Construction—Strict construction—"Requires"—If to be construed as "desires"—Test. *See* 1941 Dig., Col. 855. RAMAN NAYAR *v.* KESAVAN EMBRANDIRI. 197 I.C. 488=14 R.M. 368=(1941) 2 M.L.J. 456 (F.N.).

——S. 17—Construction—Renewal of kanom—If to be on same terms as previous kanom. *See* 1941 Dig., Col. 854. UKKALI *v.* SIVARAMA KRISHNA PATTAR. 199 I.C. 620=14 R.M. 617=(1941) 1 M.L.J. 113.

——S. 17—Scope—If affected by S. 47, Madras Hindu Religious Endowments Act—Properties owned by public temple—Right of kanomdar to call upon trustees for renewal—If subject to sanction by Board. *See* 1941 Dig., Col. 854. MANNENGATH ITTICHIRI *v.* APPU MENON. 200 I.C. 791=15 R.M. 157=A.I.R. 1942 Mad. 122=(1941) 2 M.L.J. 424.

——S. 17 (2) (c)—*Dry land—Material date for consideration—Date of demise in suit or earlier date.*

In an application for renewal of kanom made by a tenant in a suit for redemption, the Court is not entitled to draw any inference from the state of things which existed several years before the date of the suit demise, to find out whether the land is dry land or not for purposes of S. 17 (2) (*c*) of the Malabar Tenancy Act. What the Court has to consider is whether at the time of the demise which is sought to be redeemed the land was dry land or not. (*Somayya, J.*) KUNHAMMAD KOYA *v.* GOPALA MENON. 55 L.W. 824=1942 M.W.N. 667=A.I.R. 1943 Mad. 181=(1942) 2 M.L.J. 744.

——S. 20—Construction and scope—Contract before Act—Provision for eviction of tenant on ground not specified in S. 20—Enforceability. *See* 1941 Dig., Col. 854. CHANDU *v.* SANKARAN. 198 I.C. 422=14 R.M. 433=(1941) 1 M.L.J. 573.

MAD. MALABAR TENANCY ACT (1930), S. 20.

——S. 20 (5)—Construction—"Requires"—Meaning of. *See* 1941 Dig., Col. 855. NARIKKAL CHATAN *v.* KESAVAN NAMBOODIRI. **I.L.R (1942) Mad. 133=201 I.C. 288=15 R.M. 303=A.I.R. 1942 Mad. 242 (2)=(1941) 2 M.L.J. 455.**

——S. 33—Applicability—Usufructuary mortgagee—Right to benefit of section. *See* MALABAR TENANCY ACT, SS. 3 (*v*) AND 33. **(1942) 2 M.L.J. 154.**

MADRAS MAPPILLA MARUMAKKATHAYAM ACT (XVII OF 1939), S. 20 (1) and (3)—*Scope and effect of—Application under S.* 20 (1)—*Duty to stay suit for partition pending application.*

Where a petition is filed under S. 20 (1) of the Madras Mappilla Marumakkathayam Act, any suit for partition brought under Ch. III of the Act will have to be stayed under S. 20 (3) during the pendency of the petition; there is no warrant for holding that no order can be passed on the petition till the suit is finally disposed of. (*Lakshmana Rao, J.*) KUNHABDULLAH *v.* ABUBACKER. **202 I.C 8=15 R.M. 471=55 L.W. 178=1942 M.W N. 120 (1)=A.I.R. 1942 Mad. 320 =(1942) 1 M.L.J. 217 (1).**

MADRAS MARUMAKKATHAYAM ACT (XXII OF 1933), S. 48—Applicability—Property acquired in name of woman by husband—Wife dying before Act—Effect—Absence of legalised marriage under S. 4 (1) (*b*) (*i*)—Stirpital division—If available. *See* 1941 Dig, Col. 855. KRISHNAN *v.* THALA. **198 I.C. 292 =14 R.M. 416=(1941) 1 M.L.J. 508.**

——S. 48—Scope—If retrospective in operation. *See* 1941 Dig., Col. 856. KRISHNAN *v.* THALA. **198 I C. 292=14 R M. 416=(1941) 1 M.L J. 508.**

MADRAS MOTOR VEHICLE RULES (1938), Rr. 4 and 138—*Scope—Use of car for carrying passengers for reward under contract—Possession not transferred—Absence of licence for use as contract carriage—Charge and conviction for breach of R.* 138—*Legality.*

The petitioner's motor car was used for carrying passengers for reward under a contract for the use of the vehicle for an agreed sum; possession of the car was not transferred within the meaning of the Explanation to Cl. (iii) of R. 4 of the Madras Motor Vehicle Rules 1938. The petitioner who had no permit to use it as a "contract carriage" was charged for breach of R. 138 of the Rules and convicted.

Held, that the car was a "contract carriage" within the meaning of R. 4 (iii) of the Motor Vehicle Rules and the petitioner was rightly convicted for breach of R. 138. (*Lakshmana Rao, J.*) RAMACHANDRAN *v.* EMPEROR. **198 I C. 396=14 R.M. 453=55 L.W. 18 (1)=43 Cr.L.J. 359=1941 M.W.N. 1075=A.I.R. 1942 Mad. 276 (2).**

MADRAS PREVENTION OF ADULTERATION ACT (III OF 1918), S. 5—*Applicability*—"*Sale*"—*Sanitary Inspector demanding sample of ghee—Employee of owner of shop giving sample—If sells or offers for sale.*

A Sanitary Inspector entered the shop of the first accused and in exercise of his powers under S. 14 of the Madras Prevention of Adulteration Act demanded a sample of ghee; the second accused who was an employee in the shop and who sold ghee in his master's absence gave the Inspector a sample which on analysis was found to be adulterated.

Held, that the act of the second accused in giving the sample did not amount to sale so as to render him guilty under S. 5 of the Act. (*Horwill, J.*) KANAKAYYA, *In re.* **202 I.C. 607=15 R.M. 540=43 Cr.L.J. 863 =55 L.W. 464=1942 M.W.N. 439=A.I.R. 1942 Mad. 609=(1942) 2 M.L.J. 172.**

MADRAS PROHIBITION ACT (1937), S. 4.

——S. 5 (1) (a) and (b) and Rr. 28 and 29—*Adulteration—Proof—Charge of adulteration of butter—Reichert Wollny and Saponification values found by analyst—Value of—Abnormality in numbers—If proof of adulteration.*

Although the Reichert Wollny and Saponification values, etc., found on tests by the analyst, of the specimen butter are abnormally low for pure butter, they do not ensure beyond all reasonable doubt that they are quite inconsistent with the purity of the sample. Abnormality in the Reichert Wollny numbers do not necessarily mean adulteration. (*Horwill, J.*) PADMANABHA CHETTY, *In re.* **204 I.C. 311=55 L.W. 775=1942 M.W.N. 587=A.I.R. 1943 Mad. 47=(1942) 2 M.L. J. 285.**

——S. 15—*Scope—Non-compliance—Effect—Prosecution or trial for offence under S.* 5—*Notice under S.* 15—*If condition precedent to.*

S. 15 of the Madras Prevention of Adulteration Act is not in any way connected with the prosecution or the trial of a person for an offence under S. 5, so as to make the notice required by S. 15 an indispensable preliminary to either, and an offence under S. 5 does not cease to be such because of the omission to give a notice in writing under S. 15. (*Horwill, J.*) KANAKAYYA, *In re.* **202 I.C. 607=15 R.M. 540=43 Cr.L.J. 863 =55 L.W. 464=1942 M.W.N. 439=A.I.R. 1942 Mad. 609=(1942) 2 M.L.J. 172.**

——S. 16 (5)—Scope—Sample already analysed by Government analyst—If to be sent again to him by Magistrate *See* 1941 Dig., Col. 856. RAMASAMI KONAR, *In re.* **55 L.W. 30 (1)=A.I.R 1942 Mad. 48.**

MADRAS PROHIBITION ACT (X OF 1937), S. 3 (17)—"*Spirits*"—*If means only potable spirits—Spirits mixed with shellac—Introduction into prohibition area—Offence.*

The term "spirits" is defined in S. 3 (17) of the Madras Prohibition Act as meaning any liquor containing alcohol and obtained by distillation (whether it is denatured or not). There is nothing in the Act which suggests that because some substance (*e.g.* shellac) is mixed with the spirit that makes it unfit for human consumption it is no longer "spirits". On the contrary, the very wording of S. 3 (17), indicates that spirits which are not potable come within the definition of spirits. Even if the transport of such spirits is for industrial purposes a licence is required under S. 18 of the Act. *The Attorney-General* v. *Bailey*, (1847) 1 Ex. Rep. 281, dist. Accordingly where the accused despatched from the Madras Central Station two drums which on examination on suspicion by the Police at Melpatti Station were found to contain denatured spirit with some solid matter which the analyst thought might have been schellac, he is guilty of an offence under S. 4 (1) (*a*) of the Madras Prohibition Act. (*Horwill, J.*) GAVASUDEEN, *In re.* **55 L.W. 705= 1942 M.W.N. 747=(1942) 2 M.L.J. 547.**

——S. 4 (1) (a) and (g)—*Applicability*—"*Possession*"—*Hut owned by accused and younger brothers forming undivided family—Search—Finding of illicit distilled arrack and fermented wash and vessels used for illicit distillation—Accused absent at time of search—Liability to conviction.*

The accused and his brothers were an undivided family of which the accused was the manager and the eldest member. On a search of a house owned by the accused and his brothers, a pot containing $4\frac{1}{2}$ gallons of fermented wash, a bottle containing 4 drams of illicit distilled arrack, and a number of vessels used for illicit distillation were found in the hut. The accused was

not present at the time of the search, but it was found that he also lived in the hut,

Held, that the accused, in the circumstances, was in possession of the articles found and was therefore guilty under S. 4 (1) (*a*) and (*g*) of the Madras Prohibition Act. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* POONGAVANA GOUNDAN. 201 I.C. 459=15 R.M. 395=43 Cr.L.J. 762=55 L.W. 354 (2)=(1942) M.W.N. 374=A.I.R. 1942 Mad. 530 (1)=(1942) 2 M.L.J. 37.

MADRAS REVENUE RECOVERY ACT (II OF 1864)—Procedure—Sale after death of defaulter—Heirs not substituted in registry—Failure to serve notice on them or to fix fresh date—Effect on sale. *See* 1941 Dig., Col 857. THIRUVENGADAM PILLAI *v.* KOOLAI. I.L.R. (1942) Mad. 300=201 I.C. 369=15 R.M. 321=A.I.R. 1942 Mad. 230=(1941) 2 M.L.J. 1002.

——**S. 38 (3)**—Jurisdiction of Collector—Setting aside of sale—Conditions—Suit in Civil Court to cancel order of Collector setting aside sale—Maintainability—Grounds for. *See* 1941 Dig., Col. 858 NARAYANAN CHETTIAR *v.* SECRETARY OF STATE. 199 I.C. 774=14 R.M. 679=(1941) 1 M.L.J. 543.

——**S. 59**—Limitation—Period of six months—Starting point of limitation—Sale confirmed by Deputy Collector—Application to Collector to set aside sale—Order declining to intefere—Suit within six months of Collector's order—If in time. *See* 1941 Dig., Col. 858. VENKATANARASIMHACHARYULU *v.* SECRETARY OF STATE I.L.R. (1942) Mad 264=198 I.C. 230=14 R.M. 405=(1941) 2 M.L.J. 904 (F.B.).

MADRAS SALT ACT (IV OF 1889), S. 74 (d)—Offence—Transport of contraband salt in motor lorry—Owner, driver and cleaner—Liability to conviction—Evidence of knowledge of salt being contraband—Necessity. *See* 1941 Dig., Col 858 VENKATACHALAM. *In re.* 200 I.C 550=15 R.M. 177=43 Cr.L.J. 706=55 L.W. 17.

MADRAS VILLAGE COURTS ACT (I OF 1889), S. 8—Duty of District Judge—Notice to show cause to Village Munsiff before making requisition to collector for removal of Village Munsiff—Omission to give—Effect on order of removal. *See* 1941 Dig., Col. 859 RANGA RAO *v.* COLLECTOR OF TRICHINOPOLY. 197 I.C. 432=14 R.M. 365=(1941) 2 M.L.J. 428.

——**S. 13**—*Scope—Death of defendant pending suit—Minor legal representative—Substitution of—If barred or prohibited.*

Though S. 13 of the Madras Village Courts Act provides that no suit can be brought against a minor, it does not say that, on the death of a defendant pending suit, his minor legal representative cannot be brought on the record. (*Abdur Rahman, J.*) NAGAPPA PRABHU *v.* CHANDRASEKHARA. 55 L.W. 556=1942 M.W.N. 537=A.I.R. 1942 Mad. 648=(1942) 2 M.L.J. 272.

——**Ss. 32 and 69**—*Scope—Death of defendant—Dismissal of suit under S. 30 (1)—Fresh suit—Competency—Period of 60 days under S. 69 expiring—Effect of.*

Where the period of 60 days mentioned in S. 69 of the Village Courts Act for bringing the legal representative of a deceased defendant on record has not expired when the suit is dismissed in the absence of parties under S. 30 (1), the plaintiff can bring a fresh suit under S. 32 in the Court of the District Munsiff. The plaintiff has the option either to make an application to set aside the dismissal or to bring a fresh suit straightaway.

Obiter.—A second suit would lie even if the period of 60 days mentioned in S. 69 has expired on the date of dismissal of the suit. (*Abdur Rahman, J.*) NAGAPPA PRABHU *v.* CHANDRASEKHARA. 55 L.W. 556=1942

M.W.N. 537=A.I.R. 1942 Mad. 648=(1942) 2 M.L.J. 272.

——**S. 77 (as amended in 1937)**—Scope and effect of—Village Court—Applicability of Ss. 476, 476-A and 476-B, Cr. P. Code—Offence in Course of suit in Village Court—Authority who can make complaint. *See* CR. P. CODE, SS. 195 (1) (c) AND 476-A. (1942) 1 M.L.J. 436.

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——Applicability. *See* DURGAH KHAWAJA SAHIB ACT (XXIII OF 1926).

——Applicability *See* MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT.

——*Applicability—Plea of application of Hindu Law in matters of inheritance—Proof required.*

In order that in a certain case a Mahomedan may be governed by Hindu Law in the matter of inheritance, the parties must not only plead custom but also establish it by positive evidence by showing, for instance how the property had been inherited in the family for some generations. (*Nawal Kishore, C. J. and R. M. Toshniwal, J.*) MST. SUKINA *v.* HUSSAIN. 1942 M.L.R. 4 (Civ.).

——*Co-heirs—Alienation by one for discharging debts of deceased—Declaratory suit by another—Latter, if can be asked to pay proportionate share of debts.*

If one of the co heirs of a deceased Mahomedan sells property in his possession forming part of the estate for discharging the debts of the deceased, such sale is not binding on the other co heirs. If another heir is in actual possession of the property and merely seeks a declaration that the alienation effected in respect of his share without joining him in the transaction is illegal, he cannot be called upon to pay a proportionate share of the debts of the deceased as a condition precedent to his suit being decreed. (*Din Mohamed, J.*) ZABIDA BIBI *v.* ZENAB BIBI 199 I.C. 604=14 R.L. 405=43 P.L.R. 732=A.I.R. 1942 Lah. 65.

——*Co-heirs—Debts—One co-heir inducing creditor to accept him as sole heir—Other co-heirs in joint possession of property—Whether liable to pay their share of debt.*

If one of the co-heirs succeeds in inducing a creditor to accept him as the sole heir and thus to transact with him alone while the others are in joint possession of the property and in actual enjoyment thereof, it is not equitable to require that the recovery of their share of the property should be contingent on the payment by them of their share of the debt. (*Nasim Ali and Pal, JJ.*) CHANDULAL AGARWALA *v.* KEBAL. I.L.R. (1942) 2 Cal. 299=46 C.W.N. 729=75 C.L.J. 301.

——Co-heirs—Right of representation—Suit against one—If binds all. *See* 1940 Dig., Col. 880. SULEMAN *v.* ABDUL SHAKOOR. I.L.R. (1941) Nag. 735.

——Cutchi Memons — Wills — Construction. *See* CUTCHI MEMON ACT.

——Divorce. *See also* MUSLIM MARRIAGES DISSOLUTION ACT (VIII OF 1939).

——*Divorce—Rule inconsistent with English Law—If opposed to public policy.*

Per *Ameer Ali, J.*—The English Divorce law no doubt, only recognises for purposes of divorce a marriage which is a monogamous marriage. But this principle of monogamous marriage should not be introduced into India for the purpose of vitiating any rule of personal law—Hindu, Mahomedan, Buddhist—as being inconsistent with public policy. As there is no one

personal law or law of the domicil or territorial law in India, there can be no one public policy or one good conscience. What is the good conscience of one is the bad conscience of another. It follows that we have our own problems within India, conflicts so to speak, of pri- of 1913, he must establish that he falls in one of the vate international law between group and group, community and community. Those problems juridically, no less than politically, can only be solved by applying principles of mutual consideration. (*Derbyshire, C.J., Ameer Ali and Nasim Ali, JJ.*) NOOR JEHAN BEGAM *v.* EUGENE TISCENKO. **I.L.R (1942) 2 Cal. 165=200 I.C. 176=14 R.C. 679=75 C.L.J. 242=46 C.W. N. 465=A.I.R. 1942 Cal. 325.**

———*Dower—Interest on—Right of widow to claim.*

A Mahomedan widow is entitled to claim interest at a reasonable rate on the amount of her dower. (*Broomfield and Macklin, JJ.*) HASNUMIYA DADAMIYA *v.* HALIMUNNISA HAFIZULLA. **I.L.R. (1942) Bom. 204=200 I.C. 355=14 R.B. 399=44 Bom.L.R. 126 =A.I.R. 1942 Bom. 128.**

———*Dower—Lien—Right of widow.*

A Mahomedan widow who claims to have entered into possession of her husband's property on claim of her dower is entitled to remain in possession until her dower is satisfied. She has of course to account for the profits of the property received by her. She is also entitled to compensation by way of interest on the dower debt. (*Almond, J.C. and Mir Ahmad, J.*) SHANKAR DASS *v.* MAHBUB JAN. **A.I.R. 1942 Pesh. 92.**

———*Dower—Lien—Widow in possession of husband's house—One of sons found entitled to half of house—His right to get possession on payment of half amount of dower.*

Where a Mahomedan widow claims to be in possession of her husband's house under claim of her dower and one of her sons is found entitled to half of the house it is equitable that the son should be given possession of half of the property on payment of half the amount of dower which is found due to the widow. (*Almond, J.C. and Mir Ahmad, J.*) SHANKER DASS *v.* MAHBUB JAN. **A.I.R. 1942 Pesh. 92.**

———*Dower—Lien—Widow in possession of husband's house—Presumption.*

Where a Mahomedan widow claims to have taken possession of her husband's house in lieu of her dower, he fact that the widow was living in the house when her husband died and her children were minors cannot justify the presumption that she entered into possession thereof as guardian of the minors and not as a claimant for her dower in view of the fact that after the children became major she continued to retain possession of the house and realised the rent from tenants. Even if consent of the heirs is assumed to be necessary for possession on claim of dower the children must be taken to have impliedly consented when none of them attempted to oust the widow from the property since they came of age. (*Almond, J.C. and Mir Ahmad, J.*) SHANKER DASS *v.* MAHBUB JAN. **A.I.R. 1942 Pesh. 92.**

———Dower—Prompt—Time for payment—Law and practice as to—Long lapse of time since marriage—Presumption of payment. *See* 1941 Dig., Col. 861. FAQIR BUX *v.* THAKUR PRASAD. **16 Luck. 832.**

———*Dower—Prompt or deferred—Presumption as to—Rule for determination among Sunnis—Circumstances to be considered in the absence of custom.*

Under the Mahomedan law applicable to Sunnis, where it is not settled at the time of marriage whether the dower is to be prompt or deferred, the rule is to regard part as prompt and part as deferred; the proportion referable to each class is regulated by custom, and in the absence of custom, by the status of the parties and the amount of the dower settled. Where it was proved that Rs. 2,000 was fixed as dower at the time of marriage, it was held that in the circumstance, a third of it, *viz.*, Rs. 660 should be held to be prompt and the rest regarded as deferred. (*Nageswara Iyer and Subrahmanya Aiyar, JJ.*) NUR-UN-NESA BEGAM SAHEBA *v.* OFFICIAL RECEIVER, BANGALORE. **46 Mys.H.C.R. 484=20 Mys.L.J. 52.**

———*Dower—Remission by widow—Legality—Essentials of valid remission.*

The dower due to a Mahomedan widow from her husband may legally be remitted by her by the recital of a simple formula at the funeral of her husband, but to be effective it must be the voluntary act of the widow. The Court must be satisfied that she realised what she was doing and the consequences of it. (*Broomfield and Macklin, JJ.*) HASNUMIYA DADAMIYA *v.* HALIMUNNISA HAFIZULLA. **I.L.R. (1942) Bom. 204=200 I.C. 355=14 R.B. 399=44 Bom L.R. 126=A.I.R. 1942 Bom. 128**

———*Dower—Widow's lien—Right to retain possession till payment—Possession of widow—If to be with consent of heirs.*

A Mahomedan widow who is in possession of her husband's estate is entitled to retain possession until payment of her dower debt by the heirs of the deceased. It is not necessary that in order to claim the lien, she must be in possession with the consent of the heirs. (*Broomfield and Macklin, JJ.*) HASNUMIYA DADAMIYA *v.* HALIMUNNISA HAFIZULLA. **I.L.R. (1942) Bom. 204=200 I.C. 355=14 R.B. 399=44 Bom.L.R. 126=A.I.R. 1942 Bom. 128.**

———Dower—Widow's lien for—Widow in possession of husband's property—Right to retain possession till payment of dower—Transferability. *See* 1941 Dig., Col. 862. MAHOMED ZOBAIR *v.* BIBI SAHIDAN. **197 I. C. 241=14 R P. 289=23 Pat.L.T. 72=8 B.R. 179 =A.I.R. 1942 Pat. 210.**

———*Funeral expenses—Dinner to community—Expenses of—If permissible.*

If on the death of a Mahomedan a dinner to the community is prescribed by custom, reasonable expenses under that head are admissible as part of the funeral expenses. (*Broomfield and Macklin, JJ.*) HASNUMIYA DADAMIYA *v.* HALIMUNNISA HAFIZULLA. **I.L.R. (1942) Bom. 204=200 I.C. 355=14 R.B. 399=44 Bom.L.R. 126=A.I.R. 1942 Bom. 128.**

———*Guardianship—Father—Right to appoint guardian for minor daughters by will—Father under sentence of death for murder of wife—If validates will appointing guardian.*

A Mahomedan father cannot, by his will, exercise over his minor daughters a power of disposition which he could not exercise when alive. The fact that he executes his will shortly before death (before his execution under a sentence of death on conviction for murder of his wife) cannot give him greater powers than he had when alive. (*Davis, C.J.*) ISSO DARWESH, *In re.* **I.L.R. (1942) Kar. 215=202 I.C. 626=15 R.S. 54=A.I.R. 1942 Sind 113.**

———Guardianship—Mortgage by guardian—Powers—Existence of debts of deceased. *See* 1941 Dig., Col. 863. ABBAS HUSEIN *v.* KIRAN SHASHI DEVI. **I.L. R. (1942) Nag. 166=198 I.C. 313=14 R.N. 213= A.I.R. 1942 Nag. 12.**

———*Guardianship—Mother—Right of to be guardian of minor children—Re-marriage of mother with stranger—Effect—If absolute bar to be appointed guardian of minor children by former husband.*

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Although, according to the Mahomedan Law text-books and decided cases, a mother who re-marries is generally stated to be disqualified from being the guardian of her minor children by her former husband, this does not mean that under no circumstances can a woman, who has re-married, be appointed guardian for her own minor children; it may be that she is the only person surviving suitable to be appointed guardian. Where the text-books say that a mother, who re-marries a stranger, loses her right to the custody of the children, it is meant that she only loses her preferential right of custody which otherwise she possesses ; it is not meant that she is, for ever and under all circumstances, barred from being appointed guardian of her own children. There is no basis for the view that where there are no relations the Court cannot appoint a woman, who has lost her right of *hizanat* by her re-marriage to a stranger, to be guardian of her minor children. (*Davis, C. J.*) GHULAM MAHOMED, *In re*. **I.L.R. (1942) Kar. 363=A.I.R. 1942 Sind. 154.**

——Guardianship—Shafei sect—Daughters—Guardianship and custody—Right to maintenance from father after attaining puberty till marriage. *See* 1941 Dig., Col. 863. KACHI MUHAIDIN THARAGANAR *v.* SAINAMBU AMMAL. **198 I.C. 870=14 R.M. 505=(1941) 1 M.L.J. 503.**

——*Inheritance — Consanguine sister—Right of.*

According to Mahomedan law among the Sunnis a consanguine sister is a sharer if the deceased person has left no child, child of his son how low-soever, father, true grand-father, full brother, full sister or consanguine brother. (*Mir Ahmad, J.C.*) MAHOMED ALI KHAN *v.* ZEWAR NISA. **199 I.C 353=14 R. Pesh. 81=A.I.R. 1942 Pesh. 22.**

——*Inheritance—Custom of exclusion of females—Dharbhunja community.*

A custom of excluding females from inheritance among the Mahomedan community of Bharbunjas in Ajmer was not proved. (*M.R. Davies*) ALA DIN *v.* IMAM ALI. **1941 A.M.L.J. 115.**

——Maintenance—Daughter— Right of—Claim to separate maintenance—Father's liability. *See* 1941 Dig., Col. 864. BAYABAI *v.* ESMAIL AHMED. **I.L.R. (1941) Bom. 643=197 I.C. 161=14 R.B. 205.**

——*Marriage—Breach of promise—Right to damages.*

Under Mahomedan Law in a suit for breach of promise to marry, the plaintiff cannot recover the damages peculiar to an action for breach of promise under the English Law (*Nawal Kishore, C.J., Ranjitmal and Sukhdeonarain, JJ.*) MEHBOOBE *v.* RAHIM BUX. **1942 M.L.R. 36 (Civ.).**

——Marriage—Dissolution—Rule entitling convert to Islam to dissolve marriage on refusal of unconverted spouse to adopt Islam—If applicable to Muslims with foreign domicile—Woman contracting Christian marriage and thereby acquiring Russian domicile becoming convert to Islam in India—If can seek dissolution of marriage in Indian Court—Christian marriage—Meaning of. *See* 1941 Dig., Col. 865. NOOR JEHAN BEGAM *v.* EUGENE TISCENKO. **199 I.C. 549=14 R.C. 601.**

——Marriage—Dissolution—Rule entitling convert to Islam to dissolve marriage on refusal of unconverted spouse to adopt Islam—Procedure prescribed—Rule, if applicable in India. *See* 1941 Dig., Col. 865. NOOR JEHAN BEGUM *v.* EUGENE TISCENKO. **199 I.C. 549=14 R.C. 601.**

——Marriage—Minor—Contract by guardian for marriage on behalf of minor husband relating to divorce—Validity. *See* 1941 Dig., Col. 865. MARFATALI

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——*Marriage — Minor — Right to contract in marriage—Father's sister.*

Under the Mahomedan Law, the right to contract a minor in marriage belongs successively to (1) the father, (2) paternal grandfather, how-high so-ever, and (3) brother and other male relations on the father's side in the order of inheritance enumerated in the Table of Residuaries. In default of paternal relations, the right devolves upon the mother, maternal uncle or aunt and other maternal relations within the prohibited degree. Consequently father's sister has no right to contract her minor niece in marriage. (*Sukhdeonarain, J.*) NURJAHAN *v.* MAHOMED HANIF. **1942 M.L.R. 69 (Civ.).**

——*Marriage — Restitution of conjugal rights—Proof of validity of marriage—Necessity for.*

In a suit for restitution of conjugal rights by a Mahomedan husband against his wife, the plaintiff must establish the requirements of a valid Mahomedan marriage. (*Sukhdeonarain, J.*) NURJAHAN *v.* MAHOMED HANIF, **1942 M.L.R. 69 (Civ.).**

——Marriage—Rights of repudiation—Girl given in marriage by father before attaining age of 15—Right of—Marriage—Validity of until repudiation. *See* DISSOLUTION OF MUSLIM MARRIAGES ACT, S. 2 (*vii*). **A.I.R. 1942 Sind 92.**

——*Marriage—Validity—Consent of girl—Proof.*

Under the Mahomedan law the regular procedure for obtaining the consent of the girl (as laid down in A.I.R. 1940 Pesh. 2) must be proved. In the absence of the proof that the procedure was gone through, no valid marriage can be taken to have been established. There should be the evidence to show that the girl agreed either expressly or by implication. The padar vakil is a very important witness in the matter of proof of consent. Where the girl brings a suit for declaration for he marriage as invalid definitely asserting that she had not consented to the marriage and it was against her wishes and in support of the allegations produces witnesses, the onus shifts to the defendant to prove that the nikhah was properly performed. (*Mir Ahmad, J.C.*) AHMAD-UN-NISA BEGUM *v.* ALI AKBAR SHAH. **199 I.C. 531=14 R. Pesh. 84=A.I.R. 1942 Pesh. 19.**

——*Marriage—Validity—Consummation — If has validating effect.*

Under the Mahomedan law, even if there be consummation, it does not validate an invalid marriage. (*Mir Ahmad, J.C.*) AHMAD-UN-NISA BEGAM *v.* ALI AKBAR SHAH. **199 I.C. 531=14 R Pesh. 84=A.I.R. 1942 Pesh. 19.**

——*Mosque—Mutawalli—Lease for over three years without sanction—Power of Court to validate retrospectively—Considerations.*

Before a Court is called upon to exercise an extraordinary jurisdiction for validating a lease by a mutawalli of a mosque for more than three years without sanction of the Qazi or a Judge, restrospectively, the Court has to be satisfied as to the absolute necessity for the lease and of the undoubted benefit which is conferred on the endowment by the transaction. (*Abdur Rakman and Somayya, JJ.*) SUNDARAMURTHI NAINAR *v.* CHOTTI BIBI. **55 L.W. 494=1942 M.W.N. 534=A.I.R. 1942 Mad. 641=(1942) 2 M.L.J. 164.**

——*Mosque — Mutawalli —Power to lease—Lease without sanction—If void or voidable—Suit by succeeding mutawalli to avoid—Limitation—Adverse possession.*

The powers of a mutawalli to grant leases are restricted under the Mahomedan Law. A grant of land belonging to a mosque on lease for more than three

years without the sanction of the Qazi or Judge is not valid; and when there is no recorded evidence of any application having been made to a Judge of the High Court—a District Judge or Subordinate Judge—who are recognised to have the powers of a Qazi, it would be impossible to raise a presumption of a legal origin for a lease. Leases granted by a mutawalli of land belonging to a mosque are not void *ab initio*, but only voidable. The lessee cannot therefore be deemed to remain in adverse possession of the land after expiration of the lease. A succeeding mutawalli who has not affirmed the lease can sue for its avoidance within twelve years of the death of the prior mutawalli who granted it. (*Adur Rahman and Somayya, JJ.*) SUNDARAMURTHI NAINAR *v.* CHOTTI BIBI. **55 L.W. 494=1942 M.W. N. 534=A.I.R. 1942 Mad. 641=(1942) 2 M.L.J. 164.**

———*Religious Office—Khatib of mosque—Woman—If disqualified from holding office.*

There is no general rule of Mahomedan law prohibiting a woman from holding a religious office such as the office of *khatib* in a mosque, and unless it can be shown by cutsom or usage that it cannot be held by a woman, a woman is not disqualified by reason of her sex from holding such office. (*Mockett and Kunhi Raman, JJ.*) MAHOMED HOOSAIN FAROKI *v.* SYED ABDUL HUQ. **202 I.C. 323=15 R.M. 482=55 L.W. 303=A.I.R. 1942 Mad. 485=(1942) 1 M.L.J. 564.**

———*Succession—Position and rights of heirs—Their remedies—Proof of title.*

The legal position as regards Mahomedans is *prima facie* that when the owner dies leaving a number of heirs those heirs take the estate as tenants-in-common They have each a separate right and at any moment any one can demand administration of the estate so as to demarcate the property that falls to that one's share. But until that is done they hold, not as joint tenants as will be the case were they Hindus which joint tenancy is broken up by partition, but as tenants in common which co-tenancy is broken up by severance of the shares normally done by means of administration or by partition. Administration is normally the better course because, then all questions of indebtedness of the deceased, priority of claims and so forth can be properly adjusted. A Mahomedan *prima facie* establishes title when he shows that the estate in question was in *A* that he is in the iine of heirs from *A* and nearer heirs are dead and that there has been no administration which starts a new line of descent not from *A* but from (say) *N*, in which case he will then have to establish that he is in the line of heirs from *X*. He, though establishing that *prima facie* case, may be defeated by his opponent (say) *X* if *M* can establish that the claimant has been ousted. (*Stone, C. J. and Bose, J.*) FARDOSJAHAN BEGUM *v.* KAZI SHAFIUDDIN. **I.L.R. (1942) Nag. 781=201 I.C. 325=15 R.N. 40=1942 N.L.J. 261=A.I.R. 1942 Nag. 75.**

———Succession—Shias—Asna Ashari section—Succession—Family custom of exclusion of women—Proof of—Requisites. *See* 1941 Dig., Col. 867. NISAR ALI KHAN *v.* FATIMA SULTAN. **I.L.R. (1941) Kar. (P. C.) 106=1942 A.L.J. 110 (P C.).**

———*Succession — Sister's son and brother's son's daughter.*

Under the Mahomedan law in the matter of inheritance sister's son excludes brother's son's daughter. (*Almond, J.C. and Md. Ibrahim, J.*) AGHA WALAYAT SHAH *v.* MT. MAHBUB. **204 I.C. 327=A.I.R. 1942 Peah. 88.**

———Wakf.

See (1) MUSSALMAN WAKF ACT.
(2) MUSSALMAN WAKF VALIDATING ACT.

———*Wakf—Creation of wakf without providing for payment of debts—Propriety.*

It is one of the principles of Mahomedan Law as indeed of the law prevailing in all civilised communities that the first duty of those who are governed by that law is to arrange for the payment of their debts before they make gifts or create wakfs. (*Allsop and Verma, JJ.*) HAR PRASAD *v.* MOHAMMAD USMAN HUSSAIN. **1942 A.W.R. (H.C.) 332=1942 A.L.W. 613=1942 A.L.J. 645=A.I.R. 1943 All. 2.**

———Wakf—Creditor of mutawalli—Recovery of debt out of estate—Subrogation of indemnity—Proof required. *See* 1941 Dig., Col. 867. ABBAS ALI *v.* ABID JAHAN. **199 I.C. 141=14 R.C. 520=A.I.R. 1942 Cal. 66 (2).**

———*Wakf—Mutwalli—Minor—Death-bed nomination—Evidentiary value.*

A death-bed nomination is a strong piece of evidence in favour of a minor nominee, even according to Mahomedan law which does, under certain circumstances, recognise the validity of the appointment of a minor to the mutwalliship of a mosque or shrine. (*Dalip Singh and Sale, JJ.*) GHULAM RASUL *v.* GHULAM QUTAB-UD DIN. **200 I.C 684=15 R.L. 11=44 P.L.R. 476=A.I.R. 1942 Lah. 142.**

———Wakf—Mutawalli—Powers of—Lease for fifty one years—Validity—Sanction obtained by Court after suit to set aside lease—Sufficient power to sanction—If confined to District Judge. *See* 1941 Dig. Col. 868. SHEIKH ZAFARBHAI *v.* CHHAGANLAL. **198 I.C. 439=14 R B. 303=A.I.R. 1942 Bom 21.**

———*Wakf—Partly public and partly private—Appointment of* mutwalli—*Ouster of Court's discretion by agreement of parties.*

A *wakf*, partly public and partly private, for religious and charitable purposes is subject to the supervision of the *qazi* and a Court trying a suit with reference to the appointment of a *mutwalli* is acting as *qazi* and hence its discretion in making the appointment to the office of *mutwalli* cannot be ousted by agreement of parties. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. **1942 O A. 536=1942 A.W.R. (C.C.) 346 (2)=1942 O.W N. 657.**

———*Wakf—Public purposes of charitable nature—Substantial part of income set apart for distribution of alms to the poor, feeding of poor and education of Muslim boys—Small part of income provided for religious ceremonies and for payment of legacies to private individuals—Effect.*

Where a very substantial part of the income of an endowment (Rs. 485 out of Rs. 500), is to be utilised for the distribution of alms to the poor or for feeding the poor and for education of poor Muslim boys, etc., these are undoubtedly public purposes of a charitable nature, and a *wakf* which has these objects, is a valid wakf. The fact that there are other objects provided for, such as, performance of religious ceremonies for the benefit of private individuals and payments of legacies to private individuals, for which a small part of the income is required, does not make the wakf any the less a wakf for public purposes of a charitable nature. (*Davis, C.J. and Tyabji, J.*) HASHIM HAROON *v.* GHOUNSALI-SHAH. **I.L.R. (1942) Kar. 179=A.I.R. 1942 Sind 137.**

———*Wakf—Sajjada Nashin—Dastar bandi, if root of title.*

The dastar bandi ceremony itself is not a root of title as it is not a ceremony of selection but it is a ceremony

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of installation. (*Dalip Singh and Sale, JJ.*) GHULAM RASUL *v.* GHULAM QUTAB-UD-DIN. 200 I.C. 684 = 15 R.L. 11 = 44 P.L.R. 476 = A.I.R. 1942 Lah. 142.

——Wakf—Subject matter — Property previously leased out by wakif—Shia law. *See* 1941 Dig., Col. 868. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.

——Wakf—Validity — Provision for payment of maintenance to servants—If contravenes provisions of Mussalman Wakf Validating Act. *See* 1941 Dig., Col. 869. AKHTAR BANU BEGAM *v.* KANHAIYA LAL. 16 Luck. 769.

——Wakf—Validity—Provision made in deed for pension for faithful servants—Shia law. *See* 1941 Dig., Col. 869. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.

——Wakf—Validity—Provision made in deed for reserve fund—Shia law. *See* 1941 Dig., Col. 869. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.

——Wakf—Validity—Shia Law—All rights in the properties reserved to wakifs—Wakifs to have right of residence, in some properties and to enjoy rents and profits of other properties—If valid wakf under the Shia system of Mahomedan Law. *See* 1941 Dig., Col. 869. SHAHBAN MOHIB *v.* HEMRAJ RAGHAVJI. 197 I.C. 884 = 14 R.S. 125 = A.I.R. 1942 Sind 14.

——Wakf—Validity—Wakif appointing himself mutwalli and taking remuneration—Shia law. *See* 1941 Dig., Col. 870. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.

——Wakf—Validity—Who can challenge. *See* 1941 Dig., Col. 871. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392 = 15 R.C. 7 = 46 C.W.N. 561 = A.I.R. 1942 Cal. 180.

——*Wakf—Wakf in favour of strangers—Validity.*

There can be no valid wakf under the Mahomedan Law in favour of strangers. (*Chagla, J.*) ISMAIL HAJI ARAT *v.* UMAR ABDULLA. I.L.R. (1942) Bom. 441 = 201 I.C. 34 = 15 R.B. 51 = 44 Bom. L.R. 256 = A.I.R. 1942 Bom. 155.

MAJORITY ACT (XI OF 1875), S. 2 (a)—*Construction—Suit by Mahomedan girl of 15 for dower without next friend—Competency.*

The words 'to act in the matter of marriage' in S. 2 (*a*) must be construed in a restricted sense and means only, to enter into the contract of marriage. S. 2 (*a*) of the Majority Act merely relieves a Mahomedan girl of some of the consequences of her minority, but she remains a minor none the less. That being so the provisions of O 32, R. 1, C. P. Code, still apply. Hence a Mahomedan girl of 15 can file a suit for dower only through her next friend. (*Bennett and Madeley, JJ.*) USMAN ALI KHAN *v.* MT. KHATOON BANU. 17 Luck. 572 = 198 I.C. 327 = 14 R.O. 391 = 1942 O.W.N. 22 = 1942 O.A. 12 = 1942 A.L.W. 9 = 1942 A.W.R. (C.C.) 24 = A.I.R. 1942 Oudh 243.

MALABAR COMPENSATION FOR TENANTS IMPROVEMENT ACT (I OF 1900). *See* MADRAS ACTS—MALABAR COMPENSATION FOR TENANTS IMPROVEMENT ACT.

MALABAR LAW—Alienation—Karnavan living away being employed elsewhere—Mother doing minor acts of management—Mortgage by mother—If binds tarward. *See* 1941 Dig., Col. 872, KRISHNAN CHETTIAR *v.* AMMALU AMMA. 201 I.C. 132 = 15 R.M. 231 = A.I.R. 1941 Mad. 90 = (1941) 2 M.L.J. 472.

MARWAR C. P. CODE.

MALABAR TENANCY ACT (XIV OF 1930). *See* MADRAS ACTS—MALABAR TENANCY ACT.

MAPPILLA MARUMAKKATHAYAM ACT—*See* MADRAS MAPPILLA MARUMAKKATHAYAM ACT.

MARRIAGE. *See also* HINDU LAW—MARRIAGE—MAHOMEDAN LAW—MARRIAGE.

——Proof — Long continuous co-habitation—Presumption from. *See* EVIDENCE ACT, S. 114. 75 C.L.J. 301.

MARRIED WOMEN'S PROPERTY ACT (III OF 1874), S. 6—Applicability—Policy effected before 1913—If governed by S. 6—Mahomedans—Policy of life insurance for benefit of wife and children—If creates trust—Beneficiary—If can release right or interest. *See* 1941 Dig., Col. 872. ENAYATULLAH SAHEB *v.* JEELANI SAHEB. 201 I.C. 320 = 15 R.M. 306 = 1942 M.W.N. 63 = A.I.R. 1942 Mad. 136 = (1941) 2 M.L.J. 740.

MARUMAKKATHAYAM ACT. *See* MADRAS MARUMAKKATHAYAM ACT.

MARWAR—'Bona fide *Marwari*'—*British Indian subject permanently residing in Marwar for long time—Declaration of intention to retain British Indian domicile—Original domicile, whether retained—Intention to make Marwar permanent home—If can be inferred from conduct—Notification of* 1940.

M, originally domiciled in Madras, resided at Jodhpur with the intention of living there for an indefinite period. He wished, however, to retain his Madras domicile and for that purpose declared his intention not to renounce his domicile of origin. He, however, continued to live at Jodhpur permanently. It was held that the law could not permit him to retain his Madras domicile as he had resided with the *animus manendi* in Marwar. Without the requisite intent no amount of residence will help a person to acquire the domicile. There is, however, nothing in the Rules to indicate that such intention must be expressed in writing. It can be proved in various ways. The conduct of a man is the best proof of his intention. Thus where *M* had resided in Marwar permanently for over 30 years and built immovable property of the value of Rs. 15,000 and got all his sons into Government service, it was held that he had proved by his conduct that his intention was to make Marwar his permanent home. (*Nawal Kishore, C.J. and Ranjitmal, J.*) BABHUTCHAND *v.* M.S. RAO. 1942 M.L.R. 95 (Civ.).

——*Religious endowment—Temple property—Right of inspection.*

The temple property is an endowment to God and therefore it is the duty of the persons in its charge to keep its affairs beyond all suspicion and above board Accordingly they should not object to reasonable check or control from individual members of the community. (*Nawal Kishore, C.J. and Ranjitmal, J.*) MAGNIRAM *v.* RIKHABDAS. 1942 M.L.R. 112 (Civ.).

MARWAR CIVIL PROCEDURE CODE—*Final decree—What is—Suit for possession of property by partition.*

The mere use of words "final decree" cannot make it a final decree in a suit for possession of immovable property by partition unless and until the property is actually partitioned and possession given over to the parties concerned. (*R.M. Toshniwal, J.*) SHRI KUNWAR *v.* KANWARLAL. 1942 M.L.R. 19 (Civ.).

——**S. 21**—*Applicability—Inherent want of jurisdiction.*

MARWAR C. P. CODE, S. 21.

S. 21 applies to objections to the "place of suing" only and not to those of inherent incompetency of a Court to assume jurisdiction. The word 'jurisdiction' means the authority which a Court has to decide matters which are litigated before it. This authority is conferred by and is subject to the limitations imposed by the statute under which the Court is constituted. Consequently S. 21 has no applicability to a case in which there has been usurpation by a Court of a jurisdiction which it did not possess and no amount of consent could confer jurisdiction where no jurisdiction exists. (*Sukhdeonarain, J.*) CHUNILAL *v.* LICHMINARAIN. **1942 M.L.R. 106 (Civ.).**

——**S. 21**—*Applicability—Suit not cognizable by Marwar Courts.*

Ss. 15 to 20 regulate the venue within Marwar and apply only to those places where the Code is in force. They deal with matters of domestic concern and do not prescribe rules for assumption of territorial jurisdiction by Marwar Courts in things wholly outside their jurisdiction. It follows, therefore, that the rule laid down in S. 21 applies only to cases cognizable by such Courts only. (*Sukhdeonarain, J.*) CHUNILAL *v.* LICHMINARAIN. **1942 M.L.R. 106 (Civ.).**

——**S. 73 (3)**—*Claim of State—Jurisdiction of executing Court to entertain without decree.*

Under S. 73 (3), C. P. Code, the claims of the State or the Crown are entitled to precedence over all other claims but the clause does not confer any jurisdiction on the executing Court to entertain a claim on behalf of the State in the absence of any decree in support of it. (*R. M. Toshniwal, J.*) SETH MOOLCHAND NEMICHAND *v.* THIKANA NIMBAJI. **1942 M.L.R. 1 (Civ.).**

——**S. 115**—*Power of Chief Court to act* suo motu.

It is not necessary that a revision should be filed by any party as the Chief Court can of its own motion call for the record and pass necessary orders. (*Nawal Kishore, C.J.*) RAM CHANDRA *v.* BALURAM. **1942 M.L.R. 109 (Civ.).**

——**O. 5, R. 10**—*Knowledge of suit—If dispenses with necessity of proper service.*

The mere fact that the defendant has knowledge of the institution of a suit against him does not dispense with the necessity of proper service of summons upon him. (*Sukhdeonarain, J.*) GANESH *v.* NATHURAM. **1942 M.L.R. 63 (Civ.).**

——**O. 5, R. 17**—*Temporary absence of defendant—Serving officer—Duty of.*

To justify service under O. 5, R. 17 it must be shown that proper efforts were made to find the defendant. When therefore a defendant is temporarily absent from home and is not represented in his house by any male member of his family, the summons should be taken again to his house to be served upon him at the time when the enquiries made show that he is likely to be found at home. (*Sukhdeonarain, J.*) GANESH *v.* NATHURAM. **1942 M.L.R. 63 (Civ.).**

——**O. 9, R. 7**—*Adjournment of hearing of suit ex parte—Defendant, whether can file written statement as of right.*

Discretion has been given to a Court which had adjourned the hearing of a suit *ex parte*, to allow a defendant who appears and assigns good cause for his non-appearance to be heard in answer to the suit as if he appeared on the date fixed for his appearance, upon such terms as the Court thinks fit. Unless the Court exercises the discretion in favour of the defendant, he cannot as a matter of right file a written statement and be heard in answer to the suit irrespective of the stage of the proceedings reached in the case. (*Nawal Kishore, C.J. and Ranjit Mal, J.*) NEMICHAND *v.* SHIVNATH SINGH. **1942 M.L.R. 48 (Civ.).**

MARWAR C. P. CODE, O. 22 R. 9.

——**O. 16, R. 17**—*Amendment changing nature of suit—Suit for declaration of title under O. 21, R. 103, C. P. Code—Amendment into suit for possession based on title—Permissibility.*

The plaintiffs filed a suit under O. 21, R. 103, C. P. Code, that they were the owners of 5/6 of the house and therefore entitled to present possession thereof. Subsequently they applied for amendment seeking to delete the words O. 21, R. 103, C. P. Code, and make other verbal and consequential alterations and ask for a decree for possession instead of a mere declaration.

Held, that proposed amendment would not amount to a change in the substance of the plaint. In fact the only material change which the plaintiffs desire to make is as regards the relief and such alteration is permissible in law provided there is no injustice to the other side. (*Nawal Kishore, C.J. and Ranjit Mal, J.*) MAHSINGH *v.* UTAMCHAND. **1942 M.L.R. 45 (Civ.).**

——**O. 21, R. 58**—*Scope of enquiry.*

In objections under O. 21, R. 58, C. P. Code, the question to be decided is whether on the date of attachment the judgment-debtor or the objector was in possession and where the Court is satisfied that the property was in possession of the objector, it should be further found whether he held it on his own account or in trust for the judgment-debtor. In other words, the sole question to be investigated is one of possession and questions of legal right and title are not relevant except so far as they may affect the decision as to whether the possession is on his own account or in trust for the judgment-debtor or some other person. (*Nawal Kishore, C.J.*) KISHANRAJ *v.* PUKHRAJ. **1942 M.L.R. 80 (Civ.).**

——**O. 21, R. 58**—*Scope—Objection relating to question of priority.*

O. 21, R. 58 applies only when a claim or objection is preferred to the attachment of any property in the execution of a decree on the ground that such property is not liable to attachment. The rule has no application where objection relates to the question of priority to be given to the objector. (*R. M. Toshniwal, J.*) SETH MOOLCHAND NEMICHAND *v.* THIKANA NIMBAJ. **1942 M.L.R. 1 (Civ.).**

——**O. 21, R. 90**—*Substantial injury—Whether can be inferred from facts.*

It is not necessary that the relation of cause and effect between a material irregularity and the injury must be proved by direct evidence. It may either be established by direct evidence or be inferred, where such inference is reasonable. Where there has been material irregularity in publishing and conducting a sale and the price fetched by the auction is proved to be grossly inadequate, the Court may presume that substantial loss has been suffered by reason of the irregularity. (*Sukhdeonarain, J.*) PARTAPCHAND *v.* GENA. **1942 M.L.R. 51 (Civ.).**

——**O. 22, R. 9**—*First suit for dissolution of partnership and rendition of account—Second suit for contribution—Maintainability.*

Plaintiff's suit for dissolution of partnership and rendition of accounts had abated. Subsequently he filed another suit for contribution in respect of a payment made by him to a creditor of the firm several years after its dissolution.

Held, that he was not precluded by the provisions of O. 22, R. 9, C. P. Code, from bringing the present suit as the cause of action in the subsequent suit was different from that in the first suit. (*Nawal Kishore, C.J. and Ranjit Mal, J.*) CHANDANMAL *v.* BHOMRAJ. **1942 M.L.R. 13 (Civ.).**

MARWAR C. P. CODE, Sch. II, Para. 1.

——Sch. II, Para. 1 and Evidence Act, S. 106—*Reference to arbitration by secretary of an association—Invalidity—Burden of proof.*

The Secretary, Marudhar Shrawak Mandal, acting on behalf of the Mandal agreed to refer the matter in dispute to arbitration and in the agreement of reference introduced a recital that he has been authorized by the Mandal in a properly held meeting to refer the matter to arbitration. On an award being given the other party filed an application under para. 20, Sch. 2 praying that a decree may be passed in accordance with the award. Certain members of the Mandal objected to the validity of reference.

Held, that the burden of proving the invalidity lay upon them as the secretary being an agent of the Mandal, the acts done by him in his capacity as such must be presumed to have been within the scope of his employment and further the facts whether a meeting was actually held and authority given to the secretary were within the special knowledge of the members of the Mandal. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) BHANVARLAL *v.* MORTILAL. 1942 M.L.R. 78 (Civ.).

MARWAR CONTRACT ACT, S. 45—*Co-promisees—Joint Hindu family—Manager alone, whether entitled to sue.*

S. 45, Contract Act, which deals with how the right to claim performance devolves expressly lays down that where there are a number of promisees, all of them will be jointly entitled to claim performance. It is not open to one of the joint promisees to sue alone either for performance of the promise in its entirety or to the extent of his share. The section, as it stands relates to all co-contractors whether they be members of a joint Hindu family, co-sharers or co-partners. (*Nawal Kishore, C J., Ranjit Mal and Sukhdeonarain, JJ.*) ACHALDAS *v.* CHIMNIRAM. 1942 M.L.R. 42 (Civ.) (F B.).

——S. 69—*Applicability—Payment under compulsion of law.*

Involuntary payment of money made under compulsion of law is a payment falling within S. 69, Contract Act. A request will be implied where the plaintiff having been compelled by law to pay or being compellable by law to pay, has paid the money which another is ultimately liable to pay so that the latter enjoys the benefit of the payment by the discharge of his liability. Under such circumstances the defendant was held indebted to the plaintiff in the amount. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) HAZARIMAL *v.* FATEHCHAND. 1942 M.L.R. 100 (Civ.).

——S. 73—*Interest on price of goods sold.*

S. 73, Contract Act, does not confer upon a creditor a right to recover interest upon a debt which is due to him, when he is not entitled to such interest under any provision of the law. (*R.M. Toshniwal, J.*) INDERMAL *v.* HEERACHAND INDERMAL. 1942 M.L.R. 114 Civ.)

MARWAR COURT FEES ACT, Sch. III, Art. 10 (2)—*Declaratory suits relating to 'Mang'—Council Resolution published in Marwar Gazette, dated 2nd June, 1923.*

The Council Resolution published in the Marwar Gazette, dated 2nd June, 1923, requiring a court-fee of Rs. 25 in suits relating to 'Mang' and guardianship must be deemed to have been superseded by the Uzardari Rules subsequently promulgated by the Darbar. The position, therefore, for the purposes of court-fee is restored to what is required by the provisions of the Court-Fees Act. According to these provisions a court-fee of Rs. 10 is sufficient for all declaratory suits irrespective of their value for the purpose of jurisdiction provided no consequential relief is sought.

MARWAR CR. P. CODE, S. 423.

(*Ranjit Mal, J.*) CHIMNIRAM *v.* CHUNILAL. 1942 M.L.R. 29 (Civ.).

MARWAR CRIMINAL PROCEDURE CODE, S. 114—*Bond taken by Hakim in executive capacity—Forfeiture by him—Court, whether can interfere.*

An order was passed by the Revenue Minister directing that pending the decision of a dispute between Thikana *H* and *Hk*, the produce of the land be kept in deposit. In execution of this order a bond was taken from *Hk* by the Hakim. On *Hk's* failure to keep the bond the Hakim forfeited the same.

Held, that the Judicial Courts had no jurisdiction to interfere with the order of forfeiture passed by the Hakim in his executive capacity. (*Nawal Kishore, C.J.*) KHANGAR SINGH *v.* SARKAR. 1942 M.L.R. 31 (Cr.).

——S. 154—*First information report—Value—Absence of accused's name therein—Effect.*

First information report is never *per se* the statement of a case for the prosecution and absence of any accused's name in the same is not by itself sufficient proof of his innocence. (*Nawal Kishore, C.J and Sukhdeonarain, J.*) KISHANIA *v.* SARKAR. 1942 M. L.R. 19 (Cr).

——S. 162—*Recording of dying declaration—Magistrate if to be preferred.*

Where a Magistrate is easily available, he should be summoned and the dying declaration should preferably be got recorded by him, for a declaration recorded by a Magistrate is at once placed on a much higher footing than the one recorded by a Police official. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) SARKAR *v.* SURAJGIRI. 1942 M.L.R. 24 (Cr).

——Ss. 200, 204—*Complaint of cognizable offence—Duty of Magistrate—Power to direct Police to put up challan.*

It is open to the complainant before he actually files the complaint to lodge a first information report and thereby move the police to take the investigation and challan the accused if necessary but where he does not adopt this procedure and actually files a complaint before the magistrate, it is the duty of the magistrate to take cognizance and after examining the complainant proceed to dispose it of in accordance with law. It is not open to him after he has come to the conclusion that a case has been made out even if it be a cognizable case, to direct the Police to investigate and put up the challan. (*Nawal Kishore, C. J.*) AMOLAK *v.* RAJU. 1942 M.L R. 5 (Cr.).

——S. 215—*Commitment order in absence of accused—Legality.*

An order of commitment in the absence of the accused is illegal and liable to be set aside. (*Ranjitmal, J.*) SARKAR *v.* KUSHALIA. 1942 M.L.R. 3 (Cr.).

——S 349—*Accused challaned under several counts—Procedure.*

If the Subordinate Magistrate submits a case to the higher Magistrate for severer punishment under a particular count, he should leave the case open under all the counts in respect of which the accused has been challaned and should not himself convict the accused under any of them. (*Nawal Kishore, C.J and Ranjitmal, J.*) LAKHIA *v.* SARKAR. 1942 M.L.R 29 (Cr.).

——S. 423—*Retrial, order of—Reopening of case in respect of offences of which accused had been acquitted—Power of trial Court*

An order of retrial by an appellate Court passed on appeal by an accused person against his conviction does not reopen the case against him in respect of the offences of which he had been acquitted by the trial Court and the Government had not filed an appeal

MARWAR CR. P. CODE, S. 424.

against such order of acquittal. (*Nawal Kishore, C.J. and Ranjitmal, J.*) SARKAR *v.* RUDSINGH. **1942 M.L.R. 7 (Cr.).**

——**Ss. 424 and 367**—*Judgment of appellate Court—Requirements.*

The judgment of the Court of appeal should be such that the High Court as a Court of revision might on looking into the judgment be in a position to judge for itself what the case was and how far the Court of appeal had considered the evidence as bearing on the guilt or innocence of the accused before it affirmed the judgment of the trial Court. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) KISHANIA *v.* SARKAR. **1942 M.L.R. 19 (Cr.).**

——**S. 476**—*Preliminary enquiry—Discretion of Court.*

Under S. 476, it is entirely discretionary and not obligatory with a Court to issue a notice and hold a preliminary enquiry. If, however, an inquiry is necessary in the circumstances of the case and the lower Court has not exercised a sound discretion in not holding an inquiry, the order is liable to be interfered with. (*Ranjitmal, J.*) SONSINGH *v.* SARKAR. **1942 M.L.R. 82 (Civ.).**

MARWAR EVIDENCE ACT, S. 16—*Post card—Date and place of posting—Presumption.*

There is a presumption in favour of a post card being genuine and when taken to be genuine, it is evidence that the cover bearing it was stamped on the date the impression bears and that the place of office mentioned therein was actually the place where it was affixed. (*Nawal Kishore, C.J. and Ranjitmal, J.*) GHANERAO *v.* CHOUTHMAL. **1942 M.L.R. 54 (Civ.).**

——**S. 90**—*Presumption of genuineness—Nature and extent of.*

The presumption under S. 90, Evidence Act, is discretionary and not imperative. Normally speaking, unless circumstances creating suspicion are pointed out the genuineness will be presumed. (*Nawal Kishore, C.J. and Ranjitmal, J.*) GOVERNMENT ADVOCATE *v.* HARIDAS **1942 M.L.R. 72 (Civ.).**

MARWAR LEGAL PRACTITIONERS ACT, S. 13—*Professional misconduct—Pleader accepting brief for filing suit but deceiving client without doing so.*

G, a pleader, accepted a brief on behalf of *S* to file a suit against *M* and received the necessary papers for the purpose. *G*, however, did not file the suit and kept *S* under a delusion by giving fictitious dates. *Held*, that *G* was guilty of professional misconduct. (*Nawal Kishore, C.J., and Sukhdeonarain, J.*) SOHANRAJ *v.* GANGADAS. **1942 M.L.R. 17 (Cr.).**

MARWAR LIMITATION ACT, S. 12 (2)—*Copy of decree not ready on due date—Applicant not informed as to when it will be ready—Effect.*

An application for the copy of the decree was presented on 8th September, 1941, and the copy was to be given on 14th September, 1941. On this date the copy was not ready and it was prepared on 16th September, 1941, but no date was given to the appellant after 14th September, 1941, when the copy would be ready for delivery to him. The copy was actually delivered to the appellant on 23rd September, 1941.

Held, that the appellant was entitled to exclude the period from 8th September, 1941, to 23rd September, 1941. (*Ranjit Mal and R. M. Toshniwal, JJ.*) THAKUR LAL BABAJI *v.* KESAR SINGH. **1942 M.L.R. 8 (Civ.).**

——**S. 20 (1)**—*Payment admitted by defendant—Plea that it was made towards another debt—Onus of proof.*

MARWAR PENAL CODE, S. 111.

Where the defendant admits the payment but alleges that it was made towards another debt it is open to him to prove that there existed other dealings between the parties in respect of which this payment was made. In the absence of any such proof it must be taken to be a payment towards the debt in the suit. (*Ranjit Mal and R. M. Toshniwal, JJ.*) THAKUR LAL BABAJI *v.* KESAR SINGH. **1942 M.L.R. 8 (Civ.).**

——**S. 20 (2)**—*Mortgagee receiving Hasil with landlord's consent—If amounts to payment.*

Receipt of Hasil by the agent of the mortgagee with the consent of the landlord amounts to payment for the purpose of S. 20 (1), Limitation Act. (*Ranjit Mal and R. M. Toshniwal, JJ.*) THAKUR LAL BABAJI *v.* KESAR SINGH. **1942 M.L.R. 8 (Civ.).**

——**S. 21**—*Authorised agent—Inference from facts.*

The question whether a person is or is not the authorized agent of the debtor is a question of fact and is to be determined on the circumstances of each case. Thus where movable property like cattle is taken from the debtors' possession by a third person and delivered to the creditor and there is no protest or objection by the debtor it cannot but be assumed that it had been done with the knowledge or implied consent of the debtor. (*Nawal Kishore, C.J.*) GUDARMAL *v.* ASIYA. **1942 M.L.R. 65 (Civ.).**

——**S. 21 (2)**—*Principal and surety—Payment by principal debtor if extends limitation against surety.*

In cases of principal and surety, there are two distinct liabilities both arising out of the same transaction and in respect of the same debt. Therefore, the principal debtor by an acknowledgment of his own liability, in making payment of part of the principal cannot acknowledge the liability of the surety so as to bind him; nor is there anything in the relation of principal and surety itself which makes payment by the principal debtor as a payment by the surety. (*Nawal Kishore, C.J., Ranjit Mal and Sukhdeonarain, JJ.*) HARIRAM *v.* FATEHRAJ. **1942 M.L.R. 27 (Civ.) (F.B.).**

——**Art. 52**—*Applicability—Case of constructive delivery.*

Art. 52, Limitation Act, is not restricted to actual delivery of goods but also covers the case of constructive delivery. Consequently, where *P* first contracted with *J* on Asoj Bud 9 and 10, S. 1990 for the purchase of 1,600 guineas at a certain rate to be delivered to him on Asoj Sud 15 and *J* also contracted with *P* to purchase an exactly similar quantity of guineas on Asoj Bud 10 and 14 S. 1990 at a higher rate to be delivered on the same date Asoj Sud 15 and on this date *P* debited *J* with the sum of Rs. 263-8-0 on account of the difference between the amounts due to each other under the two contracts and sued him for its recovery. It was held that it was in fact a suit for the price of goods sold and delivered and was within the purview of Art. 52, Limitation Act. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) JAITMAL *v.* FIRM PANNA SURSING. **1942 M.L.R. 83 (Civ.).**

MARWAR MEHKMA KHAS NOTIFICATION, DATED 20-6-1917—*"Upara"—Meaning of.*

The term 'Upara' included all those miscellaneous items of expenditure which a cultivator has got to incur in connection with the raising of crops. (*Ranjit Mal, J.*) LALCHAND *v.* DHOOLCHAND. **1942 M.L.R. 23 (Civ.).**

MARWAR PENAL CODE, S. 111—*Principal offender employing different method to carry out common intention than suggested by abettor—Liability of abettor*

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner

MARWAR PENAL CODE, S. 304-A.

and to the same extent as if he had directly abetted it provided the act done was a probable consequence of the abetment and was committed under the influence of the instigation. Thus where *D* suggested to *R* to kill *RC* by setting fire to the Chhan where the latter was hiding but *R* instead killed him by firing at him, *held* that *D* was guilty of abetting the murder of *RC*. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) DURJANSING *v.* SARKAR. **1942 M.L.R. 13 (Cr.).**

——**S. 304-A**—*Negligence—Lorry leaving road and falling down into water.*

C was driving a lorry from Bali to Pipar City. At about 3 A.M. the lights went off and the lorry left the road and after continuing to run for a goodly distance over Kacha track reached the bank of a stream and there fell down from a height of seven to eight feet. *Held*, that *C* was *prima facie* guilty under S. 304-A and it was for him to explain any exculpating circumstances. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) SARKAR *v.* CHATARBHUJ. **1942 M.L.R. 1 (Cr.).**

——**S. 326**—*Proper sentence.*

In a case of aggravated grievous hurt resulting in death, a sentence of three years' rigorous imprisonment is grossly inadequate and may be enhanced to six years. (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) SARKAR *v.* SURAJGIRI. **1942 M.L.R. 24 (Cr.).**

——**S. 441**—*Intention to annoy—Person claiming title but out of possession taking possession unlawfully—Absence of complainant—Effect.*

If a person claiming a title to property whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have an intention to annoy the person in possession within the meaning of S. 441, Marwar Penal Code, even though he had no primary desire to annoy and his only object was to obtain possession for himself. Actual presence of the complainant at the time is not necessary. (*Nawal Kishore, C.J. and Ranjitmal, J.*) SONRAJ *v.* SARKAR. **1942 M.L.R. 22 (Cr.).**

——**S. 447**—*Attachment of disputal property—Legality.*

In a case under S. 447, Marwar Penal Code, the first class Magistrate passed an order appointing an Amin for guarding the crop standing on the disputed field.

Held, that it was not open to the magistrate to order attachment of immovable property in a case under S. 447, Marwar Penal Code. (*Ranjitmal, J.*) SETANSINGH *v.* SARKAR. **1942 M.L.R. 4 (Cr.).**

——**S. 499**—*Ex-communication from caste—Minority number of Panchas entertaining complaint in respect of matters happening several years before and deciding without notice to complainant—Plea of* bona fide *action whether available.*

The complainant married a girl alleged to have been betrothed to another in Sambat 1983. The matter was reported to the Panchayat seven years after the marriage. In S. 1990 a minority number of Panchas passed a resolution imposing a fine on the complainant without giving him an opportunity to answer the allegation against him. Three years later a leaflet containing the defamatory statement was published.

Held, that the accused were not protected by any of the exception to S. 499, Marwar Penal Code. (*Ranjitmal and Sukhdeonarain, JJ.*) SARKAR *v.* LIKHMICHAND. **1942 M.L.R. 9 (Cr.).**

——**S. 499**—*Ex-communication from caste—Proceedings of caste body—Principles of natural justice.*

Although hard and fast rules of procedure cannot be applied to the proceedings of a caste body yet some fundamental principles of natural justice are expected to

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be observed and are in fact followed by caste bodies generally and one of these is that the person against whom the Panchayat proposes to take action should be given an opportunity to explain his conduct before the Panchayat. (*Ranjitmal and Sukhdeonarain, JJ.*) SARKAR *v.* LIKHMICHAND. **1942 M.L.R. 9 (Cr.).**

MARWAR PUBLIC DEMANDS RECOVERY ACT, S. 19—*Suit to set aside sale—Court whether can direct Kotwal to decide questions arising in suit.*

A certain shop was sold under the Public Demands Recovery Act. *H* filed a suit for cancellation of the sale and possession of the shop on the ground that he was owner of half the shop while the other half was under mortgage with him. The trial Court while maintaining the plaintiff's title qua half the shop and setting aside the sale directed the Kotwal to settle the plaintiff's claim regarding the mortgage.

Held, that the trial Court was wrong in leaving the determination of the question arising in connection with the mortgage to the Kotwal under the Public Demands Recovery Act. The Act lays down a summary procedure which precedes and is in its essence different from that of a regular suit which is provided under S. 19 of the Act when the person aggrieved is directed by the Mehkma Khas to seek his remedy in Civil Courts. After the filing of the suit the aid of the provisions of the Act cannot be invoked and all questions arising in the suit must be tackled and decided there. (*Nawal Kishore, C.J. and Ranjitmal, J.*) GOVERNMENT ADVOCATE *v.* HARIDAS. **1942 M.L.R. 72 (Civ.).**

MARWAR REGISTRATION ACT OF 1899, S. 28—*Thikanas—Power to register documents—Parties, whether must be residents of Thikana.*

The principle governing the grant of jurisdiction to Thikanas to register documents is that the parties to the document must be residing within the Thikana area. (*Nawal Kishore, C.J., Ranjit Mal and Sukhdeonarain, JJ.*) CHANDMAL *v.* MOTILAL. **1942 M.L.R. 38 (Civ.) (F.B.).**

——**Ss. 32 and 33**—*Presentation—First presentation invalid—Subsequent valid presentation—Registration, whether proper.*

A deed of gift was executed by *F* in favour of her daughter *S*. One *R* presented it to the Sub-Registrar for registration and represented that as *F* was too ill to attend his office the deed may be registered at her house. The Sub-Registrar did not register the deed. Four days after this *F* died and after her death *S*, as the representative of the executant, presented the deed before the Sub-Registrar requesting its registration at her instance. The Sub-Registrar refused to register it but on appeal the Registrar directed its registration.

Held, that the registration was quite valid. Even if the original presentation by *R* was invalid, it did not affect the subsequent registration which was valid and proper. (*Nawal Kishore, C.J. and R. M. Toshniwal, J.*) MST. SUKINA *v.* HUSSAIN. **1942 M.L.R. 4 (Civ.) (F.B.).**

——**S. 49**—*Mortgage deed not registered—Claim on basis of part performance—Onus.*

Where the mortgage deed is inadmissible in evidence due to want of registration and the mortgagee wants to take advantage of the doctrine of part performance the onus is upon him to prove that he is entitled to the benefit of the doctrine. (*Nawal Kishore, C. J., Ranjit Mal and Sukhdeonarain, JJ.*) CHANDMAL *v.* MOTILAL. **1942 M.L.R 38 (Civ.) (F B.).**

——**S. 49**—*Part performance—Applicability of principle.*

The principle of part performance is a principle of equity and has been recognised and enforced by the

MARWAR STAMP ACT, S. 7.

Courts of British India independently of S. 53 (*a*) of the Transfer of Property Act. But before it can be applied in favour of a mortgagee, he must be able to satisfy the Court that the mortgage money had been paid and that he had been placed in possession of the property in dispute as mortgagee. (*Nawal Kishore, C.J., Ranjit Mal and Sukhdeonarain, JJ.*) CHANDMAL *v.* MOTILAL. **1942 M.L.R. 38 (Civ.) (F.B.)**

MARWAR STAMP ACT, Ss. 7 and 9—*Documents executed out of Marwar—Duty chargeable.*

The provisions of S. 7, Stamp Act, are not to be subordinated to the provisions of S. 9 of the Act. Consequently documents executed out of Marwar whether on stamped or plain paper, are chargeable with stamp duty as mentioned in Sch. II of the Act. (*Ranjitmal, J.*) BALCHAND *v.* UMEDMAL. **1942 M.L.R. 21 (Civ.).**

MASTER AND SERVANT—Dismissal of servant for misconduct—Past misconduct or offence—If can be taken into account as justifying dismissal for subsequent misconduct. *See* 1941 Dig., Col. 873. VENKATA SITAPATHI *v.* KRISHNA CHANDRA GAJAPATHI NARAYAN DEO. **197 I.C. 750 = 14 R.P. 353 = 23 Pat. L.T. 481 = 8 B.R. 295 = A.I.R. 1942 Pat. 176**

——Dismissal—When wrongful — "Misconduct"—What amounts to—Suit for damages—Question for determination of Court. *See* 1941 Dig., Col. 873. VENKATA SITAPATHI *v.* KRISHNA CHANDRA GAJAPATHI NARAYAN DEO. **197 I.C. 750 = 14 R.P. 353 = 8 B.R. 295 = 23 Pat. L.T. 481 = A.I.R. 1942 Pat. 176.**

——Local bodies—Position of with reference to their employees—Power to suspend—Right to salary during suspension—Condonation of misconduct — Effect. *See* 1941 Dig., Col. 874. DISTRICT COUNCIL, AMRAOTI *v.* VITHAL VINAYAK. **I.L.R. (1942) Nag. 343.**

——"Permanent" appointment or employment—Meaning of—If denotes duration of appointment or merely indicates nature or character of same. *See* 1941 Dig., Col. 873. VENKATA SITAPATHI *v.* KRISHNA CHANDRA GAJAPATHI NARAYAN DEO. **197 I.C. 750 = 14 R.P. 353 = 8 B.R. 295 = 23 Pat. L.T. 481 = A.I.R. 1942 Pat. 176.**

——*Suspension of servant—Right to wages during period of suspension—Rule—Municipality having power to suspend—Suspension of servant ordered properly—Right of servant to wages for period of suspension.*

It is clear that if a master chooses not to terminate a contract of service of his servant notwithstanding dereliction of duty on his part entitling the master to dismiss the servant, the master cannot by merely suspending the servant refuse to pay the wages of the servant during the period of the suspension treating the contract as a continuing contract, the reason of the rule being that there is no implied power in the employer to punish a servant by suspension. But different considerations would arise when the master has the power of suspension which he exercises upon a supposed misconduct of the servant. In that case suspension would inevitably mean the suspension of the entire contract and therefore the obligations on both sides. Where a Municipality having power to suspend a servant rightly orders suspensions, such suspension must involve the suspension of payment of wages; and the servant cannot therefore claim wages during the period of suspension. The suspension suspends for the time being the relationship of master and servant between the parties. (*Warmoore, J.*) PADMAKANT MOTILAL *v.* AHMEDABAD MUNICIPAL BOROUGH. **204 I.C. 216 = 44 Bom L.R. 514 = A.I.R. 1943 Bom. 9.**

——*Suspension and subsequent dismissal of servant—Right to wages during period of suspension.*

MESNE PROFITS.

The suspension of an employee does not amount to dismissal or termination of the contract of service, and until the contract of service is terminated the employee is entitled to his wages. An employer who has no power to suspend has no power to withhold the servant's salary during the period of suspension. Even when an employer is entitled to suspend an employee and withhold his wages during the period of suspension, the employee is entitled to wages during the period of suspension if he is dismissed at the end of that period. (*Dhavle and Agarwala, JJ.*) PEOPLE'S CO-OPERATIVE BANK, LTD. *v.* RAMESHWAR PRASAD VARMA. **21 Pat. 609 = 201 I.C. 509 = 15 R.P. 66 = 8 B.R. 822 = 23 Pat. L.T. 428 = A.I.R. 1942 Pat 452.**

——Wrongful dismissal—Contract of service providing for permanent appointment not to be terminated ordinarily—Dismissal on ground of financial stringency—If justified—Burden of proof. *See* 1941 Dig., Col. 874. LAKSHMINARASIMHACHARLU *v.* MCLAURIN HIGH SCHOOL, COCANADA. **14 R.M. 673 = 200 I.C. 40 = (1941) 2 M.L.J. 270.**

MAXIM—*Actio personalis moritur cum persona*—Applicability. *See* C. P. CODE, O. 22, R. 1. **1942 O. A. 524.**

——Actio personalis moritur cum persona—Applicability to insolvency proceedings. *See* PROVINCIAL INSOLVENCY ACT, S. 17. **44 Bom L.R. 132.**

——*Lex non cogit ad impossibilia* and *actus curiae neminem gravabit*—Meaning and application of. *See* LIMITATION ACT, S. 4 AND GENERAL CLAUSES ACT, S. 10. **1942 A.L.J. 592 (F.B.).**

MERCHANDISE MARKS ACT (IV OF 1889), S. 15—*Discovery of the commission of offence—What would amount to.*

The mere discovery that counterfeit labels were being used would not be a discovery that an offence has been committed by a particular press. There could be no effective prosecution of the owner and proprietor of the press until the complainant is able to discover that it was in that particular press that the labels were in fact printed. S. 15 of the Merchandise Marks Act cannot bar a prosecution where the prosecutor had no chance to prosecute. So the period of one year must be calculated from the date when it was discovered that the labels were printed in a particular press. (*Pollock, J.*) PRATIVIDEBI DUTT *v.* GAJANAN RAMACHANDRA RAO. **1942 N.L.J. 388.**

MERGER. *See also* MORTGAGE—MERGER.

——Impartible estate in Madras—Legacy of monies and outstandings out of estate—Legatee succeeding as holder of estate—Effect on legacy—If extinguished. *See* MADRAS IMPARTIBLE ESTATES ACT. **(1942) 2 M.L.J. 496**

MESNE PROFITS—Interest on—Award of—Power of Court—Interest Act. *See* LIMITATION ACT, ARTS. 109 AND 120. **(1942) 1 M.L.J. 472**

——Liability — Co-sharer maliks having definite shares in village—Settlement of diara land with third person claiming right to do so—Suit by another against them for possession and mesne profits on ground that defendants had no right to settle land—Decree for possession and mesne profits against all—Joint and several decree—Execution—Right of decree-holder to execute decree for mesne profits against one defendant for whole amount. *See* DECREE—CONSTRUCTION. **(1942) P.W.N. 198.**

——*Liability for—Nature of—Different defendants setting up different grades of interest in land—Case where there is and there is not wrongful combination among them.*

MINOR.

In ordinary cases, that is, where there is no wrongful combination or conspiracy among the defendants who dispossessed or wrongfully kept the plaintiff out, each defendant or each set of defendants as the case may be, is liable for what he received or could by ordinary diligence have received from the defendant or set of defendants immediately below him, where the defendants or the different sets of defendants had set up different grades of interest in the land in suit, and the professed sub-infeudation between them is either admitted or proved. For instance, where there was no wrongful combination amongst the wrong-doers, if the lands were being possessed by a Zamindar through tenure holders, under-tenure-holders and raiyats, and the whole set were made defendants and the possession of all of them was found wrongful, the zamindar would be liable by way of mesne profits for what he had or by ordinary diligence could have received as rent from the tenure-holders of the first degree, and the tenure-holders of the first, second and third degrees, etc., would have to be assessed on the same basis, the actual cultivator or raiyat being liable on produce basis. In the case where there is a wrongful combination amongst the defendants, the position is different. They would all be liable jointly and severally for mesne profits. In such a case they are to be regarded as forming one body and the liability for their unlawful act when they so act in concert cannot and ought not to be separated or apportioned between them. (*Mitter and Khundkar, JJ.*) KALIDAS RAKSHIT *v.* SARASWAT DOSSI. **I.L.R. (1942) 2 Cal. 268=75 C.L.J. 447=46 C.W.N. 982=A.I.R. 1943 Cal. 1.**

MINOR. *See also* (1) GUARDIANSHIP.
(2) HINDU LAW—MINOR.
(3) MAHOMEDAN LAW—MINOR.
(4) CONTRACT ACT.

———*Decree against—Minor brought on record under guardianship of mother—Omission to adopt procedure for her appointment as guardian* ad litem—*Effect of.*

Where a minor is brought on record under the guardianship of his mother, his natural guardian, the mere omission to adopt the procedure which should be adopted for her appointment as guardian *ad litem* does not justify a reversal of the decree passed against him in second appeal, when no prejudice has accrued to the minor. (*Agarwala, J.*) PARAN MUNDA *v.* SANTOSH MAHTO. **199 I.C. 144=14 R.P. 543=8 B.R. 501=A.I.R. 1942 Pat. 372.**

———Decree against proper guardian *ad litem*—Presumption as to propriety of decree—Minor's remedy—Improper representation and negligence of guardian—Difference between. *See* 1941 Dig., Col. 876. MAHOMED BAKHSH *v.* ALLAH DIN. **17 Luck. 1=A.I.R. 1942 Oudh 33.**

———*Decree against—Right of minor to challenge by suit—Gross negligence of guardian* ad litem—*Sufficiency—Fraud or collusion—If to be alleged and proved.*

It is open to a minor to challenge by a suit a decree passed against him on the ground that his guardian *ad litem* had been grossly negligent in the conduct of the suit and it is not essential that he should allege and prove fraud or collusion. (*Leach, C.J. and Kuppuswami Ayyar, J.*) EGAPPA CHETTIAR *v.* RAMANATHAN CHETTIAR. **I.L.R. (1942) Mad. 526=203 I.C. 526=15 R.M. 651=55 L.W. 43=1942 M.W.N. 104=A.I.R. 1942 Mad. 384=(1942) 1 M.L.J. 155.**

———*Decree against—Setting aside—Grounds—Gross negligence of guardian* ad litem—*Omission to raise defence when there is no valid defence to suit—Effect of.*

MINOR.

When there is no valid or proper defence to urge, on behalf of the minor, the guardian *ad litem* has no duty to raise frivolous or untenable pleas in defence, and the omission to raise such pleas in defence does not amount to gross negligence which would entitle the minor to sue to set aside the decree. (*Abdul Ghani and Venkatoranga Iyengar, JJ.*) KARIAPPA *v.* BHARMAPPA. **19 Mys.L.J. 414=46 Mys.H.C.R. 592.**

———Decree against—Setting aside — Grounds—Gross negligence—What amounts to—Guardian *ad litem* appearing and raising all defences open and adducing all evidence available—Decree against minor—Failure to appeal—If ground for setting aside decree. *See* 1941 Dig., Col. 876. NAGAYYA *v.* VENKATAYYA. **200 I.C. 871=15 R.M. 162=A.I.R. 1942 Mad. 82.**

———*Decree against—Setting aside of—Grounds—Negligence of guardian* ad litem.

Negligence of a guardian *ad litem* is not in itself a ground for setting aside a consent decree against a minor which can only be set aside on the ground of fraud, actual or constructive. Fraud must be definitely made a cause of action and the facts constituting the fraud must be clearly and specifically set out. (*Young, C.J. and Beckett, J.*) KANTA DEVI *v.* KALWATI. **201 I.C. 671=15 R.L. 71=44 P.L.R. 136=A.I.R. 1942 Lah. 205.**

———*Decree or award against—Absence of proper representation—Effect.*

There is lack of inherent jurisdiction in a Court to pass a decree against a minor if the minor is not properly represented. In such a case he must be taken to be no party to the proceedings at all. Therefore any decree which is passed against him without his being a party to the proceedings is a decree passed without jurisdiction, and similarly an award passed against him is null and void as against the minor. (*Dalip Singh and Din Mohammad, JJ.*) MAHBUB HUSSAIN SHAH *v.* ANJUMAN IMDAD QARZA. **201 I.C. 311=15 R.L. 38=44 P.L.R. 31=A.I.R. 1942 Lah. 129.**

———*If can be transferee of immovable property—If can maintain suit in respect thereof.*

Inasmuch as there is nothing in the law to prevent a minor from becoming a transferee of immovable property so a minor in whose favour a valid deed of sale has been executed is competent to maintain a suit in respect of that property. (*Yorke, J.*) RAM SEWAK *v.* RAM SAHAI. **1942 A.L.W. 225=1942 O.W.N. 281.**

———*Guardian—Loan by, with sanction of Court—Binding character.*

A loan contracted by a legally appointed guardian of a minor with the sanction of the District Judge is a loan on behalf of the minor and binding on him. (*Agarwal, J.*) RAI SHYAM BAHADUR *v.* RAMESHWAR PRASAD. **203 I.C. 95=15 R.P. 156=9 B.R. 59=A.I.R. 1942 Pat. 441.**

———*Guardian* ad litem—*Gross negligence—What amounts to—Decision in suit in conformity with law—Failure to appeal in anticipation of change in law—Effect—Minor's right to challenge decision.*

The mere fact that a guardian *ad litem* fails to appeal against a decision which is in conformity with the law as it then stood and fails to anticipate a change in the law by a proposed amendment which may enure to the benefit of the minor, would not amount to gross negligence on the part of the guardian *ad litem* so as to entitle the minor to challenge the decision which the guardian has accepted. (*Leach, C.J. and Kuppuswamy Ayyar, J.*) ADEMMA *v.* SATYADHYANA THIRTHASWAMIGAL. **1942 M.W.N. 700=56 L.W. 30=A.I.R. 1943 Mad. 187.**

MORTGAGE.

See also (1) T. P. ACT, SS. 58 98.
(2) C. P. CODE, O. 34.

———*Co-mortgagees—Suit by one for his share of mortgage money—When maintainable—Proper frame of suit—Proper form of decree—Rights of parties at execution stage.*

A co-mortgagee whose share in the mortgage money is defined in the mortgage instrument or is otherwise ascertainable can sue for his share only, and a suit for his share will be maintainable provided certain conditions are fulfilled. Those conditions are: (1) that he must make the co mortgagees defendants, (2) that he must ask for the usual mortgage decree, which must provide for all necessary accounts and payments in respect of the *whole* of the mortgage-debt, that is to say, there must be a prayer for sale of the entire mortgaged property, if the mortgagor failed to pay into Court within the period of grace the amount that may be found due in respect of the *entire* mortgage-debt. The preliminary decree must specify the entire amount due on the mortgage as at the date of grace and not merely what is found due in the plaintiff's share at that date and direct the sale of the entire mortgaged property in default of payment of the same. The consequence would be that if the mortgagor pays into Court the said sum—(*i.e.*) the total amount so found due—within the period of grace, the share found due to the plaintiff will be paid out to him, and the share of the co mortgagee defendants kept in deposit. If there is default in paying that total sum, the final decree will be for sale of the whole of the mortgaged property. At the execution stage either the whole of the mortgaged property or so much thereof as may be necessary to satisfy the *whole* amount due on the mortgage must be put up to sale. The rights of the parties can be worked out thus. If the sale fetches a price equal to or greater than the said total amount, besides the costs of bringing the properties to sale, the dues of the plaintiff must be paid out to him. If the sale of the whole of the mortgaged property be insufficient to cover that amount, the plaintiff would be paid *pro rata* from the sale-proceeds, and he can obtain a decree under O. 34, R. 6 C. P. Code, for the balance of his dues; provided that he is otherwise entitled to such a decree. As the sale would be under a decree for sale of the entire mortgaged property, the purchaser at the Court sale would get the property freed of the mortgage, and the rights of the co-mortgagee defendants would necessarily be transferred to the surplus sale-proceeds. (*Mitter and Biswas, JJ.*) MATILAL DUTTA *v.* BARA BURI. **46 C.W.N. 1015.**

———*Construction—Interest* post diem—*Rule—Deed to be taken and construed as a whole—Intention not to pay interest after expiry of period—Necessity for clear and express terms.*

In the case of a mortgage deed all the terms of the deed have to be considered when the question to be decided is whether interest is to run after the stipulated period. Where the deed does not clearly state that interest should run after the end of the stipulated period, the terms of the whole deed must be looked at to ascertain whether it was the intention of the parties that *post diem* interest should be paid. If a Court is asked to hold that in a particular case the mortgagor and mortgagee had some intention other than the usual intention then such must appear in the clearest terms from the provisions of the deed, the usual intention being that money should bear interest until repayment. (*Harries, C.J. and Manohar Lall, J.*) RAJENDRA NARAYAN BHANJ DEO *v.* BICHITRANAND SAHU. **8 Cut. L.T. 27.**

———Construction—Mortgage by conditional sale executed in 1873—Condition that in default of redemption within two years properties should become absolute property of mortgagee—Enforceability—Law applicable. *See* 1941 Dig., Col 878. VENKATASUBBIAH CHETTY *v.* JUMMA MOSQUE. **198 I.C. 309=14 R.M. 419=(1941) 1 M.L.J. 754.**

———*If a debt or liability.*

From one point of view a mortgage is neither a 'debt' nor a 'liability.' It is a security for a debt and a suit on a mortgage is no more a suit on the debt than a suit on a promissory note is one to enforce the original liability. From the definition of a mortgage in the Transfer of Property Act it is clear that the mortgage itself is not the liability but is only the transfer of an interest in property to secure the proper discharge of the liability. (*Stone, C.J. and Ros-, J.*) DAU BALWANT SINGH *v.* MT. BINDABAI. **I.L.R (1942) Nag. 357=15 R.N 13=200 I.C. 709=1942 N.L.J. 113=A.I.R. 1942 Nag 88.**

———*Interest—Charge for usufructuary mortgage Provision for payment of interest in addition in default of payment of mortgage money at the end of term fixed—If charge on property—Provision for payment* 12 *per cent. interest—Penalty—Relief against.*

A usufructuary mortgage for Rs. 800 in favour of the appellant executed on 1st May, 1930, provided that the mortgaged property was to be enjoyed in lieu of interest, that the mortgage amount was payable in three years and that in default of such payment at the end of three years interest at 12 per cent. per annum was payable in addition. Some time later, in 1930 itself the mortgagee (appellant) leased the property to the mortgagor and another, but the rent due under the lease fell into arrears and in 1936 a suit was filed and a decree obtained on 25th March, 1937. Meanwhile on 30th May, 1935 the mortgagor sold the mortgaged property for Rs. 1,000 to another, directing him to redeem the mortgage on payment of Rs. 800 This vendee in turn sold the property on 1st April, 1937, to the respondent for Rs. 1,000 directing her (respondent) to redeem the mortgage on payment of Rs. 800. The respondent having failed in her attempt to discharge the mortgage debt and get possession under S 83, T.P. Act, brought a suit for redemption in 1938. The appellant claimed not only the principal amount of Rs. 800, but also the amount due to him under his decree of 1937 for rent and interest on Rs. 800 at 12 per cent, as provided in the mortgage deed, as the amount was not paid at the end of three years.

Held, (1) that the covenant for payment of interest was not merely a personal covenant, but created a charge for interest in the absence of a contract to the contrary; (2) that there was nothing in the mortgage deed to indicate that it was the intention of the parties that there was to be no charge for interest, and therefore the security could be enforced in respect of the interest also; (3) that the provision for payment of additional interest in default of payment of the principal amount by the date fixed for redemption was a penal clause and must be relieved against; (4) that the clause, merely because it was penal, could not be held to be wholly unenforceable; (5) that the mortgagee (appellant) not having obtained payment of the rent due to him under the decree could not be said to have got enough so as to disentitle him to any interest, and that the Court would be justified in awarding 6 per cent interest on the principal amount from the date of default; (6) that the claim for rent, being only a personal one, could not be claimed in the suit for redemption. (*Kuppuswami Ayyar, J.*) SUBRAMANIA CHETTIAR *v.* VISALAKSHI AMMAL. **55 L.W. 661=1943 M.W.N. 19=A.I.R. 1943 Mad. 109.**

———*Merger—Possession in different capacities—If can give rise to—Union of different capacities in one at a particular time—Sufficiency.*

MORTGAGE.

Where the capacity in which a person is in possession of the mortgagee rights is something quite different from the capacity in which he is in possession of the equity of redemption, the mere fact that those two capacities were united in the same physical person at a particular time could not result in a merger. In many cases the question whether there has or has not been a merger of the equity of redemption with the mortgagee rights depends on the intention of the person in whose possession both rights were at the same time. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v.* GIRDHARI LAL. **I.L.R. (1942) All 259=200 I C. 269=14 R.A. 423=1942 A.L.J. 179=1942 A L W. 161=1942 O.A (Supp.) 145 (2)=1942 A.W.R. (H.C.) 84 (2)=A.I.R. 1942 All. 175.**

———*Mortgage by conditional sale—Foreclosure decree—Effect of—If constitutes transfer.*

Where a person executes a mortgage by conditional sale and then suffers a foreclosure decree to be passed against him, he virtually executes thereby a transfer in favour of the mortgagee. (*Biswas and Akram, JJ.*) RAI CHANDI CHARAN CHATTERJEE *v.* TARANATH DUTT. **75 C.L.J. 434.**

———Mortgage suit—Decree—Suit based on equitable mortgage—Subsequent mortgagee also made a party—Equitable mortgage found to be invalid and plaintiff declared an unsecured creditor—Proper decree to pass—Declaration as to validity of subsequent mortgage—Propriety. *See* 1941 Dig., Col. 879. KRISHNASWAMY AYYANGAR *v.* KAMALAMMA. **I L.R. (1942) Mad. 82=1942 O.W.N. 48=74 C.L.J. 479=1942 A.L W. 36=23 Pat.L T. 29=44 P.L.R. 83= 44 Bom.L.R. 191=I.L R (1941) Kar. (P.C.) 127=(1941) 2 M.L.J 894 (P.C.).**

———Mortgage suit — Failure to implead purchaser from mortgagor--Decree and sale in execution—Purchase by mortgagee—Subsequent suit to evict private purchaser and for possession subject to his right to redeem—Maintainability. *See* C. P. CODE, O. 34, R. 1. **44 Bom.L.R. 111.**

———*Mortgage suit—Parties—Some of mortgagors not impleaded—Plaintiff's right to decree for proportionate share of mortgage money.*

If some of the persons interested in the equity of redemption are left out in the mortgage suit or if they are made parties after the period of limitation has expired, the plaintiff is entitled in such cases to a decree for proportionate share of the mortgage money as against the defendants who are actually on the record or against whom the suit is not barred by limitation and the fact that all the mortgagors are not parties before the Court will not justify the dismissal of the whole suit. (*Mukherjea and Roxburgh, JJ.*) TARAN ROY BAIN *v.* SHYAM MONDAL. **201 I.C 454=15 R.C. 201=74 C.L.J. 495=A.I.R. 1942 Cal. 226**

———*Mortgage suit—Question of paramount title—Plea on the basis of* spes successionis *to the third person—If can be gone into.*

Where persons setting up the defence of title paramount in a suit on mortgage, are persons who state that they have a *spes successionis* in respect of the third person's interest, it is clearly not enough to entitle them to litigate that title in the mortgage suit. (*Stone, C. J. and Bose, J.*) DAU BALWANT SINGH *v.* CHHATAR SINGH. **1942 N.L.J. 47.**

———Mortgage suit—Question of paramount title—Relevancy—If a necessary issue to be decided. *See* C. P. CODE, S 11. **20 Pat. 841.**

———*Mortgage suit—Suit by assignee of mortgage-deed* bona fide *for valuable consideration—Plea of absence of consideration for deed—Right of defendant to succeed on such plea.*

The fact that the plaintiff in a mortgage suit is a *bona fide* assignee of a mortgage bond for valuable consideration cannot stand in the way of the defendant successfully pleading that the mortgage bond was not supported by consideration, and hence no decree can be passed in favour of the plaintiff in the suit. (*Kuppuswami Ayyar, J.*) PARVATHI AMMAL *v.* ANGAMUTHU. **204 I.C. 128=55 L.W. 652=A.I.R. 1942 Mad. 730=(1942) 2 M.L.J. 518.**

———Mortgagor and mortgagee—Stranger or trespasser in possession—Rights of parties. *See* 1940 Dig. Col. 922. UMAR HAJI *v.* BADRI DAS. **I.L.R. (1942) Nag. 145.**

———*Mortgagor—Right to sue for accounts only.*

A mortgagor is not entitled to sue merely for accounts when he is also entitled to sue for redemption. (*Verma, J.*) GORDHAN LAL *v.* SHRI THAKUR RADHA KANT. **1942 A.W.R. (H.C.) 389=1943 A. L.W. 56.**

———Power of sale—Exercise of—Suit for injunction to restrain—Mortgagor's right to maintain—Grounds—Payment or tender of mortgage money—If condition precedent. *See* 1941 Dig., Col. 881. BABAMIYA MOHIDEEN SHAKAR *v.* JAHANGIR DINSHAW. **I.L.R. (1941) Bom. 506=198 I.C. 474=14 R.B. 304.**

———Power of sale—Mortgage debt falling due—Suit by mortgagor for injunction to restrain sale by mortgagee—Maintainability—Absence of offer to redeem or tender—Effect—Discretion of Court. *See* 1941 Dig., Col. 881. MULRAJ VIRJA *v.* NAIMMAL PRATAPMAL. **I.L.R (1942) Bom. 83=198 I.C. 646=14 R.B. 334=A.I.R 1942 Bom. 46.**

———Prior and subsequent mortgages—Decree on prior mortgage and sale in execution—Rights of purchaser—Suit on later mortgage impleading purchaser—Nature of relief available to latter. *See* 1941 Dig., Col. 882. PUTTAMADAPPA *v.* NAGAMMA. **46 Mys. H.C. R. 583.**

———Prior and subsequent—Sale in execution of prior mortgage decree—Puisne mortgagee not impleaded in suit—Right of purchaser. *See* 1941 Dig, Col. 882. SAILENDRA NATH *v.* AMARENDRA NATH. **198 I.C. 315=14 R.C. 448.**

———Prior and subsequent—Suit by each mortgagee without impleading the other—Purchase by each in execution of decree—Puisne mortgagee's purchase prior in point of time—Suit by prior mortgagee purchaser for possession against him—Maintainability. *See* 1941 Dig., Col. 883 SAILENDRA NATH *v.* AMARENDRA NATH. **198 I.C. 315=14 R.C. 448.**

———Prior and subsequent—Suit by prior mortgagee without impleading puisne mortgagee—Decree and sale—Rights of purchaser and puisne mortgagee. *See* 1941 Dig., Col 883. KAISER KHAN *v.* ABDUL GHANI. **202 I.C. 308=15 R.C. 318=A.I.R. 1942 Cal. 138.**

———*Redemption—Duty of second mortgagee.*

A second mortgagee owes no duty to the mortgagor to redeem the prior mortgage. He is entitled to do so if he thinks it desirable to protect his own interest. (*Henderson, J.*) SATISH CHANDRA NAG *v* SILCHAR CO-OPERATIVE TOWN BANK, LTD. **I.L.R. (1941) 2 Cal. 551=201 I.C. 585=15 R.C. 246=A.I.R. 1942 Cal. 290.**

———Redemption—Puisne mortgagee not party to prior mortgagee's suit — Redemption by—Amount payable—Method of calculation. *See* 1941 Dig., Col. 884. SAILENDRA NATH *v.* AMARENDRA NATH. **198 I.C. 315=14 R C. 448.**

MORTGAGE.

———*Relief on basis of substituted security—Mortgage of his share of the house by a joint owner—Subsequent partition and allotment of specific share to him—Suit by mortgagee decreed—Right to possession of share specifically given to his mortgagor, on his becoming purchaser in execution.*

Where subsequent to the mortgage of his share of a house by a joint owner a specific portion of it is given to him on a partition between joint owners, when the mortgagee obtains a decree and purchases his mortgagor's share in execution of the decree is entitled to possession of the share specifically given to his mortgagor at the partition. As the mortgage had merged in the decree and so ceased to exist the principle of substituted security may not be applicable. But what the mortgagee wants is really in substance what was given by the decree for sale and what was purchased by him in execution. (*Iqbal Ahmad, C.J. and Dar, J.*) IMTIAZ-UN NISSA BIBI *v.* ABDUL QASIM. **202 I.C. 199=15 R.A. 103=1942 A.W.R. (H.C.) 167=1942 A.L.W. 362=A.I.R. 1942 All. 267 (1).**

———Right and remedy of purchaser—Sale in execution of mortgage decree—Person interested in equity of redemption not impleaded in mortgage suit. *See* 1941 Dig., Col. 884. BIDHURANJAN SARKAR *v.* SOLEMAN PRAMANIK. **197 I.C. 334=14 R.C. 338.**

———Rights of mortgagee—Mortgage of undivided share of co-sharer—Subsequent partition. *See* 1941 Dig., Col. 885. SARADINDU MUKHERJEE *v.* JAHAR LALL AGARWALLA. **I.L.R. (1942) 1 Cal. 326=201 I.C. 353=15 R.C. 174=A.I.R. 1942 Cal. 153.**

———Rights of mortgagee—Simple mortgage—Property belonging to member of agricultural tribe—Interest transferred—Punjab Alienation of Land Act, S. 60. *See* 1941 Dig., Col 885. SAMPURAN SINGH *v.* AHMAD DIN. **198 I.C. 100=14 R.L. 300.**

———Simple—Receiver. *See* 1941 Dig., Col. 885. SUKHARANIABAI *v.* LAXMIKANT RAO. **I.L.R. (1942) Nag. 119=198 I.C. 807=14 R.N. 245=A.I.R. 1942 Nag. 1.**

———*Splitting up—Right of mortgagors—Decree—Execution—One of several mortgagors willing to pay up his share of decree amount—If ground for splitting up mortgage and direct sale of items other than his.*

The course of execution of a mortgage decree or charge decree cannot be determined by the mere willingness or otherwise of one or two of the judgment debtors to pay his or their share of the decretal amount; it is beyond dispute that mortgagors are not entitled to have the mortgage split up on such a ground. (*Dhavle and Chatterji, JJ.*) KRUSHNA CHANDRA KAR *v.* SREEMATYA SEETA DIBYA. **8 Cut.L.T. 88.**

———*Subrogation—Keeping alive—First mortgagee taking another mortgage in renewal of first and for fresh advance—First mortgage if kept alive as against mesne mortgagee—Limitation to enforce subrogation—Starting—Date of first mortgage or later mortgage.*

A mortgagee taking another mortgage in renewal of a prior mortgage does not on that account lose his priority over a mesne mortgage. A first mortgagee making a fresh advance after a second mortgage, on a renewed mortgage, even if that fresh advance is to pay off the first mortgage, retains priority over the second mortgagee as regards the first mortgage and is entitled to subrogation. By the renewal of the prior mortgage a new covenant to pay is substituted for the covenant contained in the old mortgage and therefore limitation to enforce his right of subrogation commences from the date of the new covenant in the later mortgage and from the date of old mortgage which has been paid off by the later mortgage. If there are payments towards the later mortgage saving limitation the period for enforcing the right of subrogation would be extended by such payments. The keeping of the security alive does not necessarily involve the proposition that the date when the debt can be demanded continues to be the old date. (*Nageswara Iyer and Venkataranga Ayyangar, JJ.*) GANGAHANUMIAH *v.* NARAYANA SETTY. **20 Mys L.J. 286.**

MOTOR VEHICLES ACT (1939), S. 11.

———*Suit and decree on—Mortgagee getting into possession in execution—Official Receiver not impleaded on mortgagor's insolvency* pendente lite—*Receiver getting back possession through insolvency Court—Claim to mesne profits—Maintainability.*

The mortgagee filed a suit on his mortgage and obtained a decree thereon. Though the fact of the mortgagor having been adjudicated an insolvent in the meanwhile was brought to the notice of the Court, the Official Receiver was not added as a party. The mortgagee obtained possession of the property in execution of his decree. The Official Receiver by taking proceedings under S. 4 of the Provincial Insolvency Act obtained possession of the mortgaged property. On his claim for mesne profits due for the period in which the property was in the possession of the mortgagee it was held that the possession of the mortgagee was not that of a trespasser but that of a mortgagee in possession and he was not therefore liable to pay mesne profits. It was held further that the mortgagee having come into possession during the continuance of the mortgage would be liable to account for the profits. (*Stone, C.J. and Niyogi, J.*) KHADILKAR *v.* RAMNARAYAN. **1942 N.L.J. 108.**

———*Usufructuary mortgage and lease back—Nature of—Suit on lease for rent—Finding that mortgage is binding only to extent of part of consideration—Right of mortgagee to full rent stipulated—If affected.*

When there is a usufructuary mortgage and a contemporaneons lease back to the mortgagor, it is no doubt necessary for some purposes to read the mortgage and the lease as parts of a single transaction, but that does not mean that the possessory mortgage and the lease back are to be considered as a simple mortgage providing for interest at a certain rate. Though the two form part of the same transaction, effect must be given to each transaction according to its terms and the Court cannot by reading the two together, spell out a transaction totally different in its character and incidents. In a suit on the lease, therefore, full effect must be given to the terms of the contract of lease and it is not open to the Court to vary the terms of that contract on grounds not even stipulated in the contract of mortgage, and the mortgagee-lessor is therefore entitled to recover rent under the lease at the contract rate notwithstanding that the mortgage is found to be binding only to the extent of a part of the nominal amount. (*Wadsworth, J.*) ACHUTHA KURUP *v.* GOVINDAN NAVAR. **56 L.W. 35=1942 M.W.N. 784=(1942) 2 M.L.J. 775.**

MOTOR VEHICLES ACT (IV OF 1939), S. 3(1)— Scope—Expiry of licence—Application for renewal some days after—Driving after expiry and before renewal—Offence. *See* 1941 Dig., Col. 886. PUBLIC PROSECUTOR *v.* KRISHNASWAMI. **14 R.M. 564=43 Cr.L.J. 524=199 I.C. 143=1942 M.W.N. 39=A.I.R. 1942 Mad. 196=(1941) 2 M.L.J. 1040.**

———**S. 11 (3)**—*Scope—If deals with effectiveness of licence—Application for renewal several days after expiry—Renewal with effect from date of expiry—Conviction for driving without licence on day after day of expiry and date of application for renewal—Legality—S. 112.*

S. 11 (3) of the Motor Vehicles Act has nothing whatever to do with the effectiveness of the licence. It

MOTOR VEHICLES ACT (1939), S. 16.

merely enables a licensee to obtain his licence at a lower rate, if he applies within fifteen days of the expiration of his old licence. Accused, a motor driver, had a driving licence which expired on 2nd February, 1941 On 17th February, 1941, his licence was examined and was found to have expired On the same day, however, he got a renewal of his licence with effect from 2nd February, 1941. On 13th June 1941, a complaint was filed against him under S. 11 (3) read with S. 112 of the Motor Vehicles Act and convicted,

Held, that though the accused could not claim renewal except for one year from the date of application, the licensing authority having issued him a renewal as from 2nd February, 1941, there was an effective licence on the date of the alleged offence and hence he was not guilty. (*Beaumont, C. J. and Sen, J.*) EMPEROR *v.* RAMDAS. **201 I.C. 770=15 R.B. 121=43 Cr.L.J. 778=44 Bom.L.R. 449=A.I.R. 1942 Bom. 216.**

——**S. 16**—Rules under— R. 7 (1)—Offence under—Powers of Police to demand name and address of accused. *See* 1941 Dig., Col. 886. DEVKI NANDAN *v.* EMPEROR. **14 R.L. 205=43 Cr.L J 127.**

——**Ss. 22 (1) and 42 (1)**—*Lorry driven without registration and permit at different places on same day—Separate offences, if committed.*

If a lorry is permitted to be driven on a particular day without registration and permit contrary to the provisions of Ss. 22 (1) and 42 (1) of the Motor Vehicles Act, the owner cannot be charged for a number of separate offences, although it is seen at different places on the same day. The offence is using the lorry on the particular day and it is only one offence. (*Young, C. J. and Beckett, J.*) BAL MOKAND *v.* EMPEROR. **200 I. C. 514=15 R.L. 2=43 Cr.L J. 673=44 P.L R 101 =A.I.R. 1942 Lah. 125.**

——**Ss 42 (1) and 123 (1)**—*Applicability—"Use"—"Permit"—Meaning—Burden of proof.*

Though Ch IV which contains S. 42 of the Motor Vehicles Act deals with the control of transport vehicles and contemplates primarily the control of the carriage of goods for hire or for reward, S. 42 (1) is more general and prohibits the use of a transport vehicle for any purpose in a public place save in accordance with the conditions of a permit as provided in that section The driver of a motor vehicle took the same to convey himself to the Magistrate's Court—where he was being tried for driving without a license—and back again. There was no permit for the use of the vehicle to the knowledge of the owner. There was no evidence as to whether the owner knew that the driver was going to so use the car or not. In a prosecution of the owner on a charge under S. 42 (1) and S 123 (1) of the Act,

Held, (1) that the driver did "use" the vehicle and the vehicle was "used" within the meaning of S. 42 (1) of the Act ; (2) that mere negligence on the part of the owner to lock up his vehicle so that his driver could not take it would not amount to "permitting" the use of the car under S. 42 (1), because "permit" carried with it the meaning that the person actually and knowingly allowed the thing to be done ; (3) that the prosecution had not discharged the duty that was cast on them to prove that the owner either used or permitted the use of the vehicle; and (4) that therefere the accused was entitled to be acquitted of the charge. (*Horwill, J.*) ABDUL SALAAM ROWTHER, *In re.* **204 I C. 295=1942 M. W.N. 760 (1)=55 L W. 754=A.I.R. 1943 Mad 41 =(1942) 2 M.L J. 577.**

——**Ss. 42 (1) and 48 (d)**—*'Owner' if includes agent.*

The word 'owner' used in Ss 42 (1) and 48 (*d*) of the Motor Vehicles Act does not include an agent of the

MOTOR VEHICLES ACT (1939), S. 123.

owner and hence such an agent cannot be prosecuted under those sections. (*Niyogi, J.*) EMPEROR *v.* PATHAK. **203 I.C 162=43 Cr.L.J. 917=1942 N.L. J. 308=A.I.R 1943 Nag. 22.**

——**S. 71 (2)**—*Construction—Speed when "fixed"—Notification—If essential and condition precedent to commission of offence of exceeding speed limit.*

Under S. 71 (2) of the Motor Vehicles Act which permits the restricting of speed within certain areas, the notification is the fixing, and therefore until the restriction has been notified, the speed limit is not fixed. A notification is therefore a condition precedent to the commission of an offence of exceeding the speed limit and is not merely a method of publishing the speed fixed. (*Horwill, J.*) BICHAL NAIDU *v.* EMPEROR. **55 L.W 827 (2)=1942 M.W N. 724=(1942) 2 M.L.J. 670.**

——**Ss. 78 and 112**—*Burden of proof—Charge of exceeding speed limit—What the prosecution has to prove.*

In a prosecution for an offence under S. 78 read with S. 112 of the Motor Vehicles Act for exceeding the speed limit laid down under S. 71 (2) of the Motor Vehicles Act, it is the duty of the prosecution, in order to bring home the offence to the accused, to prove (1) that a certain speed has been laid down under the Act as the maximum speed that a vehicle should attain, and (2) that the accused exceeded that speed limit. It is not sufficient to prove merely that there were two posts on the road on which the number "10" was painted to indicate that the speed should not exceed 10 miles an hour. It has further to be proved that the speed had been fixed by some authority empowered to fix a speed under S 71 (2). When that is not proved, a conviction is unsustainable (*Horwill J.*) JAMBULINGAM PILLAI, *In re.* **204 I.C. 339=1942 M.W.N. 764=55 L.W. 722=A.I R. 1943 Mad 61=(1942) 2 M L.J 629.**

——**S. 112**—*Enhanced fine—When can be exacted.*

It is inequitable to exact from a person the enhanced fine under S. 112 of the Motor Vehicles Act unless he has suffered a first conviction and after that conviction he has again offended. (*Young, C J and Beckett, J.*) BAL MOKAND *v.* EMPEROR **200 I.C. 514=15 R.L. 2=43 Cr L.J. 673=44 P.L.R. 101=A I.R. 1942 Lah 125.**

——**S 112—Bombay Motor Vehicle Rules (1940) R. 93 (2) and (4)**—*Goods vehicle—Driver carrying more than six persons without permit—Vehicle not loaded with goods at the time—Offence.*

Sub-rule (2) of R. 93 of the Bombay Motor Vehicles Rules framed under the Motor Vehicles Act of 1938 lays down unconditionally the number of persons that may be carried in a goods vehicle, this provision applies not only when the goods vehicle is loaded with goods but also even when it does not happen to carry any goods. This is clear from sub-rule (4) which contemplates a goods vehicle being used for carrying persons when it is not loaded with goods at all. Where the driver of a motor lorry used as a goods vehicle carries more than six persons in it without a permit though the vehicle is not loaded with goods at the time, he is guilty of a breach of R. 93 (2) of the Bombay Motor Vehicle Rules, and is liable to conviction under S 112 of the Motor Vehicles Act. (*Beaumont, C.J and Wadia, J.*) EMPEROR *v.* GULAM RASUL. **201 I.C 116=43 Cr. L J 645=15 R.B 68=44 Bom.L R. 225=A.I.R. 1942 Bom. 184.**

——**S 123 (1)**—Burden of proof—"Use or permit." *See* MOTOR VEHICLES ACT, SS. 42 (1) AND 123 (1) **(1942) 2 M L J 577**

——**S. 123 (1)**—Contravention of S. 42 (1)—Transport vehicle driven on public road without permit—

MOTOR VEHICLES ACT (1939), S. 123.

Liability of driver to conviction. *See* 1941 Dig., Col. 888. PUBLIC PROSECUTOR *v.* JEVAN. 55 L.W. 216 =1942 M.W.N. 223=43 Cr.L.J. 49=(1941) 2 M.L. J. 349.

——S. 123 (1)—*Lorry owned by several persons—Liability of each.*

If a lorry is owned by two or more persons, each of them is the owner of the lorry and each of them would be liable under the strict wording of S. 123 (1) of the Motor Vehicles Act for an illegal act. But it is undesirable to exact a fine from all the owners separately. (*Young, C. J. and Beckett, J.*) BAL MOKAND *v.* EMPEROR. 200 I.C. 514=15 R.L 2=43 Cr.L.J. 673= 44 P.L.R. 101=A.I.R. 1942 Lah. 125.

——S. 128 (2)—Applicability. *See* 1941 Dig., Col. 888. DEVKI NANDAN *v.* EMPEROR. 43 Cr.L.J. 127 =14 R.L. 205.

——(Burma) S. 16—Burma Motor Vehicles Rules—R. 24 (*b*)—Conductor, if in charge of the bus—Over loading—Who is to be charged. *See* 1941 Dig., Col. 886. RADHAMOHAMOG *v* EMPEROR. A.I.R. 1942 Rang. 51 (2).

MUNICIPALITY—*Liability of a Municipal Board for negligence—Collapse of house due to percolation of drain water—Absence of periodical inspection.*

Public bodies created by statute are liable for negligence in the discharge of their duties and a municipality is liable for damage caused by their negligence in not keeping their works in proper repair. Where the plaintiff's building collapsed as a result of the percolation of the drain water in the street adjoining, it was *held* that the Municipal Board was liable for damages for their negligence in not keeping the drain in proper repair and failure to have it periodically examined by competent members of their engineering staff. (*Thomas, C. J. and Ghulam Hasan, J.*) KALI KRISHNA NARAIN *v.* MUNICIPAL BOARD, LUCKNOW. 204 I.C. 100=1942 O.W.N. 773=1942 O.A. 617.

MUSLIMS DISSOLUTION OF MARRIAGES ACT (VIII OF 1939)—*Suit for maintenance—Proper forum.*

In the case of a claim for maintenance under the Muslims Marriages Dissolution Act, the proper forum is the defendant's place of residence and not that of the plaintiff wife. (*Davies.*) MAHMUD HASAN *v.* NOOR JAHAN. 1942 A.M.L.J. 18.

——S. 2 (ii)—*Wife contributing towards husband's failure to maintain—Effect of.*

The wife is entitled to a decree for dissolution of her marriage if the husband fails to maintain her for a period of two years, even though she may have contributed towards the failure of the maintenance by her husband. Simply because the wife refused once to receive a cheque from her husband, the latter is not relieved of all liabilities that attaches to his status by virtue of S. 2 (*ii*) of the Dissolution of Muslim Marriages Act. (*Abdul Rashid, J.*) AKBARI BEGAM *v.* ZAFAR HUSSAIN. 199 I.C. 847=14 R.L. 433=44 P.L.R. 69=A.I.R. 1942 Lah 92.

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (XXVI OF 1937), S 5—Petition pending on date of repeal of Act—Order made after repeal—If *ultra vires*—General Clauses Act, S. 6 (*e*). *See* 1941 Dig., Col. 890. KARIM SHAH *v.* ZINAT BIBI. I.L.R. (1941) Lah. 773.

MUSSALMAN WAKF ACT (XLII OF 1923) S. 2—*Jurisdiction—Additional District Judge—Bengal, Agra and Assam Civil Courts Act, S. 8 (2)—Power of Additional District Judge to review or vacate order passed by District Judge before transfer.*

MUSSALMAN WAKF ACT (1923), S. 6-C.

An application under S 2 of the Mussalman Wakf Act for registration of a wakf estate has to be presented in the Court of the District Judge which is the Court competent to entertain the application. The Court of an Additional District Judge is a Court different from that of the District Judge, but under S. 8 (2) of the Bengal, Agra and Assam Civil Courts Act, it is competent to the District Judge to transfer the application for registration of a wakf estate to the Additional District Judge and on such transfer the Additional District Judge has jurisdiction to deal with the matter. The Additional District Judge has all the powers which the District Judge has and has jurisdiction to pass any order which the District Judge could pass including an order reconsidering or reviewing a prior order, even though such prior order is one passed by the District Judge prior to the transfer to the Additional Judge. The inherent power to review conferred by S. 151, C. P. Code, can be exercised by the Additional District Judge and he is therefore competent to vacate an order passed by the District Judge before the application was transferred by him to the Additional District Judge. (*Agarwala, J.*) ABDUL HASAN *v.* NANHE SHAH. 1942 P.W.N. 94.

——S. 2—*Scope—Wakf created for providing facilities to travellers—Provision for enjoyment by creator and members of his family of surplus income which might arise in future—If excluded.*

A wakf created originally to provide facilities for travellers on a road, *i.e.*, to subserve a charitable purpose with a provision that any surplus income that might arise in future should be enjoyed by the original creator of the wakf and the members of his family, is not a wakf which is excluded from the purview of the Mussalman Wakf Act of 1923, as such a wakf is not one falling under S. 3 of the Mussalman Wakf Validating Act of 1913. S 3 of the Act of 1913 cannot apply to wakfs which subserve two purposes partly charitable and partly private but must apply only to wakfs originally designed to serve one purpose only and that is private. (*King, J.*) HAJI KADIR MURTHUZA HUSSAIN SAHIB *v.* MAHOMED MURTHUZA HUSSAIN SAHIB. 55 L.W. 828=1942 M.W.N. 712=(1942) 2 M.L.J. 672.

——S. 3—Applicability—Kinds of wakf governed by. *See* MUSSALMAN WAKF ACT (1923), S. 2. 1942 M. W.N. 712=(1942) 2 M.L.J. 672.

——S. 6 A (as amended by Bombay Amendment Act XVIII of 1935)—*Order of Court directing mutawali of wakf to deliver particulars and accounts—Disobedience—Proceedings for contempt—If justified—Contempt of Courts Act.*

The Court has to see that the law is enforced. When there is special order made apparently under S. 6-A of the Mussalman Wakf Act, as amended by Bombay Amendment Act of 1935, directing certain particulars and accounts to be delivered by a mutawali of wakf, and that order is disobeyed, the mutawali disobeying such order is on the face of it guilty of contempt of Court and that is a matter which the Court can deal with under the Contempt of Courts Act, 1926. (*Beaumont, C. J. and Wadia, J.*) EMPEROR *v.* ALI MAHOMED ADAMALLI. I.L.R. (1942) Bom. 240=200 I.C. 852 =43 Cr L.J. 726=15 R.B. 61=44 Bom.L.R. 281= A.I.R. 1942 Bom 152.

——Ss. 6-C and 6-F (as amended by Bombay Amendment Act XVII of 1935)—*Decision of District Judge under S. 6-C—Appeal to High Court—Competency*

No appeal lies from the decision of a District Judge on an inquiry under S. 6-C of the Mussalman Wakf Act as amended by the Bombay Amendment Act of 1935;

MUSSALMAN WAKF ACT (1923), S. 6-C.

such a decision is final as provided by S. 6 F of the Act. (*Beaumont, C. J. and Sen, J.*) KARIMMIYA HAMDUMIYA *v.* JAFARALI BAWAMIYA. 202 I.C 574=15 R. B. 171=44 Bom L R 666=A.I.R.1942 Bom 279.

——S. 6 C and 6-M—*Scope—Question whether property is wakf and if so for what purpose—Reference to wakf—Committee for investigation and report—Jurisdiction of Court to make.*

The question whether certain property is wakf property is one of the matters which the Court can inquire into under S. 6oC of the Mussalman Wakf Act as amended by Bombay Amendment Act of 1935, but is not a matter which can be referred to the Wakf Committee under S. 6-M. The Court has therefore no jurisdiction to refer to the Wakf Committee for investigation and report the question whether a property is wakf property and if so for what purpose. (*Beaumont C.J. and Wadia J.*) EMPEROR *v* ALI MAHOMED ADAMALLI. I L.R. (1942) Bom 240=200 I.C. 852 =15 R.B. 61=43 Cr L.J. 726=44 Bom.L.R. 231= A.I.R. 1942 Bom. 152.

——S. 6-F—*Applicability—Notice under S. 10-B and R. 26—No specification as to inquiry being held under S. 6-C—Effect—Findings recorded—Finality.*

Where a notice issued to an accused person under S. 10-B and R. 26 of the Mussalman Wakf Act as amended by the Bombay Amendment Act of 1935, does not specify that an inquiry under S. 6-C of the Act is being held, it is open to the accused to say that he had no idea that an inquiry under S 6-C was being held, and the findings recorded by the Judge in respect of the matter cannot be considered to be final within the meaning of S. 6-F of the Act. (*Beaumont, C.J and Wadia, J.*) EMPEROR *v.* ALI MAHOMED ADAMALLI. I.L.R. (1942) Bom. 240=200 I C. 852=15 R.B. 61=43 Cr. L.J. 726=44 Bom L.R. 231=A.I.R. 1942 Bom. 152.

——S. 6-M (2)—*Inquiry—Scope of—Power of Court to accept evidence filed before committee and documents not proved before Committee—Duty to hear accused and take evidence.*

Where the Wakf Committee to which a matter has been referred by the Court under S. 6-M of the Mussalmah Wakf Act, as amended by the Bombay Amendment Act of 1935 makes a report to the Court after making an inquiry, and the matter again comes before the Court, it is not competent to the Judge to accept evidence which had been filed before the committee or documents which have not been proved. Evidence given before the committee is not made evidence in proceedings before the Court and the Judge should therefore hear the accused and take evidence himself. (*Beaumont, C. J. and Wadia J.*) EMPEROR *v.* ALI MAHOMED ADAMALLI. I.L.R. (1942) Bom. 240= 200 I.C. 852=15 R.B. 61=43 Cr.L.J. 726=44 Bom. L R. 231=A.I.R. 1942 Bom. 152

——S 10—Jurisdiction to punish offence—District Court—If empowered—Plea that property is not wakf—Jurisdiction to hold enquiry—Cr. P. Code, S. 29. *See* 1941 Dig., Col. 892. SYED ISMAIL SAHIB *v* ETHIKA SHA SARQURU. I L R. (1942) Mad 143=200 I.C. 587=15 R.M. 94=(1941) 2 M.L J 541

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913), S. 3—*Scope and effect of—"Family"—Meaning—Wakf for benefit of settlor's family, children and descendants—Invalid bequests in favour of remote relations—Effect of—Ultimate bequest to charity—Validity.*

In order that a beneficiary under a wakf can claim the protection under the Mussalman Wakf Validating Act of 1913, he must establish that he falls in one of the three categories mentioned in the Act, *viz.*, (1) the family of the settlor; (2) the children of the settlor; (3) the descendants of the settlor. "Family" in S. 3 of the Act would include (1) all those persons residing in the same house as the settlor and dependent upon him for maintenance and (2) all those connected with the settlor through a common progenitor or by ties of common lineage. In order to come within the purview of the Act, every person benefitted by the wakf, however remote in time from the settlor himself, must be in a position to trace his descent from a progenitor common to himself and the settlor. In the case of a wakf created for the benefit of the settlor's family, children or descendants, if there are further dispositions in it in favour of remote relations which are void, the ultimate gift to charity must also be held to be void and cannot be given effect to. (*Chagla, J.*) ISMAIL HAJI ARAT *v.* UMAR ABDULLA. I.L.R. (1942) Bom. 441=201 I.C. 34=15 R.B. 51=44 Bom.L.R 256=A.I.R. 1942 Bom 155.

MYSORE C. P. CODE (1911), S. 11.

——S 3, Proviso—Effect of—Ultimate gift to "Proper acts of charity"—Validity of wakf. *See* 1941 Dig. Col. 893 MAHOMED HASHIM ALI KHAN *v* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392=15 R. C. 7=46 C W.N 561=A.I.R 1942 Cal. 180.

MUTATION—*Entries in—Corrections by another mutation—Permissibility.*

No doubt entries which were incorporated in jamabandi should not be varied except on the basis of an obvious clerical error or patent fact. This however, does not absolve collectors from their duty in regard to the Punjab Alienation of Land Act, and if the mutation is found to offend against the Act, it can be still corrected by simple mutation proceedings. (*Garbett, F. C.*) BABU *v.* SHERA. 21 Lah L T. 4.

MYSORE CITY MUNICIPALITIES ACT (VII OF 1933), Ss 76, 102 and R. 11—*Construction and scope—Purchaser of property—Liability for arrears of tax prior to purchase.*

S. 76 of the Mysore City Municipalities Act cannot be construed as making an owner of a property personally liable for all the arrears of taxes that have accrued due prior to his becoming the owner thereof; nor have S. 102 and R. 11 of the Rules framed under the Act that effect. (*Nagesvara Iyer and Subrahmanya Iyer, JJ.*) BALADASAPPA *v.* SURYANARAYANA RAO. 20 Mys.L. J. 138.

MYSORE CIVIL COURTS ACT (I OF 1883), S. 11—*Partition—Suit by Hindu co-parcener—Valuation for jurisdiction.*

A suit by a co-parcener of a Hindu joint family must be valued for jurisdiction not on the value of the plaintiff's share, but on the value of the whole property of the coparcenary, calculated in accordance with the provisions of S 11 of the Mysore Civil Courts Act. (*Chief Justice and Subrahmanya Aiyar J.*) ANANTAGUPTA *v.* SRIRANGIAH SETTY. 19 Mys.L.J. 446= 46 Mys H C.R. 714.

MYSORE CIVIL PROCEDURE CODE (III OF 1911), S. 9—*Scope—Co-operative Societies Act—Award of Deputy Registrar—Suit to declare* ultra vires—*Jurisdiction of Civil Court—If barred.*

S. 9, C.P. Code, is no bar to a suit in the Civil Court to declare that the decision or award made by the Deputy Registrar of Co-operative Societies under S.43-A of the Mysore Co-operative Societies Act is *ultra vires* and illegal (*Nagesvara Iyer and Subramania Aiyar, JJ.*) VIDURASWATHA NARAYANASWAMI CO OPERATIVE SOCIETY, LTD. *v* NAGAIAH REDDY. 46 Mys. H C R 683=20 Mys L.J. 276.

—— S. 11—*Finding or observation on question which is not before Court—If operates as* res judicata.

MYSORE C. P. CODE (1911), S. 11.

Where a question is not before the Court trying a suit or proceeding, any observation or finding made or given by the Court on such a question cannot operate as *res judicata* in a later suit or proceeding. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) SREERANGACHAR *v.* JOSYER. **19 Mys L.J 426=46 Mys.H.C.R. 335.**

——**S. 11**—*Issue not arising in prior suit—Decision not necessary for prior suit and not actually given*—Res judicata.

Where the prior suit had nothing to do with the point in issue, and there was no need to adjudicate on that point in that suit, and the judgment in that suit does not also profess to decide it, it cannot be said that the point was directly and substantially in issue in the prior suit, so as to operate as *res judicata* in a subsequent suit between the parties. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) GUBBI HUCHAPPA *v.* SIDDAMMA. **46 Mys.H C.R. 319.**

——**S. 11**—Prior suit for declaration of title to land as owner—Dismissal—Subsequent suit for declaration of right of easements—If barred. *See* 1941 Dig., Col. 897. RAMAMURTHI *v.* NARASAMMA. **46 Mys.H.C. R. 621.**

——**S. 11**—Res judicata *and estoppel—Distinction.*

Res judicata and estoppel are essentially distinct. *Res judicata* prohibits an inquiry *in limine*, whilst estoppel is only a piece of evidence and prevents a man from saying one thing at one time and the opposite of it at another time. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) GUBBI HUCHAPPA *v.* SIDDAMMA. **46 Mys.H C.R. 319.**

——**S. 11**—*Waiver—Omission to raise plea of* res judicata—*Effect.*

The plea of *res judicata* does not affect the jurisdiction of the Court as it is merely a plea in bar which a party may waive. If a party does not raise a plea of *res judicata*, it will be deemed to be a matter directly and substantially in issue and decided against him. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) GUBBI HUCHAPPA *v.* SIDDAMMA. **46 Mys.H.C.R. 319.**

——**S. 47**—*Appeal—O. 21, R. 95—Application by decree-holder purchaser for delivery of possession from legal representative of judgment-debtor—Order allowing—Appealability—Revision—Competency—C.P. Code, S. 115.*

An order passed on an application by a decree-holder auction-purchaser under O. 21, R. 95, C.P. Code, directing delivery of possession of property to the purchaser from the legal representatives of the judgment debtor who are in possession, falls under S. 47, C. P. Code, and is appealable. The order is therefore not subject to revision. (*Venkataranga Iyengar, J.*) SUNTAPPA *v.* HONNURAPPA. **9 Mys L J. 478.**

——**S. 47**—*Appeal—Orders under O. 21, Rr. 98 and 99—Obstruction to delivery by stranger at instigation of judgment-debtor—Order against obstructor—Appeal Remedy.*

Where an order is made under O. 21, R. 98, C. P. Code, not against a judgment-debtor or his representative, but against some person found to have been obstructing delivery at the instigation of the judgment-debtor, the order is not one coming within the purview of S. 47, C. P. Code, and is therefore not appealable. In such a case the only remedy of the obstructor against whom the order is made is to proceed by way of a suit as provided for in O. 21. R. 103, C. P. Code. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) ARIKESWARACHARI *v.* BALE BHADRASETTY. **20 Mys.L.J. 22.**

——**S. 47**—*Appeal—Partition decree under Partition Act—Sale in pursuance of—Stranger auction purchaser—Obstruction to delivery by representative of one judgment-debtor—Application for removal—Order on—Appealability.*

A stranger auction-purchaser of immovable property at a Court-sale held in pursuance of a partition decree under the Partition Act is a representative not only of the judgment-debtor but also of the decree-holder. When such purchaser is resisted or obstructed in obtaining delivery of possession by a representative of the judgment-debtor, the dispute is one which falls under S. 47, C.P. Code, and hence an appeal lies against the order passed on the application of the purchaser for removal of obstruction. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) MAHADEVA RAO *v.* NARASIMAIAH. **20 Mys.L.J. 247.**

——**S. 60**—Bonus—Insurance amount payable to Government officer on policy taken out by him in Mysore State Life Insurance office—Liability to attachment—Insolvency of officer—Official Receiver's right to claim such amount. *See* MYSORE INSOLVENCY ACT, S. 28 (5). **20 Mys.L.J 325.**

MYSORE C. P. CODE (1911), S. 149.

——**S. 100**—*Finding of fact—Conclusiveness—If can be reopened.*

A concurrent finding of fact that the plaintiff failed to prove that he was in possession of the suit property within 12 years before suit is conclusive and is not liable to be reopened in second appeal especially when at the time of admitting the second appeal the appellant was confined to a particular question of law. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) RANASWAMIAH *v.* ADIRAJIAH. **19 Mys L J. 407=46 Mys.H. C.R. 611.**

——**S. 100**—*Finding of fact—Finding unsupported by evidence—If conclusive.*

A finding of fact which is not supported by any evidence cannot be upheld in second appeal. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) GANGAHANUMIAH *v.* NARAYANA SETTY. **20 Mys.L.J. 286.**

——**S. 115**—Applicability—Application under O. 21, R. 95 for possession to decree-holder purchaser from legal representative of judgment-debtor—Order directing delivery—Remedy of aggrieved party—Revision—Competency—Appeal. *See* MYS. C. P. CODE, S. 47. **19 Mys.L.J. 478.**

——**S. 149**—*Construction and scope of—Application for leave to sue as pauper—Dismissal—Power of Court to grant time for payment of court-fee extending beyond period of limitation for suit.*

There can be no doubt that S. 149, C. P. Code, is wide enough to give a judge a discretion to allow an applicant for leave to sue *in forma pauperis*, whose application is eventually dismissed, a reasonable time to pay the court-fee, so that, even though that time extends beyond the period of limitation for the suit if the court fee is paid within that time, it will be deemed to have been paid on the date on which the application for leave to sue as pauper was originally presented. This general power given by S. 149 is not in any way restricted by anything contained in any of the rules of O. 33, C. P. Code, whether express or implied. (*Reilly, C.J. and Singaravelu Mudaliar, J.*) NAGARAJA RAO *v.* KRISHNASWAMI RAO. **20 Mys.L.J. 296.**

——**S. 149**—*Scope—If controlled by rules in Sch. I.*

It is not permissible to attempt to control the interpretation of S. 149. C. P. Code, by the language of any rule in Schedule I of the Code. The rules in Sch. I can be annulled or amended by the High Court with the sanction of the executive government, and the language used in any of those rules cannot reasonably be held to control the language used by the Legislature in the body of the Code containing S. 149. (*Reilly, C.J. and Sin-*

MYSORE C. P. CODE (1911), 151.

garavelu Mudaliar J.) NAGARAJA RAO *v.* KRISHNASWAMI RAO. 20 Mys.L.J 296.

——**S. 151 and O. 41, R. 25**—*Remand—Powers of Court—Remand for trial of issue framed by Court on new case raised by Court—Legality—Remand set aside in appeal from final decree—Further proceedings after remand—Validity of.*

An order of remand for recording a finding on an issue which the Court frames in appeal without any basis or justification, the issue being inconsistent with the case pleaded by the parties in the trial Court, cannot be supported. It is not necessary for the party aggrieved to challenge the order at the stage at which it is made. He can do so in the appeal from the final decision. If the remand order, is set aside in the appeal, all further proceedings after the remand are of no effect and have to be quashed. (*Abdul Ghani and Subrahmanya Aiyar, JJ.*) BASKARIAH *v.* CHENNABASAPPA. 46 Mys. H.C.R. 539=20 Mys L.J. 17.

——**O. 6, R 17 and O. 7, R. 11**—*Scope—If to be read together—Plaint stamped with deficient Court-fee—Defect not noticed by Court—Appellate Court noting defect and permitting amendment to limit claim to amount paid—Propriety.*

A plaint in a suit to recover a sum of Rs. 400 was presented in time with a Court-fee of only Rs. 15, though it required a Court-fee stamp of Rs. 40. It was stated in the plaint that the balance would be paid later. The deficiency in stamp was not, however, noticed in the trial Court. The deficiency was, however, made up by the plaintiff later, but on that date the suit would be barred by limitation. Even this was not noticed in the trial Court by any one. The suit was dismissed, but on appeal the appellate Court which reversed the dismissal noticed the defect in the payment of Court-fee. The plaintiff then applied for leave to amend the plaint so as to restrict his claim to so much amount as would be covered by the Court-fee originally paid. This was allowed by that Court and the plaintiff was given a decree for Rs. 150, the amount covered by the Court-fee paid originally within the period of limitation. It was contended in second appeal that the whole suit was barred and should have been dismissed.

Held, (1) that though it was expressly stated in the plaint that only a part of the Court-fee had been paid, the procedure laid down by O. 7, R 11, C.P. Code, was not followed, and the plaintiff was not given an opportunity as required by the rule; (2) that O. 7, R. 11, must be read with O. 6, R. 17, C.P. Code, and the lower appellate Court was therefore competent to allow the plaintiff to amend his plaint in the way he did; and the procedure adopted by the Court was therefore correct. (*Nagesvara Iyer and Subramania Iyer, JJ.*) VENKATARAMIAH *v.* NARASIMAIAH. 20 Mys.L.J. 255.

——**O. 7, R. 11**—Scope—If to be read with O. 6, R. 17—Omission to note deficiency in Court fee and to give time to make up deficiency—Amendment in appeal to limit claim to amount covered by Court-fee paid originally—Propriety. *See* MYSORE C.P. CODE, O. 6, R. 17 AND O. 7, R. 11. 20 Mys.L.J. 255.

——**O. 8 R. 2**—*Scope—Plea as to maintainability of suit—Failure to take in written statement—If fatal—Duty of Court to non-suit plaintiff when he fails to make out cause of action or right to sue.*

O. 8, R. 2, C. P. Code, is no doubt a sound rule of pleading in cases where a plea in regard to maintainability of a suit has to be raised. But there are cases where a plaintiff comes forward with a particular right to sue or a claim alleging certain facts constituting his cause of action. In such cases, if the Court finds that the plaintiff has not the right or the cause of action that he alleges, there is no reason why the Court should allow him to succeed even though the defendant has not taken the plea that the suit is not maintainable. The Court should non-suit the plaintiff. It is not strictly a question in regard to the maintainability of the suit, but one relating to the plaintiff's cause of action or his right to sue. (*Abdul Ghani and Subramanya Aiyar, JJ.*) VENKIAH & BROS. *v.* GUPTA. 20 Mys.L J. 194.

MYSORE C. P. CODE (1911), O. 22.

——**O. 20, R. 12**—Court-fee—Application for ascertainment of mesne profits—Dismissal—Appeal—If one against order in execution—Court-fee payable *See* MYSORE COURT-FEES ACT, SCH. II, ART. 11-B. 46 Mys.H.C.R. 398.

——**O. 20, R. 12**—Duty of Court—Direction as to mesne profits in preliminary decree—Ascertainment of profits—Duty of Court to start proceedings—Application by party—If necessary—Limitation. *See* MYSORE LIMITATION ACT, ART. 181. 20 Mys L.J. 281.

——**(as amended in 1933), O. 21, R. 57**—*Applicability—Dismissal of application after attachment—When terminates.*

Under O. 21, R. 57, C. P. Code, as amended in 1933, the Court is required to direct whether the attachment shall continue or shall cease; and the rule does not specifically say that in the absence of an order directing that the attachment shall subsist the attachment shall cease. Two conditions are necessary to attract the rule, viz., (1) there should be some default on the part of the decree-holder; (2) on account of such default the Court must be unable to proceed further with the application for execution. In execution of a decree a house of the judgment-debtor was attached and the application was dismissed with the direction that the attachment "shall subsist." The decree-holder filed another application within a fortnight praying for sale of the attached property, but the Court erroneously dismissed the application on the ground of non-payment of process-fee.

Held, that O. 21, r. 57 did not apply and there having been no default, the attachment did not cease on the dismissal of the first execution application. (*Nagesvara Iyer and Singaravelu Mudaliar, JJ.*) KESHAVA RAO *v.* GUDIAPPA. 20 Mys.L.J. 145

——**O. 21, R. 103**—Applicability and scope—Order under O. 21, Rr. 98 or 99 against stranger obstructing delivery at instigation of judment debtor—Remedy—Appeal—Maintainability—S. 47. *See* MYSORE CIVIL PROCEDURE CODE, S. 47. 20 Mys.L.J. 22.

——**O. 22**—*Legal representative—Wrong legal representative impleaded—Decree or order against such person—True legal representative—When bound—Conditions of validity of order.*

Prima facie no person can be held bound by a decree or order to which neither he nor the person from whom he claims was a party. But in certain circumstances a person who is impleaded as the legal representative of another, which he is not, in a suit or in execution proceedings, sufficiently represents the estate with the result that a decree or order which is passed against him in an assumed representative character is held to be binding on the true representative though the latter was no party to the same. But for such representation to be effective, one of the essential conditions is that the plaintiff or decree holder must have acted *bona fide*, *i.e.*, not only in good faith but also with due care and caution, and honestly. Secondly, the decree or order must be free from any taint of fraud or collusion. It must also be clear from the proceedings that the person is impleaded in a representative capacity and that the decree or order is passed against him as representing the estate of the deceased. A person who is *prima facie* the heir at law to a deceased person may and ought to be presumed to be his

MYSORE C. P. CODE (1911), O 31, R. 2.

legal representative for the purpose of the suit or execution proceedings and may be impleaded as such unless the plaintiff or decree-holder is aware of facts which displace the title of the heir-at-law. If in ignorance of such facts he impleads the heir at law as the legal representative on the suit either before or after the decree, and the person having the real title does not intervene during the pendency of the suit or the execution proceedings, the decree or order will be binding on him unless he makes out any fraud or collusion in obtaining the same. When any question is raised in the suit or execution proceedings as to whether the person impleaded is the legal representative and the Court trying the suit or conducting the execution proceedings decides that he is the legal representative, such a decision, even if erroneous, operates to confer on him that character for the purpose or the suit or proceedings. (*Nageswara Iyer and Singaravelu Mudaliar, JJ.*) RUDRIAH *v.* VEERAMMA. **20 Mys. L.J. 313.**

——**O. 31, R. 2**—Scope—Mandatory character of—Suit against trust—All trustees not made parties—Effect—Decree—If binds trust. *See* 1941 Dig., Col. 901. RAMASWAMIAH *v.* JAIN BRAHMIN BOARDING HOME, MYSORE. **46 Mys H.C.R. 667.**

——**O. 32**—*Applicability- Execution proceedings—Failure of guardian to raise objections to execution—Sale—If affected—Right of minor to impeach.*

The provisions contained in O. 32, C. P. Code, do not directly apply to proceedings in execution; and the non-representation of a minor by a guardian *ad litem* in execution proceedings is not in itself sufficient to set aside an execution sale. Therefore the negligence of a properly appointed guardian *ad litem* in not raising a plea in execution cannot affect the validity of the sale, particularly when the purchaser at such sale is a stranger who has acted *bona fide*. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) KARIYAPPA *v.* BHARMAPPA. **46 Mys.H.C.R. 592=19 Mys.L.J. 414.**

——**O. 33, R. 15**—*Applicability—Rejection of application for leave to sue as pauper—Time allowed for payment of court fee—Costs ordered to defendant—Payment of court fee in time—Non payment of costs—If bars suit.*

O. 33, R. 15 refers to an applicant who has not obtained the leave he has asked for to sue as a pauper, being at liberty to institute a suit in the ordinary manner, if he can do so, within the period of limitation. The rule does not apply to a case in which an applicant for leave to sue as a pauper is allowed by discretionary order of the Court time to pay his court-fee on the plaint, after the period of limitation has expired, by virtue of an order under S. 149, C.P Code. R. 15 applies to other circumstances, when an applicant who has not got the leave he has asked, still has got time to file his suit in the ordinary way within the period of limitation. Where an applicant whose application for leave to sue as a pauper is refused but who is allowed time for payment of court-fee, fails to pay the costs ordered to be paid by him within that time, such failure will not bar his suit when he has paid within the time allowed the court-fee on the plaint. (*Reilly, C.J. and Singaravelu Mudaliar, J.*) NAGARAJA RAO *v.* KRISHNASWAMI RAO. **20 Mys. L.J. 296.**

——**O. 41, R. 27**—*Additional evidence—Power of appellate Court to admit—Evidence taken with consent of both parties—If can be objected to in second appeal.*

When there is a lacuna or defect in the procedure adopted by the trial Court, and fresh evidence is necessary to enable the appellate Court to pronounce judgment, the appellate Court is not wrong in allowing the parties to adduce fresh additional evidence in appeal. And when such additional evidence has been taken with the consent of both parties, it is not open to either party to complain of it in second appeal. (*Abdul Ghani and Subramanya Ajyar, JJ.*) VENKIAH AND BROTHERS *v.* GUPTA. **20 Mys.L J. 194.**

MYSORE CO-OP. SOC. ACT (1918), S. 43-A.

——**O. 47, R. 1**—*"Person aggrieved"—Meaning of—Person not party to decree or order—Right to apply for review of such order.*

A person not a party to a decree or order can have no legal grievance against such a decree or order and cannot therefore apply for review of such a decree or order as he is not a "person aggrieved." (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) SRINIVASA PRABHU *v.* RANGANATHA PUNJA. **20 Mys. L J. 301.**

——**Sch. I**—Scope—Rules in—If control body of Code. *See* MYS C.P. CODE, S. 149. **20 Mys. L.J. 296.**

MYSORE COMPANIES ACT (XVIII OF 1938), S. 79 (1) (d)—*Construction—Proxy for election of director—Attestation of instrument—Necessity—Provision in Articles of Association requiring attestation—Effect S. 79 (2) (f)—Scope.*

S. 79 (1) (*d*) of the Mysore Companies Act of 1938 has to be interpreted as making attestation of instrument of proxy unnecessary, even it required by the Articles of Association of the company concerned. It cannot be interpreted so as to confine its application to the form or wording of an instrument appointing a proxy; and under the new Act, therefore, an instrument appointing a proxy for the election of a director of a company does not require any attestation at all by virtue of S. 79 (1) (*d*) of the Act. Nor does S. 79 (2) (*f*) cut down the plain meaning of S. 79 (1) (*d*). (*Reilly, C.J. and Abdul Ghani, J.*) LAKSHMINARANAPPA *v.* MALAPPA. **46 Mys.H.C.R. 696=20 Mys L.J. 117.**

——**S 79 (2) (f)**—Scope—If controls S. 79 (1) (*d*). *See* MYSORE COMPANIES ACT, S. 79 (1) (*d*). **20 Mys. L.J. 117.**

——**S. 271 (3)**—*Construction and scope—Foreign company having branch in Mysore—Official liquidator appointed by Foreign Court in winding up proceedings in foreign State—Right to represent company in Mysore Court in proceedings for recovery of debts and assets due to company.*

The provision in S. 271 (3) of the Mysore Companies Act is only an enabling and not a disabling provision. A company incorporated in a foreign country can sue for relief in a Mysore Court; and a liquidator appointed by a foreign Court according to the law of the foreign country concerned can take proceedings in a Mysore Court as the representative of such a company for the recovery of debts due to the company and for realisation of assets due to the company from persons in the Mysore State. So long as such a company is not being wound up in Mysore under the orders of a Mysore Court, neither the fact that the company has been carrying on business within the limits of the Mysore State in the past, having a branch therein, nor the permissive provisions of S. 271 of the Mysore Companies Act would make any difference. (*Reilley, C. J., Abdul Ghani and Singaravelu Mudaliar, JJ.*) BANGALORE BANK. LTD *v.* HANUMAPPA 20 **Mys.L.J 261 (F.B.).**

MYSORE CO OPERATIVE SOCIETIES ACT (VII OF 1918). S. 43-A—Scope—Jurisdiction of Civil Court—Suit to declare award of Deputy Registrar *ultra vires*—Not barred. *See* MYSORE C P. CODE, S. 9. **46 Mys.H.C R 683.**

——**S. 43-A (1) (c)**—*"Officer"—If includes past officer—Dispute between society and ex-secretary—Jurisdiction to decide.*

S. 43-A of the Co operative Societies Act was not intended to cover and does not in fact cover disputes

MYSORE COURT-FEES ACT (1900), Sch. II.

between a Co-operative Society and its past officers, such as an ex-secretary. The Registrar or Deputy Registrar has therefore no jurisdiction under S. 43 A to decide such a dispute. (*Nagesvara Iyer and Subramania Aiyar, JJ.*) VIDURASWATHA NARAYANASWAMI CO-OPERATIVE SOCIETY, LTD. *v.* NAGAIAH REDDY. 20 Mys L J 276=46 Mys.H.C.R. 683.

MYSORE COURT-FEES ACT (III OF 1900). Sch. II, Art. 11 B—*Applicability—Application for ascertainment of mesne profits under O. 20, R. 12, C. P. Code—Dismissal on ground that decree did not award mesne profits—Appeal—Court-fee payable—If one under S. 47, C. P. Code, or from decree.*

Where in a partition suit an application is made under O. 20, R. 12, C. P. Code, for ascertainment of mesne profits and is dismissed on the ground that the decree did not direct an inquiry into or award of mesne profits, an appeal from such order of dismissal does not fall under Art. 11-B of Sch. II, of the Court-Fees Act. The appellant who challenges the order refusing him relief must pay *ad valorem* Court-fee on the amount claimed by him as mesne profits. The appeal is one against an order which amounts to a decree and not an order in the execution department. (*Nagesvara Iyer and Venkataranga Iyengar, JJ.*) VARADIAH *v.* VARADIAH. 20 Mys.L.J. 109=46 Mys H C R. 398.

——**Sch. II, Art. 11-B**—*Scope—Partition suit—Preliminary decree—Absence of direction for mesne profits—Appeal claiming direction—Court-fee payable*—Ad valorem *fee—Mesne profits prior to and after suit—Distinction.*

Where, in a partition suit, the Court making the preliminary decree does not direct an inquiry as to mesne profits either before or after suit, and an appeal is preferred claiming that such a direction should have been given in the decrees, it is not enough for the appellant to pay Court-fee as provided by Art. 11-B of Sch. II of the Court-Fees Act. The appellant has to put a valuation on the claim for mesne profits prior to suit and pay *ad valorem* Court-fee thereon; and in respect of mesne profits after suit, Court-fee has to be paid under Art. 11-B of Sch. II of the Court-Fees Act. (*Nagesvara Iyer and Venkataranga Iyengar, JJ.*) VARADIAH *v.* VARADIAH. 20 Mys.L.J. 109=46 Mys H.C.R. 398.

MYSORE CRIMINAL PROCEDURE CODE (II OF 1904), (as amended in 1935), S. 123 (3)—*Duty of Sessions Judge to write independent judgment—Order merely confirming order of Magistrate—Legality*—*S.* 367 (6).

The order of a Sessions Judge under S. 123 (3), Cr. P. Code, should be independent of the order of the Magistrate who refers the case to him under S. 123 (2), Cr. P. Code. It is not enough for him to say that the order is "confirmed". That is not in accordance with S. 367 (6) of the Code, under which the order under S. 123 (3) is deemed a judgment. (*Singaravelu Mudaliar, J.*) BHANGI RAMA *v.* GOVERNMENT OF MYSORE. 19 Mys.L.J. 384.

——**(as amended in 1927), S. 162**—Scope—If affects or abrogates S. 27, Evidence Act. *See* EVIDENCE ACT, S. 27. 20 Mys.L.J. 367.

——**S. 188**—*Applicability—"Mysore"—Civil and Military Station of Bangalore—If "without and beyond the limits of Mysore".*

"Mysore" in the Code of Criminal Procedure means territories of His Highness the Maharaja excluding the tract known as the Civil and Military Station of Bangalore. Though that tract is undoubtedly part of the territories of His Highness, it is a place without and beyond the limits of Mysore within the meaning of S. 188, Cr. P. Code. (*Reilly, C. J and Singaravelu Mudaliar, J.*) VENKATARANGA IYENGAR, *In the case of.* 20 Mys.L.J. 73=46 Mys.H.C.R. 435.

MYSORE CR. P. CODE (1904), S. 209.

——**S. 188, proviso**—*Applicability—Offence committed by subject of Mysore State in Civil and Military Station of Bangalore—If one for which extradition can be demanded.*

The proviso to S. 188, Cr. P. Code, does not apply to the case of an offence committed by a subject of His Highness The Maharaja of Mysore within the limits of the Civil and Military Station of Bangalore. The Civil and Military Station of Bangalore is not part of the dominions of His Majesty the King-Emperor. Though such an offence is one for which the offender may be tried by a Court of the Civil and Military Station of Bangalore, it is not an offence for which the British Government can demand his extradition from the part of the territories of His Highness The Maharaja in which he lives, under the proviso to S. 188. (*Reilly, C. J. and Singaravelu Mudaliar, J.*) VENKATARANGA IYENGAR, *In the case of.* 20 Mys.L.J. 73=46 Mys. H.C.R. 435.

——**S. 188, proviso**—*Construction—"Charge"—Meaning of—"Enquiry"—If includes preliminary inquiry before charge is framed.*

When the proviso to S. 188, Cr. P. Code, says "no charge as to any such offence shall be enquired into," it means that no "accusation" shall be "enquired into" in the sense of taking the evidence preliminary to the framing of a charge. (*Reilly, C.J. and Singaravelu Mudaliar, J.*) VENKATARANGA IYENGAR, *In the case of.* 20 Mys.L.J. 73=46 Mys H.C.R. 435.

——**S. 195 (1) (b)**—*Construction—Court taking cognizance of case—Subsequent events—If can deprive Court of jurisdiction to continue case.*

There is nothing in S. 195, Cr. P. Code, to have the effect, if cognizance has once been properly taken by a Court, of undoing that cognizance. S. 195, Cr. P. Code provides prohibitions that no Court shall take cognizance of an offence if certain things have happened before that point of time and not that a Court shall cease to have cognizance of an offence of which it has already taken cognizance if certain things subsequently happen. It is of course necessary that the "proceeding in Court" referred to in S. 195 (1) (*b*) should be actually instituted before the Criminal Court is asked to take cognizance of the offence. If it is not there is nothing in S. 195 to prevent the Court from taking cognizance of the case. Once the Court has lawfully taken cognizance of the case, its jurisdiction is not affected by the subsequent coming into existence of a circumstance which would have barred its jurisdiction if it had existed at the time of institution. (*Reilly, C.J. and Singaravelu Mudaliar, J.*) VENKATARANGA IYENGAR, *In the case of.* 46 Mys.H.C.R. 435=20 Mys.L.J. 73.

——**S. 195 (1) (c)**—*Applicability—Document produced by person not party to proceeding in which it is produced—Complaint by Court—Necessity.*

In order that S. 195 (1) (*c*) may apply to an offence in respect of a document produced or given in evidence in a proceeding, the document must have been produced by a party to that proceeding. Where the alleged offender who produced the document in question is not a party to the proceeding in Court in which it is produced, the clause does not apply, and a complaint by the Court is not necessary for the prosecution of the offender. (*Reilly, C.J. and Singaravelu Mudaliar, J.*) VENKATARANGA IYENGAR, *In the case of.* 20 Mys.L.J. 73=46 Mys.H.C.R. 435.

——**S. 209**—*Order of discharge—Express order—Necessity.*

MYSORE CR. P. CODE (1904), S. 344.

Although there is no judicial order expressly discharging an accused of an offence under S. 209, Cr. P. Code, a discharge can be implied or presumed from the circumstances. When a Magistrate expresses his opinion that no offence is made out, it is in substance an order of discharge, and a discharge can be implied. (*Abdul Ghani, Offg. C J. and Venkataranga Iyengar, J.*) BHAGYAMMA, *In re.* **46 Mys.H.C.R. 365=19 Mys. L.J. 461.**

——**S. 344**—"*Any other reasonable cause*"—*Pendency of civil suit—Discretion of magistrate to stay proceedings.*

There is no specific reference in S. 344, Cr. P. Code, which empowers a Magistrate or a Criminal Court to postpone the commencement of, or adjourn any inquiry or trial, to any civil suit or litigation in which the same or a similar question is being agitated as a ground to postpone or adjourn the proceedings in the Griminal Court. But the words "any other reasonable cause" in S. 344 include a civil litigation within certain circumscribed limits. A Magistrate or a Criminal Court has therefore discretion to stay the criminal proceedings in proper cases where the same matter is in litigation in a Civil Court. There can be no doubt that criminal proceedings launched or prosecuted with a view to coerce the opposite party to come to terms or to prejudice the trial of the civil suit ought to be stayed. The discretion to stay may be confined to cases where the Civil Court can give a final adjudication in respect of purely civil rights or rights to property—rights which a Criminal Court cannot finally adjudicate upon. In other cases a stay of proceedings is not called for, though the issues on the questions of fact that should be decided are the same in both. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) SYED ISMAIL *v.* THE BANGALORE CITY MUNICIPALITY. **19 Mys.L.J. 387=46 Mys.H.C.R. 639.**

——**Ss. 346 (2) and 350 (2) and (3)**—*Scope and effect of—Magistrate recording evidence and submitting case to District Magistrate for transfer to competent Magistrate—Transfer to another—Latter acting on evidence already recorded and ordering committal to Court of Session—Legality of.*

It is a general principle of criminal law that it is only an authority who has heard all the evidence in the case that is competent to decide whether the accused is innocent or guilty. The Cr.P. Code, however, makes an exception in Ss. 349 and 350. S. 350, which permits a Magistrate succeeding another Magistrate acting on the evidence recorded by his predecessor expressly excepts proceedings under S 346 from its operation. (This applies also to cases transferred from one Magistrate to another). The Magistrate to whom a case is submitted under S. 346 (1) or to whom a case is transferred under S. 346 (2) cannot act on the evidence recorded by the submitting Magistrate, but must, if he tries the case, try *de novo*. If the District Magistrate to whom a case is submitted under S. 346, refers the case to a Subordinate Magistrate for trial, the latter must try the case *de novo* and not act on the evidence already recorded by the Magistrate who submitted the case to the District Magistrate. Nor can he usurp the place of the District Magistrate to whom the report was made by the original Magistrate, even for purposes of commitment. If he commits the accused for trial to the Court of Session on the evidence recorded by the Magistrate who submitted the case to the District Magistrate, the committal is illegal and must be quashed. S. 350 (3), Cr. P Code, should be read with S. 350 (2) and should be treated as being governed by sub-S. (2), and should not be interpreted so as to run counter to S. 350 (2). (*Abdul Ghani, Offg. C. J. and Venkataranga Iyengar, J.*) BHAGYAMMA, *In re.* **19 Mys.L.J. 461=46 Mys.H. C R. 365.**

——**Ss. 348 and 349**—Applicability and construction—Second Class Magistrate finding accused guilty—Accused previously convicted and deserving sentence beyond Magistrate's powers — Proper procedure—If bound to commit to Court of Session. *See* 1941 Dig., Col. 903. ABDUL KHADER, *In the case of.* **46 Mys. H C.R 408**

——**(as amended in 1935), S. 367 (6)**—Scope—Case referred to Sessions Judge under S. 123 (2)—Duty of Sessions Judge to consider case and come to independent finding. *See* MYS. CR.P. CODE, S. 123 (3). **19 Mys L.J 384.**

MYSORE CRIMINAL RULES OF PRACTICE, VOL I, Ch. XXXVI, R. 2—*Application for transfer of case—Report sent by Magistrate in compliance with direction of High Court—Right of applicant to copy of—Practice.*

Where, in an application for transfer of a criminal case, in order to consider whether the allegations made by the applicant in his affidavit are true, a report has been called for from the Magistrate concerned, such report sent by the Magistrate must be deemed to be a part of the record of the case, and it would be only fair and just that the applicant must have an idea of the answers furnished by the Magistrate concerned in regard to the allegations made for the purpose of having the case transferred to another Court There is no reason why the party applying for transfer should not have a copy of the report in order to meet the statements made by the Magistrate. In practice the High Court should furnish the applicant with a copy of the report.

Quaere.—Whether the report of the Magistrate is a public document within the meaning of S. 74 of the Evidence Act? (*Nagesvara Iyer and Subrahmanya Iyer, JJ.*) JAVARAYYA SETTY *v.* GOVERNMENT OF MYSORE. **46 Mys.H C.R. 403=20 Mys L J. 113.**

MYSORE DISTRICT BOARDS ACT (III OF 1926), S. 87—Applicability—Right to collect tolls at Shandies or market fees—Lease by District Board farming out—Suit for money due under—If one for "any sum due to the District Board under this Regulation etc."—Limitation applicable. *See* 1940 Dig., Col. 943. ABDUL RAHIMAN *v.* BANGALORE DISTRICT BOARD. **46 Mys.H.C.R 356.**

MYSORE GOVERNMENT ACT (XVIII OF 1940)—*Legislative Council Rules, R. 72—Compliance—Declaration in form III that candidate has appointed named person as agent—Sufficiency.*

Where a candidate declares in writing in form III of the first schedule to the Legislative Council Rules under the Government of Mysore Act of 1940 that he has appointed a named person as his agent, that is a sufficient compliance with R. 72 of the Rules. The Rules do not require him to make any further allegation in that matter. (*Reilly, C. J. and Subrahmanya Aiyar, J.*) DVAVE GOWDA *v.* KRISHNA BHATTA. **20 Mys. L.J. 350.**

——*Mysore Legislative Council Rules* (1940), *Rr.* 69 *and* 76—*Form—Notice of candidature—Contents of—Particulars.*

A candidate for an election to the Mysore Legislative Council gave his notice of candidature in form III as required by the Rules. In the 1st compartment headed "name of the constituency," he entered the words "Kadur District." One of the rural constituencies was "Kadur" and the extent of that constituency was the Kadur District, In the 6th compartment, headed

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"denomination" (whether Mahomedan, Indian Christian, European, Anglo Indian or belonging to several community), he entered the word "Hindu".

Held, that the candidate had given sufficient information in both respects and the notice was not defective so as to be liable to be rejected on that ground. (*Reilly, C. J. and Subrahmanya Aiyar, J.*) DYAVE GOWDA *v.* BASAPPA. **20 Mys.L.J. 345.**

——**S. 42**—*Mysore Representative Assembly Rules, Rr.* 89 *and* 90 (1) (*b*)—*Notice of candidate—Failure to give date of birth as required in Form III—Effect—If failure to comply with rules—Rejection of notice of candidature—If improper.*

Under R. 89 of the Mysore Representative Assembly Rules, 1940, framed by the Government under S. 42 of the Government of Mysore Act of 1940, a candidate for a seat in the Representative Assembly has to present a notice of candidature completed in the manner prescribed in Form III. If the candidate fails to give any of the particulars required in that Form, he fails to comply with the provision of R. 89 and therefore the returning officer is entitled to reject such a notice of candidature under R. 96 (1) (*b*) of the Rules. Where in the column in Form III, headed, "Age and Date of Birth" a candidate mentions only his age but does not state the date of his birth, it cannot be said that he has complied with the rule. It is obligatory on a candidate to state the date of his birth as well as his age as it is necessary for him to give all the particulars required in the Form. Where a notice which does not state the date of birth is rejected by the Returning Officer on the ground of failure to comply with a provision of R. 89 under R. 96 (1) (*b*), he cannot be said to act improperly or to exercise his discretion improperly. The returning officer has no power of discretion to ignore such a failure on the part of a candidate to comply with the requirements of the Rules. (*Reilly, C J. and Subramania Iyer, J.*) SIVANANJE GOWDA *v.* KAPANIAH. **20 Mys.L.J. 331.**

MYSORE GOVERNMENT LIFE ASSURANCE DEPARTMENT—Policy of assurance—"Nominee" under—Rights of—If a *cestui que trust*. *See* MYSORE INSURANCE ACT, S. 39. **20 Mys.L.J. 63.**

MYSORE HINDU WOMEN'S RIGHTS ACT (X OF 1933), S. 8 (1) (b) and (c)—Applicability—Partition between uncle and nephew—Mothers of uncle and nephew—Right to shares. *See* 1941 Dig., Col. 905. NAGENDRA SA *v.* RAMAKRISHNA SA. **46 Mys.H.C.R. 503.**

MYSORE INCOME TAX ACT (V OF 1923), Ss. 13 and 23 (3)—Scope—Accounts produced by assessee—If can be rejected and turnover basis adopted—Grounds for—Duty of Income-tax Officer—S. 23 (3)—If excludes proviso to S. 13—Discretion of Income-tax Officer. *See* 1941 Dig., Col. 906. KAPURCHAND & CO. *v* COMMISSIONER OF INCOME-TAX, MYSORE. **46 Mys.H.C.R. 301.**

——**S. 66 (3)**—Question of law—Jurisdiction of High Court to interfere with conclusions of fact. *See* 1941 Dig., Col. 906. KAPURCHAND & CO. *v.* COMMISSIONER OF INCOME-TAX, MYSORE. **46 Mys.H.C.R. 301.**

MYSORE INSOLVENCY ACT (VI OF 1911), S. 4 (1) and (2)—*Scope and effect—Powers of Insolvency Court—Decision of Insolvency Court holding that it has no power to inquire into validity of alienation made more than two years prior to insolvency—Failure to appeal*—Res judicata *in subsequent application to set aside alienation.*

S. 4 (1) of the Insolvency Act gives the Insolvency urt power subject to the provisions of the Act, to

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decide all questions whether of title or priority or of any nature whatsoever. The words "and of any nature whatsoever" are very wide, and are not limited to questions *ejusdem generis* with questions of title or priority. Where an application by an alienee claiming attached property as having been alienated to him about ten years prior to the insolvency of the alienor, the Insolvency Court decides that it is not competent for that Court to inquire, into the validity of the alienation made more than two years prior to the insolvency, such decision is final and binding under S. 4 (2) of the Act and operates as *res judicata*, against the Official Receiver in respect of an application by him to annul the alienation, if he does not challenge the decision in appeal. (*Nagesvara Iyer and Venkataranga Iyengar, JJ.*) CHIKKANARASIMHAIYA *v.* OFFICIAL RECEIVER, BANGALORE DIVISION. **46 Mys.H.C.R. 388.**

——**S. 9**—*Official Receiver appointed by British Indian Court—If representative of creditors or a creditor himself—Right to apply as petitioning creditor or to apply for review of order of dismissal of petition by creditors.*

An Official Receiver is no doubt regarded as a representative of the creditors in an insolvency case. But an Official Receiver appointed by a foreign Court (a British Indian Court) cannot be recognised in Mysore as the representative for the creditors in Mysore, much less as a creditor himself, so as to entitle him to be a petitioning creditor under S. 9 of the Insolvency Act or to entitle him to apply for review of an order dismissing an Insolvency petition by creditors in Mysore to which he himself was no party. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) SRINIVASA PRABHU *v.* RANGANATHA PUNJA. **20 Mys. L J. 301.**

——**S. 28 (5)**—*Applicability—Insurance amount or bonus payable to Government Officer on insurance policy taken in Mysore State Life Insurance Office—If vests in Official Receiver on insolvency of Officer.*

Under S. 60, C.P.Code, insurance amounts called technically 'bonuses' due to Government officers on insurance policies taken out by them in the Official Branch of the Mysore State Life Insurance Office cannot be attached and sold in execution of a decree for a debt due from or contracted by such officers. Such an insurance amount or bonus, either payable to such a Government officer or actully paid to him, is not property which vests in the Official Receiver under S. 28 of the Insolvency Act for the benefit of the creditors in the insolvency, if such officer is adjudged insolvent; it is outside the sphere of a receiver in insolvency altogether. (*Reilly, C.J. and Subramania Aiyar, J.*) DESIKACHAR *v* OFFICIAL RECEIVER, BANGALORE. **20 Mys. L.J. 325.**

——**S. 53**—*Burden of proof—Mahomedan—Sale to wife in consideration of dower due to wife—Part only of dower prompt but major portion deferred—If fraudulent preference and to be set aside as a whole—Sale and mortgage—Distinction.*

A Mohamedan who started business in 1921, received a notice of demand from one of his creditors to whom he was indebted in a sum of about Rs. 28,000. The notice was issued on 12—6—1930 and he received it on 24—6—1930. On the same day he sold a dwelling house belonging to him to his wife for a consideration of Rs. 5 000. The sale deed recited that a sum of Rs. 3,000 was due from him to his wife in repayment of advances made to him by her for the business and that Rs. 2,000 was due to her by way of dower, and that in discharge of these the property was sold to her. It was found on evidence that Rs. 2,000 had been fixed as dower at the time of the marriage but that only Rs. 600

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out of that amount was prompt and that the balance was deferred. It was also found that a sum of Rs. 1,670 had been actually paid by the wife to her husband and that the rest of the consideration stated was fictitious. It was also found that the house was really worth much more than the price fixed in the sale deed. About eight months later, on 8—3—1931, the husband applied in insolvency and was adjudicated. The Official Receiver applied under S. 53 of the Insolvency Act for annulment of the sale.

Held, (1) that the deferred dower due to the alienee (wife) could not be regarded as valuable and *bona fide* consideration for the sale; (2) that the alienation was tainted with fraud and the whole transaction must be set aside and it could not be upheld even to the extent of the consideration found binding and valid; (3) that a distinction has to be made between a sale and a mortgage; whereas a mortgage might be upheld as a valid security to the extent of the debt actually due on the date of the mortgage, a sale must be set aside as a whole if it offends S. 53 of the Insolvency Act even when it is supported by consideration in part. (*Nagesvara Iyer and Subrahmanya Aiyar, JJ.*) NUR-UN-NESA BEGUM SAHIBA *v.* OFFICIAL RECEIVER, BANGALORE. **20 Mys L.J. 52=46 Mys H.C.R. 484.**

——Ss. 54 and 55—*Applicability and scope—Payment by insolvent to particular creditor—Preference—Payment of money which would not vest in receiver or Court in insolvency—Right of Official Receiver to impeach and to claim refund.*

S. 54 of the Mysore Insolvency Act is intended to enable an Official Receiver to get into his possession and under his control, for the benefit of the creditors in the insolvency, property which under the Act should vest in the Official Receiver for the purpose but has been transferred by way of preference within the period fixed to a particular creditor or particular creditors. But the Official Receiver has no right to attack a payment by the insolvent as voidable against him under S. 54 and laible to be annulled at his instance, when such a payment is a payment of money which under the Insolvency Act would never vest in the Court or a receiver for the benefit of creditors in insolvency and therefore money with which the Official Receiver had nothing to do. In respect of such payment he cannot maintain an application under S. 54 of the Act. Nor would S. 55 of the Act be of any help to support the Official Receiver's application to have such payment declared void as fraudulent and for an order calling upon the creditor to whom payment has been made to refund the amount. S. 55 is a qualification of the powers and rights and authority of a receiver or the Court given in the previous sections of the Act and cannot possibly extend the powers or authority or rights of the receiver or the Court in any way. (*Reilly, C.J. and Subramania Aiyar, J.*) DESIKACHAR *v.* OFFICIAL RECEIVER, BANGALORE. **20 Mys. L.J. 325.**

MYSORE INSURANCE ACT (1939), S 39—*Scope and effect of "Nominee" under Policy of Insurance—Rights of—If* cesti que trust.

A nominee under a policy of Insurance in the Official or Public Branch of the Mysore Government Life Assurance Department is not the beneficial owner under the rules governing the Insurance unless the wording of the nomination has that effect. Nor does S 39 of the Mysore Insurance Act of 1939 make the nominee a beneficial owner in respect of policy governed by the Act. Where the nomination merely authorises the Insurance Company to pay the amount to the "nominee", it does not amount to a bequest in favour of the nominee; nor does it create any right in the nominee except the right to collect it. The "nominee" is not in the position of a *cesti que trust*, but, is merely authorized to receive payment. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) THIMMAMMA *v.* THIMMAMMA. **20 Mys L.J. 63.**

MYSORE LAND REVENUE CODE (II OF 1888), S. 96-A—Applicability — Contribution payable by occupant to inamdar for conversion of dry land into wet —If rent or revenue—Charge—Right to. *See* MYSORE LIMITATION ACT, ARTS. 115 AND 132. **20 Mys.L.J. 127.**

MYSORE LIMITATION ACT (IV OF 1911), S. 14—*Applicability—Conditions—Causes of action in prior and subsequent suits or proceedings different—Prior proceeding failing on merits—Deduction of time—Permissibility.*

S. 14 of the Limitation Act would apply only if the cause of action in the later suit or proceeding is the same as the one in the prior suit or proceeding, and if the prior suit or proceeding had been disallowed or had failed on the ground of the Court being unable to entertain it from defect of jurisdiction. Where the causes of action in the two are different and when the prior suit or proceeding has failed on the merits, S. 14 will not apply and no deduction of time can be claimed or permitted. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) SREERANGACHAR *v.* JOSYER. **46 Mys.H.C.R. 335=19 Mys.L.J. 426.**

——Arts. 44 and 91—*Applicability — Minor—Alienation by* de facto *guardian—Suit by minor for declaration of title—Limitation—No prayer for cancellation of alienation—Maintainability of suit.*

For purposes of Art. 44 of the Limitation Act only the natural guardians and those appointed by Court or under a will are recognised. A *de facto* guardian is not a guardian for purposes of Art. 44. He is only an intermeddler; and an alienation by a *de facto* guardian does not require to be set aside by the minor or ward so as to attract the application of Art. 44. Neither Art. 44 nor Art. 91 of the Limitation Act applies to a suit by a minor for a declaration of his title to the property which another claims under an alienation by his *de facto* guardian. (*Abdul Ghani and Subramanya Aiyar, JJ.*) CHENNAPPA *v.* RUDRAPPA. **19 Mys L.J. 399.**

——Arts. 62 and 120—*Applicability—Co-sharers of* vritti *entitled to collect respective shares of kandayam separately—Collection by one, of share payable to another—Suit by latter for recovery of share—Limitation.*

Where one of several co-sharers who are entitled to separately collect from the tenants of a *vritti* their respective shares of the kandayam payable in respect of the *vritti*, collects the kandayam payable to another, without any right or authority, it must be held that he receives the same for the use of the other co-sharer. A suit by the latter to recover the share from the co sharer who has wrongfully collected it falls under Art. 62 of the Limitation Act, Art. 120 does not apply to the case. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) SREERANGACHAR *v.* JOSYER. **46 Mys.H.C.R. 335=19 Mys L.J. 426.**

——Arts 115 and 132—*Applicability—Inam lands—Contribution amount for conversion of dry lands into wet—Suit by inamdar for recovery from inferior holder — Limitation — Mysore Land Revenue Code, S. 96-A.*

A suit by an inamdar of a village against an inferior holder under him in occupation of the lands for recovery of contribution amount due from the defendant on account of conversion of dry lands into wet is not governed by Art. 132 of the Limitation Act, but falls under Art. 115 in the absence of a registered document therefor. Such amount is not a charge on the land

and is neither land revenue nor rent within the meaning of S. 96-A of the Mysore Land Revenue Code. (*Nageswara Iyer and Subramania Iyer, JJ.*) KRISHNA RAO *v.* SAMPATH IYENGAR. 46 Mys.H.C.R. 690=20 Mys. L.J. 127.

——Art. 120—Applicability—Co-sharers of *vritti*—Kandayam payable separately in fixed shares—Collection by one of share of kandayam due to another—Suit by latter for recovery of sum so collected—Limitation. *See* MYSORE LIMITATION ACT, ARTS. 62 AND 120. 19 Mys L J. 426.

——Art. 132—Applicability—Inamdar—Suit by for recovery from tenant of contribution amount for conversion of dry land into wet—Limitation—Amount, if charge on land. *See* MYSORE LIMITATION ACT, ARTS. 115 AND 132. 20 Mys L.J. 127.

——Art. 132—Applicability—Puisne mortgagee paying off amount due under decree on prior mortgage—Rights of—Suit for recovery of amount—Limitation. *See* MYSORE T.P. ACT, SS. 74 AND 82. 20 Mys L J. 153.

——Art. 132—*Mortgage—Time for payment fixed at 12 years—Provision for payment of interest every year and on default whole amount to become due "on demand"—Limitation for suit on default.*

A mortgage deed under which the time for payment was twelve years provided that interest shall be paid every year before the end of March, and that in default of such payment, the principal amount shall become payable on demand without waiting for the next default. Nothing was paid under the mortgage and the mortgagee brought a suit more than 12 years after the date of the 1st default in the payment of interest.

Held, that the default clause making the whole amount of the debt due on a failure to pay interest in any year, made the whole debt due within the meaning of Art. 132 of the Mysore Limitation Act, and the suit was therefore barred by limitation. The words "on demand" in the default clause did not have the effect of the prolonging the period of limitation. (*Reilly, C.J. and Subrahmanya Aiyar J.*) GOVINDA RAO *v.* RAMACHANDRACHAR. 19 Mys.L.J. 447.

——Arts. 142 and 144—*Applicability—Suit for declaration of title and for possession as owner—Allegation of dispossession by defendant under order passed under S.* 145, *Cr. P. Code—Limitation applicable.*

There is nothing in Art. 142 of the Limitation Act to show that it applies only to suits based on a mere possessory title and not to suits based on title. A suit for a declaration of the plaintiff's title to land and for possession of the same on the allegation that he is the owner thereof by right of purchase and that the defendant dispossessed him and took wrongful possession under an order passed under S. 145, Cr. P. Code, is governed by Art. 142 and not by Art. 144 of the Limitation Act. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) RAMASWAMIAH *v.* ADIRAJIAH. 46 Mys.H.C.R. 611=19 Mys.L.J. 407.

——Art. 181—*Applicability—Decree under O.* 20, *R.* 12 *directing inquiry as to mesne profits—Application for ascertainment of mesne profits—Limitation—Nature of application.*

Art. 181 of the Lim. Act applies only to an application which a party must make under the C.P. Code and does not apply to applications which a party need not make. Where a preliminary decree under O. 20, R 12, C.P.Code, directs an inquiry as to mesne profits, an application by the plaintiff for ascertainment of such profits is not governed by Art. 181 of the Limitation Act and it cannot be held to be barred on the ground that

it is made more than three years after delivery of possession was obtained by the plaintiff. R. 12 does not contemplate an application being made by the plaintiff. It is incumbent on the Court to start proceedings to give effect to the direction for mesne profits and make a final decree in accordance with the result of such inquiry as provided in O. 20, R. 12 (2). An application, if made, does not fall under Art. 181. Such an application is one in the suit itself and not in execution. (*Nageswara Iyer and Singaravelu Mudaliar, JJ.*) THIPPIAH *v.* NANJUNDIAH. 20 Mys. L.J. 281.

——Art. 182 (5)—"In accordance with law"—Mortgage suit—*Ex parte* decree—Setting aside—Surety for judgment-debtor—Bond undertaking liability in the event of decree being passed and defendant failing to pay—Subsequent preliminary and final decree—Sale—Application for personal decree against surety as well as judgment-debtor—If step-in aid and saves limitation against surety—Bond—Construction. *See* 1941 Dig., Col 909. NINGE GOWDA *v.* DYANE GOWDA. 19 Mys L.J. 468.

MYSORE MOTOR VEHICLES RULES—Right to ply motor bus—Transfer of—Agreement without previous permission of District Magistrate—Validity—Right of parties to claim relief. *See* 1941 Dig., Col. 910. KEMPARAMIAH *v.* PEERKHAN SAB. 46 Mys.H.C.R. 429=19 Mys L.J. 262.

MYSORE NEGOTIABLE INSTRUMENTS ACT (VII OF 1917), S. 48—*Scope—If exhaustive—Transfer of negotiable instrument by assignment—Rights of transferee—Suit by transferee—Maintainability—T. P. Act, SS. 130 and 137. See* 1941 Dig., Col. 910, BOMMIAH *v.* SAGARMULL. 46 Mys H.C.R. 566.

MYSORE RELIGIOUS AND CHARITABLE INSTITUTIONS ACT (VII OF 1927), S. 18—*Scope—Resumption—Grounds—Gross mismanagement—If essential—Misapplication of funds—Sufficiency.*

Under S. 18 of the Mysore Act VII of 1927, it is not necessary that there should be proved gross mismanagement. If there is misapplication of funds, though it may not be treated as misappropriation, that will justify resumption of the institution by the Government. (*Nagesvara Iyer and Venkataranga Iyengar, JJ.*) CHIKKANARASIMHAIYA *v.* OFFICIAL RECEIVER, BANGALORE DIVISION. 46 Mys.H.C.R. 388.

——Chs. III and IV, Ss. 9, 10, 11 and 18—*Order of Government resuming temples and inam lands—Deputy Commissioner directing sub-divisional officer to execute order and report—Suit to cancel order—Jurisdiction of Civil Court.*

Where properties purchased and endorsed by private persons to religious institutions are converted into Inams free of any taxes to be paid to Government, as being intended for the service of the institutions, such as temples or mutts, the endowment loses its character of a private endowment and partakes of the nature of a Government grant for the service of the institutions in as much as the Government waives the right to collect taxes. The temples or institutions thus became Muzrai Institutions to which Ch. III of the Religious and Charitable Institutions Act does not apply. The jurisdiction of the Civil Court is in such cases excluded in respect of the orders of the Muzrai Officer except when they fall under Ss. 9, 10 and 11 of the Act. An order of the Government under Ch. IV of the Act directing the resumption of the institutions and their properties does not fall under S 18 of the Act, and a Civil Court has no jurisdiction to entertain a suit for cancellation of such an order or for other relief inconsistent with such an order or questioning such order. When the Civil Court feels unable to cancel the order and holds that the suit is not maintain

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able as against the Government, it has no power to circumvent the order or prevent its execution by ordering the ministerial officers not to carry out the order of the government on the ground that no gross mismanagement is proved. The Court cannot cancel the order of the Deputy Commissioner who in pursuance of the government's order directs the sub-divisional officer to take action in matter and to report the action taken to assume management. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) DEPUTY COMMISSIONER AND MUZRAI OFFICER, SHIMOGA DISTRICT *v.* SWAMI OF SRI RAMACHANDRAPUR MUTT. **46 Mys.H.C.R. 375= 20 Mys L.J. 100.**

MYSORE REPRESENTATIVE ASSEMBLY RULES (1940)—*Appeal from decision of Election Commissioner—Question of fact—Power of High Court.*

The High Court in appeal from the decision of an Election Commissioner in an election dispute has nothing to do with a question of fact. (*Reilly, C. J. and Subramanya Aiyar, J.*) VENKATACHALA SETTY *v.* KOMARIAH. **20 Mys L.J. 182 and 351.**

——**Rr. 89 and 96 (1) (b)**—Construction and scope—Form III—Notice not giving date of birth of candidate but giving age alone—If sufficient compliance—Rejection of notice under R. 96 (1) (*b*)—If improper. *See* GOVT. OF MYSORE ACT, S. 42. **20 Mys. L J. 331.**

——**R. 178 (2)**—*Scope and effect of—Jurisdiction—Election petition—Report to Government—If makes Commissioner* functus officio*—Finding of fact not clearly recorded—Appeal—Remand by High Court for fresh disposal after clear finding—Jurisdiction of Commissioner to deal with.*

Under R. 178 (2) of the Mysore Representative Assembly Rules when once an election petition has been referred by the Government to the Election Commissioner, then all proceedings in connection with that petition until it is finally disposed of by an effective report to the Government must be carried on by or before the Commissioner. It is not the case that as soon as he makes a report he is *functus officio*. When therefore in an appeal from his decision, the High Court remands the election petition to the Commissioner for fresh disposal and for recording a clear finding on a question of fact on the ground that the finding arrived at by him was vague and was not a proper finding, it cannot be said that the Election Commissioner has no jurisdiction to deal with the petition remanded to him by the High Court on the ground that on his making his report originally, he became *functus officio*. The provisions of the Civil Procedure Code and the Rules of Practice relating to suits and appeals apply to election petitions and appeals therefrom to the High Court. (*Reilly, C. J and Subramania Aiyar, J.*) SRIKANTAIYA *v.* VENKATARANGA SETTY. **20 Mys L.J. 189.**

——**R. 187**—"*Affected*"—*Returned candidate failing to submit return of expenses in time or in proper form or to sign in proper way—Effect—Result of election—If affected.*

The question whether an elected candidate puts in his return of expenditure in time or in proper form or signed in the proper way as required by R. 165 of the Mysore Representative Assembly Rules is not a question which can be urged in an election petition which can be referred to the Election Commissioner, and is not a question with which the Election Commissioner can deal. The result of an election cannot be "affected" within the meaning of R. 187 of the Rules by the failure of a returned candidate to put in his return of expenditure in time or in exactly the proper form or signed in exactly the proper way.

MYSORE T. P. ACT (1918), S. 52.

Quaere.—Whether R. 165 is sufficiently complied with if the candidate and his election agent sign the declarations on the back of the last page of Form XIV. (*Reilly, C.J. and Subramania Aiyar, J.*) VENKATACHALA SETTY *v.* KOMARIAH. **20 Mys.L.J. 182 and 351.**

MYSORE SUITS VALUATION ACT—Mahomedan co-heir—Suit by for recovery of possession of share in estate of deceased—Valuation for jurisdiction. *See* PRACTICE—JURISDICTION—VALUATION FOR. **20 Mys L.J 239.**

MYSORE TRANSFER OF PROPERTY ACT (IV OF 1918), S. 5—*Applicability—Sale of future crops of garden—Rights of vendee—Subsequent sale of garden to another with possession—Suit by vendee of crops for recovery of value of crops realised by the vendee of garden—Maintainability—Contract Act, S. 87.*

D purported to sell to the plaintiff the crop of an areca and cocoanut garden belonging to him for a period of five years from the date of sale. The plaintiff paid the consideration and got a registered sale-deed and got the crop for the first two years after the sale. In the meanwhile *D* sold the garden itself to the defendant and put him in possession of the garden. In a suit by the plaintiff against the defendant for the value of the crops sold to him by *D*.

Held, (1) that the transaction did not fall either under the Transfer of Property Act or the Contract Act, but could be recognised only in equity; (2) that the right of the assignee was only a personal right which he could enforce against the assignor as soon as the property came into existence; (3) that since the plaintiff had not enforced his personal right and got it converted into a legal right against the property by taking appropriate action before the crop was taken by the defendant, the suit for value of the crops must fail. (*Abdul Ghani and Venkataranga Iyengar, JJ.*) EARANA BOYI *v.* NARASIMHIAH SETTY. **46 Mys H.C.R. 655 = 19 Mys.L.J 475.**

——**S. 6 (e)**—"*Mere right to sue*"—Vritti—*Kandayam payable is respect of—Sale by co-sharer of share in* vritti *and arrears of kandayam—If invalid.*

The right to collect a definite ascertained share of the kandayam payable by the ryots of a *vritti* together with his share in the vritti on the land itself can be transferred. That cannot be described as a "mere right to sue" within the meaning of S. 6 (*e*) of the Mysore Transfer of Property Act. A mere right to receive past profits stands on a different footing and it would be "a mere right to sue". (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) SREERANGACHAR *v.* JOSYER. **46 Mys HC.R 335 = 19 Mys.L J. 426.**

——**S. 52**—*Applicability*—"*Contentions*"—*Meaning—Arbitration—Award for payment of money creating charge on debtor's immovable property—Application to file award—If "suit"—Award made decree of Court—Subsequent mortgage of property—If affected by* lis pendens.

The word "contentions" in S. 52 of the T. P. Act as it stood before its amendment in 1939, meant nothing more than "not collusive." When there is a reference to arbitration in respect of an unsecured debt and an award is made for payment of a specified amount making that a charge on certain immovable properties of the debtor, an application under the Arbitration Act to file the award in Court and make it a decree of Court is a suit for purposes of S. 52, T. P. Act; a mortgage on the charged properties executed subsequent to the award decree and before its execution by sale is affected by *lis pendens*. (*Reilly, C.J. and Subramanya*

MYSORE T. P. ACT (1918), S. 52.

Aivar J.) SEVARAM LUNIDARAM *v.* PUTTIAH. 20 Mys L.J. 233.

——**S. 52**—*Lis pendens*—Applicability—Suit for maintenance by Hindu widow—Claiming charge on properties—Alienation of some items pending suit—If affected by *lis pendens*—Consideration utilised to discharge family debts—Effect. *See* 1941 Dig Col. 911. ANNADANAPPA *v.* ENCHAVVA. 46 Mys H.C.R. 328.

——**S. 55 (2)**—*Sale-deed—Express covenant of title—Vendor purporting to convey specific extent of land—Vendee afterwards unable to obtain possession of part of land which is found not to belong to vendor—Right to claim refund of part of sale price—Notice of defect—If bars claim.*

A vendor of immovable property who has by his sale deed covenanted to give a good and sound title to the vendee in respect of the entire property sold cannot afterwards turn round and plead that the vendee has forfeited his right to compensation for breach of the covenant because of his omission to make due inquiries and satisfy himself that the vendor had a good title to convey. Where the vendor expressly purports to convey a specific extent of land, but it afterwards turns out that he had no title to a portion of it and that he has sold some land not belonging to him, there is a clear breach of covenant of title and he is liable to the vendee for damages. If the vendee fails or is unable in his attempts to obtain possession of a portion of the property sold to him, he is entitled to a refund of the proportionate portion of the purchase money. The fact that the vendee was aware of the defect in the vendor's title or that he could, if he had made diligent inquiries, have discovered such defect, would not deprive the vendee of his right to hold the vendor responsible in damages under the express covenant of title contained in the sale deed. (*Nageswara Iyer and Venkataranga Iyenger, JJ.*) HUCHANNA *v* MOHAMED HUSSEN SAB. 46 Mys.H. C.R. 674 = 19 Mys.L.J. 440.

——**Ss. 74 and 82**—*Limitation—Puisne mortgagee paying off amount due under decree on prior mortgage to avert sale of property in execution—Rights of—Right to subrogation—If available—Suit against mortgagor and his vendees for recovery of amount—Limitation—Limitation Act, Art. 132—Applicability—Contract Act, S 69.*

Where a puisne mortgagee pays off an earlier mortgagee, the rights of the latter, whatever they are, devolve on the subsequent mortgagee who pays up the earlier mortgage. In effect he becomes an assignee of the mortgagee whom he pays off. His right to enforce priority under the first mortgage is not a new right which accrues to him on redemption by payment of that mortgage. Limitation for a suit by him counts from the date on which the money under the first mortgage became due and not from the date on which the puisne mortgagee pays it off whether the money paid is still due under the mortgage or under a decree on that mortgage. Four items of property were mortgaged by the owners thereof to *P* and *H*. A suit was filed on the mortgages and a decree for sale was passed. After this decree two of the items were sold by the mortgagors to defendants 4 and 5, and the plaintiff advanced money to the mortgagors on the security of another item. The decree was sought to be executed by sale of this item (mortgaged to the plaintiff), and in order to avert the sale and save her interests the plaintiff paid off the entire decree amount. She then sued the mortgagors and the defendants 4 and 5 to recover the amount with interest. The suit was filed more than three years after the plaintiff paid the amount of the decree. A suit on the original mortgage had become barred by limitation already.

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Held, (1) that the plaintiff had only the rights which the original mortgagee had under S. 74 of the T. P. Act; (2) that the right to enforce the original mortgage was not available to the plaintiff, because there was already a decree on it which was satisfied and because the mortgage itself was barred long ago by the expiry of the period of 12 years. The right of subrogation was not therefore available to the plaintiff who could not derive any advantage from it; (3) that the only right available to the plaintiff was that of reimbursement under S. 82, T P. Act or under S. 69 Contract Act; (4) that since the suit was instituted more than three years of the payment by the plaintiff, it was barred by limitation; (5) that Art. 132 of the Limitation Act did not apply as she had got no charge on the property for the payment made by her. (*Abdul Ghani and Subramanya Aivar, JJ.*) SUNDARAMMA *v.* THIMMIAH. 20 Mys L J 153.

——**S. 100**—*Charge created by decree and charge created by contract—Distinction.*

There is no difference in principle between a charge created by a decree of Court and a charge created by contract, for purposes of S. 100, T. P. Act; in neither case can a charge create an interest in property which can prevail against a transfer of an interest for valuable consideration and without notice of the charge. A charge created by decree stands on no higher footing than one created by law or one which is the result of the operation of some law. (*Reilly, C. J. and Subrahmanya Aivar, J.*) SEVARAM LUNIDARAM *v.* PUTTIAH 20 Mys.L J. 233.

——**S 106**—"Contract to the contrary"—What amounts to. *See* 1941 Dig., Col. 911. SILVA *v.* SHANMUGAM 46 Mys H C.R. 420

——**Ss. 106 and 116**—Lease for manufacturing purpose—Holding over by tenant—Effect—Term of new tenancy—If tenancy at will or on sufferance. *See* 1941 Dig., Col. 912. SILVA *v.* SHANMUGAM. 46 Mys.H. C R. 420.

——**S. 106**—Scope—Notice not in conformity with section—Effect of—If justifies termination of lease or claim for enhanced rent after period fixed. *See* 1941 Dig., Col 912. SILVA *v.* SHANMUGAM. 46 Mys.H. C.R 420.

——**S. 130**—Deed transferring all movable and immovable properties of transferor including assets of firm—Assets consisting of promissory notes—Latter not specifically mentioned—If also transferred—Deed—Construction. *See* 1941 Dig., Col. 912. BOMMIAH *v.* SAGARMULL 46 Mys H.C R. 566.

MYSORE WORKMEN'S COMPENSATION ACT. S. 3 (2-A)—*Silicosis Rules (1940), R. 10—Construction—Medical examination—Duty of employer and workman—Right to notice of date of examination.*

Rule 10 (*a*) of the Silicosis Rules, 1940, framed under the Workmen's Compensation Act cannot be interpreted as requiring the employer to compel every man in his service at the time the rules came into force to be examined medically. It is for the workman himself to indicate in some way his desire to become eligible under the rules, *i.e.* in effect his desire to be medically examined as provided in the rules. Every workman in service at the time when the rules came into force would not be entitled to individual notice from the employer. It is only a workman who could not for some reason present himself for examination, though he wished to do so, or who could not be examined when he presented himself for examination, who under R. 10 (*b*) is entitled to a notice of the future date on which he is to come for examination. (*Reilley, C.J. and Singaravelu Mudaliar,*

NAZUL.

J.) SUPERINTENDENT OF THE OOREGUM GOLD MINING CO. OF INDIA, LTD. *v.* PONNAN. **20 Mys.L. J. 240.**

NAZUL—*Principle governing grant of nazul land—Disregard by Municipal Committee—Duty of Revenue Officers.*

The grant of nazul land must not affect elementary principles of sanitation and public health in regard to avoidance of congestion. The fact that a Municipal Committee disregarding all such principles has agreed to the grant of a site, cannot justify a failure on the part of the revenue officers to deal with Government land with no regard to fundamental principles. (*Greenfield, R.A*) PUNDALIK *v.* SHKORAM. **1942 N.L J. 61.**

NEGLIGENCE — Damages—Claim for—Burden of proof—Claim for damages against ex-trustee of Devasthanam for having allowed rents to become barred—Onus. *See* TRUST—TRUSTEE. **55 L.W. 749.**

NEGOTIABLE INSTRUMENT—Cheque—Cheque given for price of goods sold—Seller endorsing it in favour of third party—Cheque dishonoured while outstanding in latter's hands—Suit by seller—If lies. *See* 1941 Dig., Col. 913. RAMPROSAD LOHIA *v.* M. P. PATEL. **198 I.C. 642=14 R.C. 482=A.I.R. 1942 Cal. 45.**

———*Hundi endorsed for collection only—Indorsee, whether can transfer his rights.*

An endorsement on a hundi 'for collection only' is in the nature of a restrictive endorsement, giving the endorsee the right to receive payment of the Hundi and if necessary, to sue the acceptor for the amount but not to transfer his rights as endorsee to anybody else. (*Nawal Kishore, C. J. and Sukhdeonarain, J.*) HAZARIMAL *v.* FATEHCHAND. **1942 M.L.R. 100 (Civ.).**

———*Hundi—Shahjog hundi—Drawee paying to non-shah—If liable to holder.*

A shahjog hundi is payable only to a respectable holder and is not equivalent to a hundi payable to bearer. A drawee cannot, therefore, avoid liability in respect of a Shahjog Hundi which he had paid unless he can show that he had paid it to a Shah. Even if such a hundi was specially endorsed it would not obviate the necessity of making an inquiry that the indorsee was a Shah. (*Nawal Kishore, C. J. and Sukhdeonarain, J.*) HAZARIMAL *v.* FATEHCHAND. **1942 M.L.R. 100 (Civ.).**

———Promissory note—Form and contents—Construction—Use of words "promise to pay on demand"—Payment to be made within three years—Nature of document. *See* 1940 Dig., Col. 950. GANPATDAS *v.* HARIVALLABH. **I.L.R (1942) Nag. 126**

———Promissory note—Indorsee—Rights of—Promissory note by Hindu—Indorsement of note alone to another—Debt not assigned—Suit by indorsee against sons of maker—Decree—If can be passed against joint family property. *See* HINDU LAW—DEBTS—FATHER. **(1942) M.W.N. 703=(1942) 2 M.L.J. 668.**

———Promissory note—Right to sue—Real creditor. *See* 1941 Dig., Col. 914. BALANNA *v.* KHUDAI NAZAR KHAN. **I.L.R. (1942) Nag 588=197 I.C. 426=14 R.N. 171.**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), S. 4—*Promissory note with words "security for over draft" printed on it—If ceases to be promissory note.*

A promissory note does not cease to be such merely because the words "security for overdraft" are found printed upon it; it is still a promissory note. (*King and Kunhiraman, JJ.*) MAHALINGA AIYAR *v.* UNION BANK, LTD., KUMBAKONAM. **55 L.W. 664=1942 M.W.N. 603=(1942) 2 M.L.J. 652.**

NEG. INSTRUMENTS ACT (1881), S. 28.

———**Ss. 5 and 6**—*Post-dated cheque—If bill of exchange.*

Although there is no provision in the Negotiable Instruments Act specifically allowing post-dated cheques, there is nothing forbidding them, and the second paragraph of S. 5 contemplates (as indeed it must) the making of a bill of exchange payable at a future date. A post-dated cheque is therefore a cheque in proper form and therefore a bill of exchange within the meaning of the Act on the day on which it is drawn. It becomes on the date it bears a bill of exchange payable on demand and so a cheque. (*Derbyshire, C.J. and McNair, J.*) BANK OF BARODA, LTD. *v.* PUNJAB NATIONAL BANK, LTD. **203 I C. 207=15 R C. 409 =1942 Comp.C. 153=46 C.W.N. 645=A.I.R. 1942 Cal. 562.**

———**S. 7**—Certification of cheque by drawee banker—If amounts to acceptance. *See* 1941 Dig., Col. 914. PUNJAB NATIONAL BANK, LTD. *v.* BANK OF BARODA, LTD. **199 I.C. 802=14 R.C. 639.**

———**S. 7**—*Cheque marked good by drawee bank—If equivalent to acceptance.*

The certification or marking of a cheque as "good" by the drawee bank is equivalent to acceptance and the bank will be liable to the holder of the cheque accordingly, provided the nature of the making or certifying and the accompanying circumstances warrant it. (*Derbyshire, C.J. and McNair, J.*) BANK OF BARODA, LTD. *v.* PUNJAB NATIONAL BANK, LTD. **203 I C. 207=15 R.C. 409=1942 Comp. C. 153=46 C.W.N. 645=A.I.R. 1942 Cal. 562.**

———**Ss. 9 and 50**—Endorsee of overdue promissory note—Liability to allow set off—Claim against endorser—Conditions of. *See* 1941 Dig., Col. 915. RAMAMURTHI *v.* NUKAYYA. **201 I.C. 145=15 R.M. 242 =1942 Comp.C. 48=A.I.R. 1942 Mad. 30.**

———**S. 27**—Applicability—Pronote by defendant for benefit by family—Fresh pronote in renewal by elder brother—Suit on against defendant after death of executant. *See* 1941 Dig., Col. 915. SAMPAT SHUKUL *v.* SUBKARAN TEWARI. **17 Luck. 226=A.I.R. 1942 Oudh 161.**

———**S. 28**—*Applicability—Promissory note by trustee of temple or other charity—Personal liability—If can be excluded.*

Where trustees or managers of temples or other charities borrow money on promissory notes under personal liability, neither S. 28 of the Negotiable Instruments Act nor the principle underlying it can have any application. Hence a person making a note as trustee of a temple or other charity cannot claim the benefit of S. 28 as he cannot be said to be acting on behalf of a person capable of being bound by the undertaking or promise to pay. (*Patanjali Sastri, J.*) BALAVENKATRAMA CHETTIAR *v.* MARUTHAMUTHU CHETTIAR. **(1942) M.W.N. 686=55 L.W. 819=(1942) 2 M.L.J. 742.**

———**S. 28**—*Personal liability—Promissory note by trustee of temple—Executant described as trustee at beginning and after signature—Body of note binding executant and temple—Personal liability of executant, if excluded—Extraneous evidence—Admissibility.*

Where the body of a promissory note executed by a trustee of a temple binds the executant and not the temple, the mere fact that the executant is described at the beginning of the note and after the signature as "adalthedar" or trustee, would not be a sufficient ground for excluding the liability of the maker on the note. It is clearly impossible to go outside the note to find out whether the maker intended to pledge his credit or intended to bind the temple. (*Happell J.*)

NEG. INSTRUMENTS ACT (1881), S. 28.

MADHAVA RAO *v.* VAIKUNTA KAMATH. 201 I C. 607=1942 M.W.N. 345=55 L.W. 258=A.I.R. 1942 Mad. 468=(1942) 1 M.L.J. 535.

——S. 28—*Promissory note by Mahant—Executant described as mahant but not as shebait or agent of deity—Liability under note.*

Where a promissory note is executed by the mahant of a Math, describing himself as mahant but not as a shebait or any kind of agent of the deity of the Math, and there is nothing on the face of the note to suggest that he is contracting in such a way as to bind the deity, the deity cannot be made liable. In a suit on the promissory note only the executant can be held liable. (*Harries, C.J and Manohar Lall, J.*) MAHADEBRAM *v.* JAGANNATH. 201 I.C 496=15 R P. 64=23 Pat. L.T. 665=8 B.R. 799=8 Cut.L.T. 10=A.I.R. 1942 Pat. 337 (2).

——S. 50—*Endorsee for collection—Rights of—Promissory note by Hindu father—Endorsements for collection—Suit by endorsee against sons of maker after latter's death—Right to decree against joint family properties.*

An ordinary endorsee of a promissory note obtains no other right under the endorsement apart from the property in the note, and cannot ask for relief against a person other than the maker on the basis of the debt evidenced by the note. Where, however, the endorsement itself purports to assign the note expressly for the purpose of the collection of the amount due on the note, the endorsee for collection is not restricted only to the remedy on the note, and relief may be given not merely against the executant personally but against the joint family properties in the hands of his sons as well, when the maker is a Hindu father. (*Patanjali Sastri, J.*) GOVINDASWAMI ACHARI *v.* KANDASWAMI ACHARI. 204 I.C. 380=55 L.W. 847=A.I.R. 1942 Mad. 742 (1) =(1942) 2 M.L.J. 468

——Ss. 69 and 70—Scope—If affected by Contract Act, S. 49—Promissory note payable on demand—Place of payment. *See* CONTRACT ACT, S. 49. 44 Bom.L.R 495.

——S. 78—*Scope and object of—Promissory note—Benami holder—Suit by real owner impleading ostensible holder—Maintainability.*

The object of S. 78 of the Negotiable Instruments Act is obviously to give a valid discharge to the maker or acceptor of the instrument; and hence it has been held that none but the holder of a promissory note is entitled to sue to recover the money due on it. But S. 78 does not mean that where a suit on a promissory note is brought not by its ostensible holder but by the real owner or beneficiary and the ostensible holder is a party to the suit and in his presence it is proved that the plaintiff is the real owner, the suit shall still be held to be not maintainable. To so hold would be sacrificing the spirit of the section to its form. Such a suit is maintainable. (*Chatterji, J.*) ANATHBANDHU SAHU *v.* BABU LAL. 8 Cut.L T 107=A I.R 1943 Pat. 79.

——S. 79—Rate of interest different from that specified in note—If can be shown as the agreed rate. *See* 1941 Dig., Col. 916. GOPAL MADHORAO *v.* ACHUT SADASHEO. I L.R. (1942) Nag. 498.

——S 87—Applicability—Promissory note—Material alteration by stranger—Holder not guilty of fraud or laches—If affected. *See* 1941 Dig., Col 917. GOURO-CHANDRO DYANO SUMANTO *v.* KRUSHNACHARANA PADHI. 199 I.C. 534=14 R M. 596=(1941) 1 M.L. J. 153

——S. 87—*Material alteration—What is—Test—Addition below signature of maker describing him as proprietor of a business concern—If renders instrument invalid.*

The fact that an alteration does not ultimately involve any change in the rights and liabilities of the parties is not very germane to the consideration of the question whether it amounts to a material alteration within the meaning of S. 87 of the Negotiable Instruments Act. Whether the change be prejudicial or beneficial to the maker does not in the least matter. Where in a promissory note, subsequent to its execution, the words "the proprietor of the Karthika Stores," were inserted above the signature of the maker and below the date.

Held, that the alteration was a material alteration rendering the instrument unenforceable though the plaintiff might ultimately make up his mind to sue the maker in his individual capacity only and had accepted the maker's case that he had nothing to do with the said stores at any time either as proprietor or in any other capacity. (*Chandrasekhara Ayyar, J.*) SUBRAMANIA PATTAR *v.* PORATHANA ANDI. 55 L W. 554 =1942 M W N. 544=A.I.R. 1942 Mad. 709 (2)= (1942) 2 M L.J. 303.

——Ss. 113 and 115—Applicability of S. 113 to "drawee in case of need"—Vendor taking bill of exchange to his own order—Property in goods—When passes to purchaser—Purchaser accepting bill but dishonouring it on presentation—Effect—Acceptance by drawee in case of need—Effect. *See* 1941 Dig., Col. 917. BHOLAT *v.* YOKAHAMA SPECIE BANK, LTD. 197 I.C 890=14 R R. 148.

——S. 118 (a)—*Presumption under—If limited to consideration stated in instrument.*

S. 118 (*a*) of the Negotiable Instruments Act does not limit the presumption as to the passing of consideration only to cases of consideration as stated in the negotiable instrument. Where the instrument itself mentions cash payment as the consideration for it and that is also the case of the plaintiff at the hearing, it must not be taken to be without consideration within the meaning of S. 43 of the Act simply because the defendant has succeeded in demolishing the plaintiff's case, when it appears from the evidence on record that there was consideration in a different form. (*Akram and Pal, JJ.*) RAMANI MOHAN BHATTACHARYA *v.* SURJYAKUMAR DHAR. 204 I C. 259=75 C L J. 404=46 C.W.N. 340=A.I.R. 1943 Cal. 22.

—— S 120—Scope—Suit by indorsee of promissory note—Plea that part consideration represented interest on prior mortgage and therefore liable to be scaled down under Madras Act IV of 1938 If barred. *See* 1941 Dig., Col. 918. KARUPPA GOUNDAN *v.* NARAYANASWAMI & CO. 201 I.C. 117=15 R.M. 227=A.I.R. 1942 Mad 169=(1941) 2 M L.J. 808.

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873), S. 70—*Water allowed to be taken through water course on accused's land—Removal of such water course—If an offence under S. 70.*

Where a water course belongs to a person and is on his land and another is permitted by him to take water through that course to his fields, a discontinuance of the permission by the owner and removal of the water course by him is not an offence under S. 70 of the Northern India Canal and Drainage Act. (*Gange Nath, J.*) RAMJI LAL *v.* EMPEROR I.L R. (1942) A. 162= 199 I.C 127=43 Cr.L.J. 472=14 R.A. 359=1942 A Cr.C 49=1941 A.W.R. (H C.) 395=1942 A.L.J. 750=A I R. 1942 All. 102

NORTH WEST FRONTIER PROVINCE AGRICULTURIST DEBTORS RELIEF ACT (IV OF 1939), S 9—Joint decree against more than one judgment-debtor—Application by one of them—Decree, if

N. W. F. P. AGR. DEB. REL. ACT (1939), S. 9.

N.W.F.P. COURTS REG. (1931), S. 30.

can be reopened. *See* 1941 Dig., Col. 919. MAHOMED AZIM *v.* BHAGAT RAM. 14 R.Pesh. 45.

NORTH-WEST FRONTIER PROVINCE COURTS REGULATION (I OF 1931), S. 30—*District Judge himself trying suit of value not exceeding Rs.* 5,000—*Forum of appeal.*

In the case of a suit of value not exceeding Rs. 5,000 tried by the District Judge himself as original Judge an appeal lies to the Judicial Commissioner under S. 30 (*b*). Section 30 (*a*) has no application to such a case. (*Almond, J.C. and Mir Ahmad, J.*) CHUNI LAL *v.* FAZAL KHAN. 202 I.C. 640=15 R. Pesh. 47=A.I.R. 1942 Pesh. 70.

——**S. 34**—*Power of Chief Court to call for records of courts not subordinate to it—Land Acquisition Officer refusing to refer case under S.* 30, *Land Acquisition Act—Chief Court, if can direct him to do so.*

Under S. 34, N.-W. Frontier Province Courts Regulation, the Chief Court has power to call for the records of Courts subordinate to it and of no other. It is not correct to say that because the words "Court subordinate to such High Court" in S. 115, C. P. Code, do not occur in S. 34 of the N.-W. Frontier Provinces Courts Regulation, the Chief Court has wider powers to call for the records and that it can call for the records of the Courts not subordinate to it. The Chief Court cannot direct the Land Acquisition Officer under the Land Acquisition Act to refer a case in which that officer has refused to do so under S. 30. Land Acquisition Act. (*Almond, J.C. and Mahomed Ibrahim, J.*) SIKANDER SHAH *v.* CHAN BIBI. 202 I.C. 155=15 R. Pesh. 36 =A.I.R. 1942 Pesh. 60.

NORTH-WEST FRONTIER PROVINCE GENERAL CLAUSES ACT (II OF 1932), S. 6 (a) and (c)—*Words "anything not existing"—Meaning of.*

The words "anything not existing" in S. 6 (*a*) do not mean rights in property for such rights are specifically provided for by S. 6 (*c*). They refer to such matters as tribunals. (*Almond, J.C. and Mir Ahmad, J.*) ZABITA KHAN *v.* SHERIN. 203 I.C. 624= A.I.R. 1942 Pesh. 91

NORTH-WEST FRONTIER PROVINCE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (VI OF 1935), S. 2—*Sons applying for succession certificate in respect of property of their deceased father before Act—Their pardanashin mother not contesting—Suit by mother for her share filed after Act—Law applicable*

The mere fact that the sons applied for a succession certificate before the Act in respect of the property left by their deceased father and their mother a pardanashin lady did not contest the application does not lead to the conclusion that she had allowed the sons to take the property because they had the right to get it according to custom. A suit brought by the mother for her share in the property after the Act is governed by Mahomedan law. (*Almond, J.C. and Mir Ahmad, J.*). GUL MAHOMED *v.* IQBAL JAN. 204 I C. 202=A.I.R. 1942 Pesh. 94.

——**S. 2**—*Suit for inheritance between Muslims filed after Act—Law applicable.*

In suits for inheritance between Muslims coming up before Courts in N. W. F. P. after the passing of the Act, the rule of decision must be Mahomedan Law. (*Almond, J.C. and Mir Ahmad, J.*) ZABITA KHAN *v.* SHERIN. 203 I.C. 624=A.I.R. 1942 Pesh. 91.

——**S. 27**—*Applicability—Estate opening before Act.*

If the person whose estate is in dispute had died before 1935 when custom was in force and the suit for inheritance of his property has been filed after 1935 when Shariat came to be the law of inheritance, Mahomedan law applies and not custom. A.I.R. 1940 Pesh. 52, Foll. (*Mir Ahmad, J.C and Sofi, J.*) SULTAN MAHOMED KHAN *v.* ABDUL KARIM KHAN. 199 I. C 634=14 R. Pesh. 85=A.I.R. 1942 Pesh. 21 (1)

OPIUM ACT (1878), S 11.

——**S. 27**—*Limited estate acquired under custom on death of holder—If affected by passing of Act.*

A lady who had acquired a life-estate from her husband by custom before the Shariat Act died in 1939, and the plaintiffs who were reversioners of her husband under custom brought a suit for a declaration that they were the owners of the property in preference to the daughters of the husband.

Held, that the life-estate acquired by the lady was not affected by the passing of the Act, and that the heirs of the husband under Mahomedan law who were in existence when the life-estate came to an end were entitled to succeed and therefore the daughters were entitled to their share as sharers under Mahomedan law. (*Almond, J.C. and Mir Ahmad, J.*) SHER DAD *v.* MT. SHAH MIRAN. 200 I C. 196=14 R. Pesh. 88=A.I. R 1942 Pesh. 27 (2).

N. W F. P. VILLAGE COUNCIL ACT (VII OF 1935) Ss 23 and 25—*Suit for possession of immovable property—Jurisdiction of Village Council.*

In S. 23 the term "debt" is to be read with the term "contracts," the term "demand" with "movable property or with the value of such property" and the term "compensation" with the phrase "wrongfully taking or injuring such property." The fact that the term "immovable property" finds no place in S. 23 clearly indicates that a suit for possession of immovable property is excepted from the cognizance of a Village Council and that the legislature never intended to empower Village Councils to entertain and decide such suits. This view is also fortified by a reference to S. 25, which indicates that the legislature did not intend to confer on Village Councils more extensive powers than those conferred under the Provincial Small Cause Courts Act. (*Almond, J.C. and Mahomed Ibrahim, J.*) ALI ASGHAR *v.* WALAYAT SHAH. 201 I.C. 564=15 R.Pesh. 24= A I R, 1942 Pesh 55.

OATHS ACT (AMENDMENT ACT XXXIX OF 1939)—Boy witness—Oath not administered—Admissibility of evidence *See* 1941 Dig., Col. 921. SHEO PRASAD *v.* EMPEROR. 17 Luck 376=197 I.C 701= 43 Cr.L.J. 243=14 R.O. 353=A I R. 1942 Oudh 193.

OPIUM ACT (I OF 1878). S. 9 (a)—*Possession contemplated under—Recovery from place jointly owned by two but in possession of one—Presumption of conscious possession.*

The possession contemplated under S. 9 (*a*) of the Opium Act in order to constitute an offence, must be possession with one's knowledge. Where a person does not actually reside in the premises and opium is recovered from the place of which he is the joint owner it cannot be presumed that the man is in conscious possession of the opium. In order to constitute an offence under this section it is essential that knowledge of the person sought to be made liable should be proved. (*Ghulam Hasan, J.*) SARJU PRASAD *v.* EMPEROR. 17 Luck. 577=198 I.C 612=14 R.O 434=43 Cr L.J. 406= 1942 A.Cr.C. 54=1942 O A. 24=1942 A W.R (C C) 36=1942 A.L.W. 11=1942 O.W.N 27=A.I.R. 1942 Oudh 270.

——**S 11**—*Car possessed under hire purchase agreement transporting contraband opium and ganja—Confiscation—When proper.*

Where a car in the possession of the accused under a hire purchase agreement was used by him for trans-

OPIUM ACT (1878), S. 15.

porting large quantities of contraband opium and ganja and the owner had received only one instalment towards the purchase of the car and had no reason to suspect that the car was being used for transporting opium it would be very hard on the owner to have the car confiscated. A conveyance ought not to be confiscated unless the owner knew or had reason to believe that his vehicle was likely to be used for such purpose. The discretion of the Magistrate to confiscate a vehicle cannot be questioned in a Civil Court but only by the Courts having appellate or revisional jurisdiction over the Magistrate. (*Horwill J.*) CHAKRAPANY CHETTY & SONS, *In re*. 204 I C 22=44 Cr L J. 136=1942 M W N 749 (1)=55 L W 692=A.I R. 1942 Mad. 724 (2)=(1942) 2 M L J 550.

——S 15 and Criminal Procedure Code, Ss. 102 and 103—Search under S. 15—Procedure to be followed—Inapplicability of S. 102, Cr. P. Code, to searches of a person under S. 15 of Opium Act—Irregularity in searches—Effect of. *See* 1941 Dig Col. 921. AUNG KIM SEIN *v.* THE KING. 197 I.C. 580=43 Cr L J. 217=14 R R. 140.

ORDINANCE — Interpretation of—Constitution of Courts. *See* 1941 Dig., Col 921. HEIRS OF PRINCE MAHOMED SELIM *v.* ATTORNEY GENERAL OF PALESTINE. 8 B R. 184=14 R P C. 78

ORISSA GENERAL CLAUSES ACT, S. 5—Applicability—Vested right in procedure *See* ORISSA TENANCY ACT (AS AMENDED IN 1938), S. 31-B. A I R. 1942 Pat 1 (F B).

ORISSA LAWS REGULATION (1936), S. 7—Scope—If displaces operation of S 26, Government of India (Constitutions of Orissa) Order, 1936 *See* MADRAS AGRICULTURISTS' RELIEF ACT, S. 3 (II), PROVISO D. 55 L W 648.

ORISSA MONEY-LENDERS ACT (III OF 1939) *—Scope—Decree on promissory note—Scaling down of interest—Provision for—If* ultra vires*—Decrees passed before and after Act—Distinction.*

The Orissa Money-Lenders Act which permits the scaling down of interest on decrees passed on promissory notes is *intra vires* at least in the case of decrees passed before the Act came into force. No distinction is made between a decree on a promissory note and any other decree.

Quaere, whether the same principle would apply to decrees passed after the Act came into force. (*Harries C. J and Manohar Lall J.*) PARMANANDA PRUSTY *v.* INDRA MANI MAHANTI. 202 I C 113=15 R.P. 93=(1942) F L J. (H C) 178=8 B R 851=8 Cut. L.T. 35=23 Pat.L T. 740=A.I.R 1942 Pat. 479.

——S. 2 (4) (j)—*"Money-lender"—Person making loans off and on because of relationship to debtor—If money lender.*

Unless a person makes investments by way of loan as a matter of regular business and for gain, it cannot be said that he carries on the business of money-lending. Where the instances of lending are few and spread over for a long period of time, it cannot be said that he is a money-lender, especially when some particular reason such as relationship is found for the particular loans. (*Harries, C.J. and Manohar Lall, J.*) SANO KASHINATH *v.* PATTITO SALENTO. 200 I.C. 284=8 B.R. 663=14 R.P. 642=8 Cut L.T 20=24 Pat L. T. 11=A.I.R. 1942 Pat. 384

——S. 10—*Applicability to execution proceedings*

S. 10 of the Orissa Money-Lenders Act, read by itself would apply to suits only and there is nothing in it to show that it applies to execution proceedings. Nor can it be held that it applies to execution proceedings by reason

ORISSA TENANCY ACT (1913), S. 193.

of S. 16 of the Act which was enacted only for the purpose of showing to what extent Ss. 10 to 15 were intended to be retrospective. (*Fazl Ali and Varma, JJ.*) BASUDEB MAHAPATRA *v.* SURENDRA NATH MITRA. 202 I.C. 615=9 B.R 29=15 R.P. 132=8 Cut L.T 49=A.I.R. 1942 Pat. 431.

——S. 11 (2)—*Interest* pendente lite—*Discretion of Court.*

Under S. 11 (2) of the Orissa Money-Lenders Act full discretion is given to the Court which passes the decree to decide whether interest *pendente lite* should or should not be awarded. (*Harries, C. J. and Manohar Lall, J.*) HADIBANDHU SAHU *v* KALURAM. 201 I.C. 566=15 R.P. 58=8 B.R. 808=8 Cut.L.T. 19=23 Pat.L. T. 212=A.I.R 1942 Pat. 320.

——S. 13—*Duty of Court to state grounds for amount of instalments—Costs—Power to make payment of costs condition precedent to order for instalment.*

S. 13 of the Orissa Money-Lenders Act in terms directs that in fixing the instalments the Court must have regard to the circumstances of the judgment debtor and to the amount of the decree. The Court in fixing the amount of instalments make it clear that the amount is fixed having regard to both the circumstances mentioned in the section. If that is not clear, and it appears to the appellate or revisional Court that the fixing of the instalment was arbitrary, the order will be set aside.

Quere.—Whether the Court has power to make payment of costs a condition precedent to an order for instalments. (*Harries, C J.*) RUSI DALAI *v.* KRISHNA BALLAV GHOSH. 201 I.C. 208=15 R.P 37=8 B.R. 774=23 Pat.L.T 618=8 Cut L.T. 24=A.I.R. 1942 Pat. 303.

——S. 14—Appeal—Order fixing valuation of property—Appeal—C. P. Code, S. 47. *See* 1941 Dig., Col. 921. BANKA DAS *v.* SRINIVAS PADHI. 8 B R. 309.

——S. 14—Applicability and scope—Rules for estimating value not prescribed under S. 26—Effect of—Duty of Court to estimate value—Execution if to be stayed indefinitely until making of rules. *See* 1941 Dig, Col. 921. BANKA DAS *v.* SRINIVAS PADHI. 197 I.C. 837=14 R.P. 374=8 B R. 309.

——S. 16—Scope and effect of—If makes S. 10 applicable to execution proceedings. *See* ORISSA MONEY-LENDERS ACT, S. 10. 8 Cut L.T. 49.

ORISSA TENANCY ACT (VI OF 1913), S. 31-B (as amended in 1938)—*Scope of—If affects right to realise arrears of mutation fee—S. 5, Orissa General Clauses Act—Applicability.*

Per *Meredith, J.*—The amending Act does not affect the right to realise arrears of mutation fee but merely affects the procedure of enforcing that right. Consequently, S. 5, Orissa General Clauses Act, has no application. No litigant has a vested right in any particular form of procedure. (*Dhavle, Manohar Lall and Meredith JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. 21 Pat. 1=198 I C. 353=8 B.R. 361=14 R.P. 420=8 Cut L.T. 53=A.I.R. 1942 Pat. 1 (F B).

——Ss. 18 and 127—Scope and effect of—Jurisdiction of Revenue Officer—Rent fixed at rate—Terms of agreement ignored—Effect—Settlement of rent—If without jurisdiction and of no effect. *See* 1941 Dig., Col. 922 SAMANTA RADHA PRASANNA DAS *v.* BARENDRA KRISHNA DAS. 198 I.C. 122=14 R.P. 333=8 B R 331.

——Ss. 193 and 250 (as amended in 1938)—*Scope—Suit under S. 31 B—Jurisdiction of Civil Courts.*

S. 250 in no way determines the forum of litigation. S 193 applies directly to suits under S. 31-B and therefore such suits are maintainable only in the Revenue

ORISSA TENANCY ACT (1913), S. 204.

Courts. The Civil Court has no jurisdiction. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat. 1=198 I.C. 353=8 B.R. 361=14 R.P. 420=8 Cut L.T. 53=A I R. 1942 Pat. 1 (F.B.).**

——S. 204 (as amended in 1938)—*Collector acting under S.* 204 (2), (3), (4) *and* (5)—*If subordinate to High Court—Powers of revision.*

Per *Full Bench.*—The Orissa Tenancy Act definitely involves the subordination of the Revenue Court to the High Court [by way of appeal under S. 204 (3)] and thus, though the general provision contained in S. 192 (2) of the Act attracts the operation of S. 115, C.P. Code, giving the High Court a power of revision, in all matters dealt with by the Collector as a Revenue Court handling landlord and tenant suits, whether as a Court of first instance, or as a Court of appeal, or as a Court of revision. The Collector consequently, when he acts under S. 204 (2) (3), (4) and (5), is amenable to the revisional jurisdiction of the High Court under S. 115, C P. Code.

Per *Manohar Lall, J.*—The High Court's power of revision under S. 115, C.P. Code, is limited to cases within S. 204 (3), that is, cases in which first or second appeal lies to the High Court. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat. 1=198 I.C. 353=8 B.R. 361=14 R.P. 420=8 Cut.L T. 53=A.I. R. 1942 Pat. 1 (F.B).**

——S. 204 (as amended in 1938)—*Suit for arrears of mutation fee—Deputy Collector dismissing suit on ground of want of jurisdiction—Appeal wrongly filed before and entertained by Collector—High Court's powers to raise Collector's order.*

The Rent Suit Deputy Collector dismissed the suit for recovery of arrear of mutation fee and interest due upon a sale deed, holding that the Revenue Court had no jurisdiction to entertain it. An appeal from the dismissal of the suit in fact lay to the District Judge but was wrongly filed before and entertained by the Collector. The question was whether the High Court under S. 115, C. P. Code, could revise the Collector's order as being beyond jurisdiction.

Held, that the High Court under S. 115, C. P. Code, had jurisdiction to revise the Collector's order. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat. 1=198 I.C. 353=8 B.R. 361=14 R.P. 420=8 Cut.L T. 53=A I.R. 1942 Pat 1 (F.B).**

——S 204 (2) (as amended in 1938)—"*Final*"—*Meaning of.*

Per *Meredith, J.*—The word "final" in S 204 (2) merely indicates that there is no right of appeal. (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat 1=198 I C. 353=8 B.R 361=14 R P. 420=8 Cut L.T 53=A.I R 1942 Pat. 1 (F.B.).**

——S 204 (5) (as amended in 1938)—*Collector's power under S.* 204 (5)—*Extent of.*

Per *Full Bench.*—The Collector's power of revision under S 204 (5) is not limited to cases within S. 204 (2). S. 204 (5) enables the Collector to call for the record of any case in which the Deputy Collector has passed a decree or order concerning disputes of over Rs 100 in value and even in cases below Rs. 100 in value involving a decision of question as to the liabilty to pay rent for land or title to land or some interest in the land as between parties to the suit.

Per *Manohar Lall, J.*—Collector's power of revision under S. 204 (5) is limited only to cases falling within S. 204 (2). (*Dhavle, Manohar Lall and Meredith, JJ.*) ARJUN RAUTARA *v.* KRISHNA CHANDRA GAJPATI NARAYAN DEO. **21 Pat. 1=198 I.C. 353=14**

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R.P. 420=8 Cut.L.T. 53=8 B.R 361=A.I.R. 1942 Pat. 1 (F.B).

——S 223 (c) and (d)—*Rent decree—Sale—Purchase by landlord—Arrears of rent due for period between date of suit ending in rent decree and sale—Liability for—Subsequent suit against tenant by landlord purchase—Right to decree.*

An auction purchaser at a sale in execution of a rent decree is not liable for arrears of rent becoming due after the date of suit in which such decree was passed and before the sale took place. If any surplus remains after satisfying the decree for rent, any rent falling due between the date of the suit and the date of the sale shall be paid out of such surplus and the tenant would be entitled to the balance of the surplus sale proceeds. The property sold would therefore pass to the purchaser free from any liability to pay such arrears of rent. The fact that the landlord himself is the purchaser and that the arrears were not notified at the time of the sale would make no difference and the landlord purchaser can therefore sue the tenant, after his purchase for the arrears due between the date of the suit and the sale. He cannot, however, obtain a rent decree, but only a money decree. (*Meredith, J.*) GIRISH CHANDRA CRAKRABARTY *v.* SANANDA PATRA **202 I C. 657=15 R P. 135=9 B R. 34=8 Cut.L.T. 43=23 Pat.L. T. 742=A I.R. 1942 Pat 425.**

——S. 250—Jurisdiction—Suit under S. 31-B—Civil Court's jurisdiction *See* ORISSA TENANCY ACT (AS AMENDED IN 1938), SS. 193 AND 250. **A.I R. 1942 Pat 1 (F.B).**

OUDH CHIEF COURT RULES, Ch. XII, R. 19—*Provision as to presentation within Court hours, if mandatory—Effect of presentation after Court hours—Ss.* 122 *and* 128, *C.P. Code and Chief Court Rules if inconsistent.*

R. 19 of Ch. XII of the Chief Court Rules which provides for the presentation of an appeal, etc., to the Registrar or other officer within the Court hours is mandatory. Hence if an appeal is presented after those hours it is not a valid presentation at all. The rules framed by the Chief Court are not inconsistent with the provisions of Ss. 122 and 128 C.P. Code. (*Thomas, C. J.*) BALDEO *v* TEJJA. **1942 O W N 475=202 I C. 87=15 R.O. 116=1942 A.W R (C C.) 309 (3)=1942 O.A 376=A.I R. 1942 Oudh 488.**

OUDH CIVIL RULES R. 287, Cl. (iv)—*Applicability to Advocates*

A pleader enrolled as an advocate under the Bar Councils Act, ceases to be a pleader within the meaning of R. 287 of the Oudh Civil Rules and hence it has no application to the case of such a pleader. (*Thomas, C. J. and Ghulam Hasan, J.*) PUBLIC PROSECUTOR *v.* KANHAIYA LAL SHUKLA. **204 I.C. 330=1942 O.W. N. 756=1942 O.A. 614.**

——R. 289. Cl. (xii)—*Applicability—Defendants succeeding on common ground though defence raised by all was not common.*

Where though the defence raised by all the defendants are not common they succeed on one defence which was common to all of them namely that the suit was not properly valued. R. 289, Cl. (xii) of the Oudh Civil Rules apply and the defendants are entitled to only one set of pleader's fee. (*Agarwal, J.*) KALLUMAL *v.* MUNICIPAL BOARD NAWABGANJ. **200 I.C. 608=15 R.O. 25=1942 O.W.N 335=1942 A.W.R. (C.C.) 220=1942 O A 241=A I.R. 1942 Oudh 392.**

——Vol. I Paras. 53 to 55—Return of documents—Time for appeal not expired—Legality. 1941 Dig., Col. 922. MATA DIN *v* IMDAD KHAN. **A.I.R. 1942 Oudh 145.**

OUDH COURTS ACT (IV OF 1925), S. 12 (2)—*Appeal under—If lies in rent case—S. 263 of U.P. Tenancy Act if bars it.*

Under S. 12 (2) of the Oudh Courts Act an appeal would lie in a rent case and it is not barred by S. 263, U. P. Tenancy Act. (*Thomas, C. J. and Ghulam Hasan, J.*) DAYA SHANKER *v.* BADRI PRASAD. 202 I.C. 529=15 R.O 132=1942 O.W N 543=1942 O. A. 453=1942 A.W.R. (C.C.) 328 (3)=A.I.R. 1942 Oudh 493.

——**S. 12 (2)**—*Certificate of fitness for appeal under—When can be granted—Mere question of interpretation of a document, if a ground.*

A certificate of fitness for further appeal under S. 12 (2) of the Oudh Courts Act should be granted only when the decision for which a further appeal is proposed to be preferred is (1) opposed to any general principle of law, or (2) involving a question of public interest or (3) is contrary to any recognised precedent. A particular interpretation put upon a particular document by a Judge in second appeal is no ground to grant a certificate that the case is a fit one for third appeal. Such a point is not even a substantial question of law, much less a point of general importance. Where the question involved in the case is one of fact upon which the learned Judge had given a considered finding after consideration of the oral and documentary evidence in the case, the fact that the decision of this question of fact depended upon the interpretation of many documents is not a proper ground for the grant of a certificate. (*Thomas, C.J. and Ghulam Hassan, J.*) MUBARAK HUSAIN KHAN *v.* GHULAM ABID KHAN. 203 I.C. 616=1942 O.W.N. 742=1942 A.W.R.(C C.) 339 (3)=1942 O A. 469.

——**S. 12 (2)**—*Further appeal—Question of custom depending on the interpretation of* wajib ul arz *of two villages—If one of pure fact.*

Where the question of custom depends entirely upon the interpretation of the two *wajib ul-arz* of two villages which must be read together, the question is not a pure question of fact, but is a mixed question of law and fact and an appeal does lie under S 12 (2) of the Oudh Courts Act. (*Bennett and Madeley, JJ.*) SRI THAKURJI *v.* GAYA KUER 17 Luck. 567=200 I.C 561 =15 R O 41=1942 R D 30=1942 A W R (C C.) 19 =1941 O W.N. 1412=1942 O.A. 7=A.I.R. 1942 Oudh 213.

——**S. 12 (2) and Limitation Act, S. 12 (2)**—*Limitation for application for leave to appeal under S 12 (2) of Oudh Courts Act—Deduction of time for obtaining copy of judgment.*

In computing the period of the limitation prescribed for an appeal under S. 12 (2) of the Oudh Courts Act, the time taken for obtaining a copy of the judgment sought to be appealed against should be excluded in view of S. 12 (2) of the Limitation Act. (*Zia-ul-Hasan, J.*) SHEO DULARI *v.* CHANDRABHAL. 199 I C. 712=14 R O 522=1942 R D. 73=1942 O A 13 (1)=1942 A.W R. (C C.) 25 (1)=1942 O.W N. 21= A.I.R. 1942 Oudh 316

——**S. 12 (2)**—*New point in third appeal—If can be raised.*

An appellant in a third appeal has no right to be heard on points which he did not raise before the learned Judge against whose decree he is appealing. (*Thomas, C.J. and Ghulam Hassan, J.*) MUBARAK HUSSAIN KHAN *v.* GHULAM ABID KHAN. 203 I C 616=1942 O W.N. 742=1942 A.W.R (C.C) 339 (3) =1942 O.A 469.

—— **S. 12 (2)**—New point in third appeal—If can be raised. *See* 1941 Dig., Col. 923 MIR MAHOMED HUSAIN *v.* MAHOMED HABIB KHAN. 17 Luck. 189.

OUDH LAWS ACT (1876), S. 15.

——**S. 39**—*Competency of appeal to District Judge—Valuation—Entertainment of appeal beyond valuation—Decision—Validity—Defect if curable.*

Under S. 39 of the Oudh Courts Act an appeal lies to District Judge from a decree of a Subordinate Judge only where the value of the original suit in which the decree or order was made did not exceed Rs. 5,000. Where an appeal beyond such valuation is entertained by the District Judge and a decision is given, it is a nullity and it is a point which though not raised at the early stages should be considered when it is raised, however late it may be Neither S. 21 of the C. P. Code nor S. 11 of the Suits Valuation Act can cure the defect. (*Bennett and Madeley, JJ.*) SITARAM SINGH *v.* TIKA RAM SINGH 202 I.C 126=15 R.O. 118=1942 A. W R (C C.) 310 (1)=1942 O.W.N. 493=1942 O. A 377=A I.R. 1942 Oudh 481.

OUDH ESTATES ACT (I OF 1869), S. 14—*Point of time of succession.*

The point of time of succession with reference to S. 14 of the Oudh Estates Act is the date of the transfer and not the date of the death of the transferor. (*Thomas, C.J. and Ghulam Hasan, J.*) SITLA BAKHSH SINGH *v.* SURENDRA BIKRAM SINGH. 1942 O.W N. 687= 1942 O.A. 545=1942 A.W R. (C.C.) 352 (1)=A.I. R 1943 Oudh 68.

OUDH LAWS ACT (XVIII OF 1876), S. 9—Shamiat lands—Meaning—Sale of plots in separate patt and in shamilat patti to relative co-sharer in different patti and also in shamilat patti—Right of co-sharer in same patti and also in another patti and shamilat patti to pre empt. *See* 1941 Dig., Col 923. GAURI SHANKER *v.* BASHIR AHMAD. 17 Luck. 435=198 I C. 241=14 R O. 383=A.I.R. 1942 Oudh 117.

—— **S. 9**—Under proprietor—Pukhtadar, if one. *See* 1941 Dig. Col. 923 SHEO DAT TEWARI *v.* BHAGWAT DAS. 17 Luck. 412=197 I.C. 715=14 R.O. 344=A. I.R. 1942 Oudh 113.

—— **S. 10**—Liability to pre-emption—Transfer by Court of law in execution of decree for specific performance. *See* 1941 Dig., Col. 924. RAM AVADH PANDEY *v.* GHISA PANDEY. 17 Luck 164.

——**S. 10 Proviso (Amendment of 1939)**—*If retrospectives in operation.*

The proviso to S. 10 of the Oudh Laws Act added by the Amending Act of 1939 could not be declaratory having retrospective effect. Hence it could not apply to a suit for partial pre-emption filed and decided against before the amendment came into force. (*Agarwal and Madeley, JJ.*) PAHALWAN KHAN *v.* SHEO NARAIN LAL. 204 I.C. 383=1942 O.A. 590=1942 O.W.N. 708.

—— **S 15**—*Pre-emption suit—Deficiency in deposit—Question if can be raised in appeal for the first time.*

Where a plaintiff in a suit for pre-emption in respect of property transferred under a foreclosure decree stated in the plaint that the final decree was obtained in lieu of a particular amount and stated in the relief paragraph that she was entitled to pre-emption on payment of this amount and no written statement was filed to contest these statements and though the office objected to the actual figures the Judge overruled the objection and ordered the plaintiff to deposit the amount mentioned by him it was held that it was not open to the defendant mortgagee to object to the correctness of the amount he not having raised it in the trial Court and that there was no deficiency in deposit as the plaintiff had complied with the terms of the decree. (*Ghulam Hasan and Madeley, JJ.*) KARTA KRISHNA *v.* MST. INDRANI KUER. 200 I C. 580=15 R.O. 23=1942 O W.N. 347=1942 A.W.R. (C C.) 217=1942 O.A. 238=A.I.R. 1942 Oudh 399 (2).

OUDH RENT ACT (XXII OF 1886)—*Non-occupancy holdings—Continuity of tenure, if can be presumed—Liability to ejectment at will.*

In the case of non-occupancy holdings in Oudh no presumption of continuity of tenure can be drawn as the tenants are liable to be ejected at the will of the Zamindar under the Oudh Rent Act. (*Sathe, J.M.*) MAHABIR *v.* RAJ KUNWAR. **1942 O.A. (Supp.) 90=1942 A.W.R. (Rev.) 84=1942 O.W.N. (B.R.) 136=1942 R.D. 202.**

——**Ss. 3, 108 (2) and 127**—'Produce', if includes fish—Land in S. 127 if includes produce of land—Suit for money due in respect of fishery rights—It lies under either S. 108 (2) or S. 127—Jurisdiction of Civil Courts, if barred. *See* 1941 Dig., Col. 924 THAKUR *v.* JAGDAMBIKA PRATAP NARAIN SINGH. **17 Luck. 205= A.I.R. 1942 Oudh 93.**

——**S. 3 (8)**—*Perpetual lease—Only heritable but not transferable rights conferred — Under-proprietary rights if created.*

Where a perpetual lease confers only heritable but not transferable rights, no under-proprietary rights are created by the lease. (*Bennett and Ghulam Hasan, JJ.*) GUR PRASAD SINGH *v* MEHDI HUSAIN. **201 I.C. 728=15 R.O. 106=1942 O.W.N. 435=1942 A.W.R. (C.C.) 266=1942 O.A. 294=A.I.R. 1942 Oudh 460.**

——**S. 3 (10**—*Lease obtained by a member of joint family—Holding, if becomes property of joint family—Facts to be proved to entitle such right.*

A tenancy in Oudh is the creation of a contract between the Zamindar and the tenant and because one member of a joint family obtains a lease from the zamindar it does not follow that all the members of the family also become the zamindar's tenants. A holding does not become the property of the joint family because it is entered in the name of a member of that family. Before the other members of the family can claim joint tenancy rights they must show that the zamindar settled the holding in fact with the whole family although the name of one member only was entered in the papers. (*Shirreff, S. M. and Sathe, J. M.*) BIJAI SUNDERJI *v.* HARI PRASAD. **1942 R.D. 212=1942 O.W.N. (B.R.) 146=1942 A.W.R. (Rev.) 158=1942 O.A. (Supp.) 178.**

——**S. 3 (17)**—Khudkasht *and sir—Difference between—Nature of* khudkasht *rights—Transferability.*

Khudkasht stands on a very different footing from *sir*. The right of a *khudkasht* holder is an incohate right based upon actual possession. The right to *khudkasht* since it is only a step on the way to the acquisition of *sir* rights and is not in itself a perfected right independent of actual possession it cannot be transferred by deed. No doubt it could be transferred by actual handing over of possession. (*Bennett and Madeley JJ.*) SHAMBHU DATT *v.* ISHWAR DEEN. **199 I.C. 180=14 R.O. 472=1942 R.D. 324=1942 O.W.N. 125=1942 O.A. 711=1942 A.W.R. (C.C.) 93 =A.I.R. 1942 Oudh 245.**

——**S. 3 (17) (d)**—*Applicability—Acquisition of 'sir' rights—Nature and scope of such rights.*

S. 3 (17) (*d*) of the Oudh Rent Act applies to the acquisition of *sir* rights in land which is not already *sir*. It has no application to the acquisition of *sir* rights by one co-sharer in the *sir* of another co-sharer. A co-sharer could not acquire *sir* rights in land which had been the *sir* of another co-sharer until the rights of the latter as *sir* holder had ceased to exist. These *sir* rights are independent of the delivery of actual possession. They could for instance be maintained through sub-tenants. They would not cease to exist merely because the land was left fallow, that is, because no one remained in actual cultivating possession for some time.

OUDH RENT ACT (1886), S. 48.

(*Bennett and Madeley, JJ.*) SHAMBHU DATT *v.* ISHWAR DEEN. **199 I.C. 180=14 R.O. 472=1942 R.D. 324=1942 O.W.N. 125=1942 O.A. 71=1942 A.W.R. (C.C.) 93=A.I.R. 1942 Oudh 245.**

——**S. 3 (18)**—*Explanation—Acquisition of statutory right—Occupation—Necessity.*

The Explanation to S. 3 (18) of the Oudh Rent Act uses the word 'occupation' and it follows that a man who is not in occupation of the holding left by his father cannot acquire statutory rights under that Explanation even though his dispossession may have been due to the action of a trespasser and he may be still in constructive possession of the holding. (*Sathe, J.M.*) CHEDI *v.* NARIND SINGH. **1942 O.A. (Supp.) 450 (1)=1942 A.W.R. (Rev.) 424 (1)=1942 O.W.N. (B.R.) 652.**

——**Ss. 5 and 127**—Transfer of occupancy rights created under S. 5—Rights created by decree—Distinction—Transferor if can eject transferee under S. 127. *See* 1941 Dig., Col. 924. MIR MAHOMED HUSAIN *v.* MAHOMED HABIB KHAN. **17 Luck. 139.**

——**S. 20**—*Relinquishment—Statement on oath of actual surrenderer—Effect.*

Where in respect of a relinquishment of a holding, the executant admits on oath that he had in fact actually surrendered the holding and that he has no more interest in the holding, the deed cannot thereafter be attacked on the ground that it was invalid as actual possession was not given up. (*Shirreff, S. M. and Sathe, J. M.*) BHAGWATI PRASAD *v.* HIRA LAL. **1942 O.A. (Supp.) 124 (1)= 1942 A.W.R. (Rev.) 107 (1) =1942 O.W.N. (B.R.) 259 =1942 R.D. 348.**

——**S. 20**—*Transfer or relinquishment of holding in favour of specific person—If possible.*

Under the Oudh Rent Act no holding could be transferred to or relinquished in favour of any particular person. (*Sathe, J.M.*) ASHRAFI LAL *v.* CHOKRA. **1942 O.W.N. (B.R.) 162=1942 O.A. (Supp.) 119= 1942 R.D. 228=1942 A.W.R. (Rev.) 103.**

——**S. 48**—*Ancestral rights question, if can arise in non-occupancy holdings in Oudh.*

There can be no question of ancestral rights in non-occupancy holdings in Oudh, where the holdings are renewed at every generation by a fresh contract with zamindar. (*Shirreff, S.M. and Sathe, J.M.*) CHANDRABHAN PRATAP BAHADUR SINGH *v.* HALAI. **1942 O.A. (Supp.) 461 (1)=1942 A.W.R. (Rev.) 435=1942 O.W.N. (B.R.) 681.**

——**S. 48**—*Non-occupancy holding—Entry in* 1892 *settlement in father's name—If raises a presumption of holding being ancestral in the hands of sons.*

Since non-occupancy holdings under the Oudh Rent Act are not heritable, it cannot be presumed that a particular plot is the ancestral holding of a particular party merely because that particular plot was entered in the name of the father of that particular party in the settlement of 1892. (*Sathe A.M.*) KRISHNA MURARI *v.* MAHADEO. **1941 O.A. (Supp.) 966=1941 A.W.R. (Rev.) 1218.**

——**S 48**—*Non-occupancy holding—Heritability—Inference from possession of descendant of a tenant.*

In the case of non-occupancy holdings in Oudh the tenancy rights are not heritable under the Oudh Rent Act. It would be wrong to infer merely from the fact that a descendant of a tenant is in possession over certain plots that he is a tenant, when neither his name nor that of his ancestors in the last two generations is ever found recorded against the holding. (*Shirreff, J. M. and Sathe, A.M.*) GIRDHARI CHAMAR *v.* NATHAI CHAMAR. **1941 O.A. (Supp.) 953=1941 A.W.R. (Rev.) 1202**

OUDH RENT ACT (1886), S. 48.

——S. 48—*Non-occupancy holdings—Heritability—Rights of heir before and after amendment by Act IV of* 1921.

Non-occupancy and statutory holdings in Oudh were not heritable under the Oudh Rent Act. Before S. 48 of the Act was amended the heirs of an ordinary tenant in Oudh were entitled to retain the holding only up to the expiry of the deceased tenant's patta. After S. 48 was amended by Act IV of 1921, the heirs of a statutory tenant acquired the right of retaining the holding for five years. But apart from this the heirs of an ordinary tenant in Oudh had no rights of inheritance and could acquire fresh rights only if the zamindar allowed them to retain possession for three years beyond the statutory period of five years or gave them a fresh patta. (*Shirreff, S.M. and Sathe, J.M.*) BIJAI SUNDERJI *v.* HARI PRASAD. **1942 R.D. 212=1942 O.W.N. (B.R.) 146=1942 A.W.R. (Rev.) 158=1942 O.A. (Supp.) 178.**

——S. 48—*Relinquishment by Hindu widow inheriting holding under—Limits to the rights of reversioners to question.*

An ordinary holding in Oudh is heritable only for a period of five years under S. 48 of the Oudh Rent Act. Where a Hindu widow inheriting under this section relinquishes it before the expiry of the period of five years, the collaterals if they have any grievance about it should agitate about it immediately after the relinquishment and at any rate before the expiry of the period of five years during which they would have been entitled to retain the holding after the last male holder's death under S. 48. (*Shirreff, S.M. and Sathe, J.M.*) MAHABIR *v.* SATNARAIN. **1942 A.W.R. (Rev.) 306 =1942 O.A. (Supp.) 332=1942 O.W.N. (B.R.) 459 =1942 R.D. 576.**

——Ss. 54 and 59—*Service of notice under S. 55—Contesting it by suit, if a necessity to avoid extinguishment of rights under S. 59—Proper scope and effect of S. 59.*

It is far too wide a proposition to state that a person on whom a notice is served whether rightly or wrongly under S. 54 of the Oudh Rent Act must institute a suit to contest it if he wants to retain his rights and that on his failure to do so he loses all his rights under S. 59 of the Oudh Rent Act. If a tenant who is not liable to ejectment at all is served with an illegal notice by the Zamindar he would have two courses open to him, *viz.*, either to ignore it or to file a suit to contest it. But if he fails to file a suit to contest it, it cannot be said that his rights will automatically expire on the 15th of May following the service of notice simply on the ground of his failure to file the suit. S. 59 of the Oudh Rent Act only lays down that a tenant who is liable to ejectment by notice will have his rights extinguished if he does not contest the notice of ejectment. Hence where statutory tenants who had perfected their title are served with a notice under S. 54 and they do not care to contest it by suit, it cannot be said that the notice would be enough to extinguish their rights. (*Sathe, J.M.*) MOHAMMAD EJAZ RASUL KHAN *v.* MATHURA. **1942 A.W.R. (Rev.) 297=1942 O.A (Supp.) 323=1942 O.W.N. (B.R.) 446=1942 R.D. 563.**

——S. 60—*Effect of refusal of application under.*

The refusal of an application under S. 60, Oudh Rent Act implies a finding that the defendant was not liable to ejectment. He continues to be a tenant as before. (*Agarwal, J.*) MUKTA *v.* RAM TAK. **204 I.C. 246= 1942 A.W.R. (C.C.) 345 (1)=1942 O.W.N. 634= 1942 O.A. 522=A.I.R. 1942 Oudh 505.**

OUDH RENT ACT (1886), S. 61.

——S. 60—*Formal* dakhal dehani—*Effect of—Extinguishment of rights of tenant.*

A formal *dakhal dehani* even though it may not be followed by actual dispossession extinguishes the rights of a tenant. (*Bennett, J.*) RAM ASREY *v.* BAIJNATH. **1942 O.W.N. 727.**

——S. 60—*Jurisdiction of Civil and Revenue Court—Proper remedy to question validity of proceedings under S.* 60.

The Civil Court has no jurisdiction to question the correctness or the validity of the order of the Revenue Court when the matter decided was exclusively within the jurisdiction of the Revenue authorities even if the latter made a mistake. The Revenue Courts are given exclusive jurisdiction in the matter of ejectment subject to the provisions for suits in Ss. 59 and 60. It is true there is no provision for a suit to contest the proceedings for ejectment when ejectment has taken place: but that is no reason why it should be held that the question of the validity of these proceedings can be raised in the Civil Courts. Rather the reverse. The proceedings can be challenged in appeal in the higher Revenue Courts. Civil Courts cannot question their validity, but must accept the decision of the Revenue Courts. If any irregularity has been committed in the help given to the landlord to obtain possession from the tenants to be ejected, the latter's remedy lay in sub-S. (2) of S. 60 and if they do not avail themselves of the remedy they cannot seek to question it in the Civil Courts. (*Bennett, J.*) RAM ASREY *v.* BAIJNATH. **1942 O.W.N. 727.**

——Ss. 60 and 127—*Effect of ejectment under S. 60—Continuance in possession—Suit under S. 127—Plea of occupancy tenancy, if available.*

Where proceedings under S. 60 of the Oudh Rent Act are taken and formal possession obtained by the landlord, it implies that a notice of ejectment was duly served on the defendant and that he had brought no suit to contest it, or if he had brought it, it was decided against him. It is no longer open to defendant to contend that he was an occupancy tenant. He can no doubt bring a suit under S. 60 (2) but in the absence of such a suit the proceedings under S. 60 cannot be regarded as null and void and he is not entitled to possession and if in possession can be sued under S. 127 as amended. (*Bennett and Agarwal, JJ.*) RAM PARGASH SINGH *v.* SARJU SINGH. **204 I.C. 249=1942 O.W.N. 722= A.I.R. 1943 Oudh 48.**

——S. 61—*Compromise decree under—Application to quash decree under S. 296, U. P. Tenancy Act, prior to expiry of limitation for execution—Adjournment—Non-payment under compromise decree—Right to execute.*

Where a compromise decree under S. 61, Oudh Rent Act, provided for payment within 4 months or for ejectment in default and the judgment-debtor applied before the expiry of the 4 months for quashing the decree under S. 296 of the U. P. Tenancy Act and the application was placed on the file and execution of the decree under S. 61 of the Oudh Rent Act was taken under Ss. 181 (1) and 182 (1) of the U. P. Tenancy Act as no payment was made as per terms of the decree it was held that the orders of the Court on the judgment debtor's application did not have the effect of misleading the judgment-debtor into thinking that no payment was necessary and that he took the risk of ejectment for non-payment. (*Shirreff, S. M. and Sathe, J. M.*) DUDHNATH PANDEY *v.* ANGAD SINGH. **1942 R.D. 433 (2)=1942 O.W.N. (B.R.) 344 (2)=1942 A.W.R. (Rev.) 275 (1)=1942 O. A. (Supp.) 301 (1).**

——S. 61—*Ejectment in pursuance of decree under—Second suit for subsequent arrears—Execution of*

OUDH RENT ACT (1886), S. 108.

prior decree by sale of Judgment-debtor's property—Legality—Dakhal dehani *given prior to second suit—If affected.*

Where a zamindar obtains a decree under S. 61 of the Oudh Rent Act and in due course ejects him and later on files another suit for the subsequent arrears, he cannot at the same time apply, during the proceedings in the later suit, for the execution of the S. 61 decree by attachment and sale of the Judgment debtor's property. But the filing of the subsequent arrears of rent suit cannot invalidate the *dakhal dehani* which has been already given to the zamindar. (*Shirreff, S. M. and Sathe, J. M.*) PITAMBER DASS *v.* RAM ADHIN. **1942 A.W.R. (Rev.) 434 (2)=1942 O.A. (Supp.) 460 (2)=1942 O.W.N. (B.R.) 638.**

———**S. 108**—Bar of civil suit—Declaration as to party being a muafidar. *See* 1941 Dig., Col. 926. AZIZ AHMAD KHAN *v.* INAYAT KHAN. **17 Luck. 215 =A.I.R. 1942 Oudh 25.**

———**S. 108 (10)**—*Ejectment contemplated by—Wrongful dispossession by one of the proprietors—Civil suit if barred.*

The ejectment of a tenant contemplated by S. 108 (10), Oudh Rent Act means an ejectment by the landlord that is, by the whole body of co-sharers. Hence when a tenant who nolds his tenancy from all of them is wrongfully dispossessed by one of the proprietors only, it is not a dispossession caused by the landlord and suit by the tenant against such a person in the Civil Court is maintainable. (*Ghulam Hassan and Agarwal, JJ.*) GUDAN DUBE *v* PURBIDIN. **203 I.C. 587=15 R.O. 231=1942 A.W.R. (C.C.) 344 (1)=1942 O.W.N. 590 =1942 O.A. 515=A.I.R. 1943 Oudh 36.**

———**S. 108 (15)**—*Co-sharer entitled to sue under—If can file civil suit for damages.*

Where a co-sharer's remedy is to file a suit for profits under Cl. 15 of S. 108 of the Oudh Rent Act, he cannot file a suit for damages in the Civil Court for S. 108 excludes the jurisdiction of Civil Courts in respect of such a suit and profits cannot be obtained under the guise of damages. (*Bennett, J.*) SHAMBU RATAN *v.* BADRI NARAIN. **203 I.C. 613=1942 O.A. 605=1942 O.W.N. 750.**

——— **S. 108 (15)**—Suit for profits under—Failure of lambardar to produce accounts—Decree on basis of gross rental, if justified. *See* 1941 Dig., Col. 927. RAJ BAHADUR SINGH *v.* PIRTHVI PAL SINGH. **17 Luck. 189=202 I.C. 273=15 R.O. 119=A.I.R. 1942 Oudh 24.**

———**S. 119**—*Orders in execution of decree for arrears of rent passed by Assistant Collector—Appeal—Forum.*

Where an order is passed by the Assistant Collector in execution proceedings in a suit for arrears of rent, it is not appealable to District Judge but only the Court of the Commissioner. Where a second appeal was filed against the District Judge's order holding that the appeal would not lie to him and it was allowed which in turn was reversed on appeal under S. 12 (2) of the Oudh Courts Act, the Judges directed the appeal to be presented to the Commissioner to be dealt with on the merits and not thrown out as barred by limitation in view of the special circumstances of the case and the lapse of time was excused under S. 14, Limitation Act. (*Ghulam Hasan and Madeley, JJ.*) JAGDAMBIKA PRATAP NARAIN SINGH *v.* SITLU BAKSH SINGH **204 I.C. 215=1942 A.W.R. (C.C.) 344 (3)=1942 O.W.N. 595=1942 O.A. 520=A.I.R. 1943 Oudh 52.**

———**S. 124-D and C. P. Code, S 115**—*Discretion in the exercise of power under S. 124-D Oudh Rent Act—Interference in revision.*

OUDH RENT ACT (1886), S. 145.

S. 124-D of the Oudh Rent Act gives the appellate Court all the ordinary powers of an appellate Court and it then proceeds to say that if it exercises its powers in certain ways, it may direct its order either to the Court in which the suit was instituted or to any other Court competent to entertain the suit. Hence the appellate Court has got a discretion either to remand it or to dismiss the appeal and if the appellate Court chooses to adopt the latter course it cannot be said that the Court has acted without jurisdiction and its orders cannot be interfered with under S. 115, C. P. Code. (*Bennett, J.*) SANGAM LAL *v.* BRAHMADIN. **200 I.C. 604=15 R.O. 19=1942 R.D. 535=1942 O W.N. 340=1942 A.W. R.(C.C.) 214=1942 O.A. 235=A.I.R. 1942 Oudh 395.**

———**S. 127**—Acceptance of rent after suit under—Effect. *See* 1941 Dig., Col. 928. DILASA *v.* SUJAN KUER. **A.I.R. 1942 Oudh 67.**

———**S. 127**—Liability to ejectment—Grove losing its character as grove—Tenants bila tasfia. *See* 1941 Dig., Col. 928. MAHOMED TAQI *v.* EWAZ MAHOMED. **A.I. R. 1942 Oudh 70.**

———**S. 127**—*Scope of old and amended section—'Holding over', if can confer any title.*

S. 127 of the Oudh Rent Act as it stood prior to its amendment in 1921 did not refer at all to the power of the landlord to eject a person in possession as trespasser. It only provided for the payment of rent by a person in possession of land occupied without the landlord's consent. The section as amended provides both for the payment of rent and for ejectment and makes liable for such payment and ejectment a person who takes or retains possession without being entitled to such possession, and not only a person who has come into possession without the landlord's consent. That is to say, under the section as amended a person who has come into possession with the landlord's consent becomes liable to ejectment as soon as he ceases to be entitled to possession. A person against whom a decree for ejectment has been passed cannot be said to be entitled to possession. Only the landlord is then entitled to possession and the failure of the landlord to execute his decree cannot restore the tenant to his former possession so as to enable him to resist a suit under S. 127, because he retained possession without being entitled to, and by so doing made himself liable to such a suit. The term 'holding over' is not to be found in the Oudh Rent Act and any temporary occupation of the trespasser that may be acquiesced in by the landlord would not confer any title on the former to possession. As there is no limitation for suits under S. 127 the only way in which a person without title can obtain title is by adverse possession for the necessary period. (*Bennett and Agarwal, JJ.*) LAKHRAJI *v.* KANIZ BAQAR. **1942 A.W.R. (C. C.) 356 (2)=1942 O.A. 586=1942 O.W. N. 712=A.I.R. 1943 Oudh 86.**

———**S. 127**—*Tenancy created by agents without authorization—Validity.*

As no valid tenancy can be created by an agent without the landholder's authorization, any person coming into some arrangements with an agent not so authorized is liable to be ejected under S. 127 of the Oudh Rent Act as a trespasser. (*Bennett, J.*) PARTAP BAHADUR SINGH *v.* MULCHAND. **202 I.C. 454=15 R.O. 121= 1942 A.W.R. (C.C.) 313=1942 O.W.N. 473=1942 O.A. 389.**

———**S. 145**—Applicability—Decree for more than Rs. 500—Apportionment of liability of each of the judgment debtors in the execution application—None liable for more than Rs. 500—Limitation for execution. *See*

OUDH RENT ACT (1886). S. 151.

1941 Dig., Col. 929. HARBANS SINGH *v.* RAMCHANDRA. **A.I.R. 1942 Oudh 139.**

——**S. 151 and United Provinces Tenancy Act (1939), S. 243**—Execution of partially satisfied decree after new Act coming into force—Law applicable. *See* 1941 Dig., Col. 929. GAIADHAR *v.* BADRI PRASAD. **A.I.R. 1942 Oudh 106.**

——**S. 151**—*Scope of—Bar of remedy against moveables—If gives right to proceed against immovable property.*

The language used in the latter part of S. 151, Oudh Rent Act is very wide and does not lay down that the decree-holder is precluded from proceeding against the immovable property, unless and until he has first proceeded against the moveable property and has found that there was no moveable property of the judgment debtor that can be attached. The language of S. 151 does not rule out the possibility of a case where the application for execution against the moveable property may have become time barred and consequently the satisfaction of the decree could not have been obtained against the moveable property of the judgment debtor. (*Thomas, C.J. and Ghulam Hassan, J.*) JAGMOHAN SINGH *v.* SPECIAL MANAGER, COURT OF WARDS **202 I.C. 651=15 R.O. 139=1942 A.W.R. (C.C.) 341 (1)=1942 O.W.N. 553=1942 O.A. 476=A.I.R. 1942 Oudh 497.**

——**S. 154**—Suit for under-proprietary rent—Mortgagee of under-proprietor not made party—Superior proprietor purchasing property in execution of rent decree—If can claim priority against mortgagee. *See* 1941 Dig., Col. 930. KANIZ BAQAR *v.* KANIZ ABID. **1941 O.W.N. 1408=1942 R.D. 23.**

OUDH SUB SETTLEMENT ACT (XXVI OF 1866), R. 9—*Applicability—Under-proprietary holdings of specific plots—Provision of law under which rent is to be fixed.*

Under-proprietary holdings of specific plots were never engaged for in sub-settlement R. 9 of the Sub Settlement Act does not therefore apply to them. They can be assessed for rent under R. 14 of the Board's circular 2-I. (*Shirreff, S.M.*) RAJ BAHADUR SINGH *v.* JAGDISH PRATAP SAHI. **1942 O.W.N. (B.R.) 547 (1)=1942 A.W.R. (Rev.) 412 (1)=1942 O.A. (Supp.) 438 (1).**

PARDANASHIN—*Admission in deed executed by Court under O. 21, R. 34, for the lady—Binding nature.*

The admissions contained in a sale-deed executed by the Court under O. 21, R. 34, C. P. Code on a *pardanashin* lady failing to execute it in pursuance of an award, are not her admissions at all. They are not binding upon her as an admission of the intelligent execution of the sale deed in question. (*Madeley, J.*) EQBAL HUSAIN *v.* MT. HASHMAT JAHAN BEGAM. **202 I.C. 738=15 R.O. 148=1942 A.W.R. (C.C.) 342 (1)=1942 O.W.N. 580=1942 O.A. 493.**

PARSI MARRIAGE AND DIVORCE ACT (III OF 1936), S. 1 (2)—"Parsi subjects of His Majesty"—Meaning of—Change of domicile—Effect of on status and nationality. *See* 1941 Dig., Col. 931. PANTHAKY *v.* PANTHAKY. **I.L.R. (1941) Bom. 589.**

——**S. 1 (2)**—Scope and effect—Act, if applies to Native States. *See* 1941 Dig., Col. 931. PANTHAKY *v.* PANTHAKY. **I.L.R. (1941) Bom. 589.**

——**S. 29 (3)**—"Resides"—Meaning of. *See* 1941 Dig., Col. 931. PANTHAKY *v.* PANTHAKY. **I.L.R. (1941) Bom. 589.**

——Ss. 29 (3) and 47 (b)—Wife obtaining leave to sue in the Parsi Chief Matrimonial Court in Madras

PARTITION.

(High Court)—Application by husband under O. 13, R. 14 (*a*) of the Original Side Rules for revocation of leave—Remedy by way of appeal under the Act—Inapplicability of the Original Side Rules. *See* 1941 Dig., Col. 931. K. N. CHINOY *v.* N. K. CHINOY. **201 I.C. 48=15 R.M. 185=A.I.R. 1942 Mad. 159=(1941) 2 M.L.J. 935.**

PARTITION—*Partition papers and map—Discrepancy between—Which to prevail.*

Where there is discrepancy between the partition papers consisting of the *chitta* and the *dole* on the one hand and the partition map on the other, the rule that is to be followed is that the partition papers should prevail over the map in as much as the map simply purports to delineate the plots that are allotted to the co-sharers by the partition papers. (*Mukherjea and Akram, JJ.*) SITANATH *v.* HARI RANI. **46 C.W.N. 509.**

——*Suit for—Commissioner's accounts—Method of preparation.*

The Commissioner of partition has to prepare the following five accounts and annex them to his *final* return (1) *Property account*: On the credit side should be the receipts and on the debit side the amounts credited to the parties in respect of their shares. (2) *Cash account*: All receipts and disbursements should find place in such account with the respective references to the other accounts, for instance, payment to the pool account. (3) The *ledger account* should show on the credit side the share of the sale-proceeds with which each party is credited, on the debit side the amounts paid to the parties or on their account. On the debit aside also should be debited the share of the pooled costs payable by each party. (4) *Costs adjustment account*: On one side, the costs of the partition which have to be dealt with by the Commissioner. First, costs of the Commissioner. Then the ascertained party and party costs of each party. On the other side of the account, the liability of the parties for the aggregate of the said costs. (5) The *costs pool account* is designed mainly to meet the difficulties of advances to the parties and to the parties' solicitors. On one side should appear the amounts payable by the parties in respect of pooled costs. On the other side must be brought in all advances to the solicitors in respect of such costs. Also on this side must appear the actual amounts payable and paid to the solicitors before the final return is filed. (*Ameer Ali, J.*) NARAIN DAS BHADURI *v.* SATYA NARAIN BHADURI. **I.L.R. (1941) 2 Cal. 410=200 I.C. 702=15 R.C. 70=A.I.R. 1942 Cal. 300.**

——*Suit for — Preliminary decree— Form and contents.*

A preliminary decree in a partition suit must contain the following clauses:—(1) Declaration of properties belonging to the estate; (2) Declaration of shares of the parties; (3) Order for partition, division and allotment; (4) Appointment of Commissioner for the purpose of partition setting out the conditions, powers and duties; (5) Receiver, if appointed; (6) Special Referee to take accounts; (7) Costs prior and subsequent to preliminary decree, and a provision for the ascertainment of costs before the filing of the return at the instance of the Commissioner; (8) Provisions relating to conveyances and documents of title, etc.; (9) Liberty to apply including liberty to bring on the matter for further directions in the Partition List at the instance of the Commissioner or at the instance of any party with the Commissioner's consent or with the sanction of the special officer. (*Ameer Ali, J.*) NARAIN DAS BHADURI *v.* SATYA NARAIN BHADURI. **I.L.R. (1941) 2 Cal. 410=200 I.C. 702=15 R.C. 70=A.I.R. 1942 Cal. 300.**

PARTITION.

———*Suit for—Receiver's accounts—Method of preparation.*

Receivers in partition suits should prepare a classified statement of account from which the Commissioner can at once enter up his accounts:—(1) Property account; (2) Cash account; (3) Parties' ledger accounts; (4) Costs adjustment account; and (5) Pool account. Receiver's costs must be taxed or assessed; and included in the above account. (*Ameer Ali, J.*) NARAIN DAS BHADURI *v.* SATYA NARAIN BHADURI. **I.L.R. (1941) 2 Cal. 410=200 I.C. 702=15 R.C. 70=A.I.R. 1942 Cal. 300.**

PARTITION ACT (IV OF 1893), S. 2—*Applicability—Request of parties—Necessary condition.*

S. 2 of the Partition Act authorises the Court to apply S. 2 only on the previous request of the parties. The consent of parties must appear in the record prior to judgment. (*Niyogi, J.*) KAPURCHAND *v.* SHANKARRAO. **1942 N.L.J. 134.**

PARTITION PROCEEDINGS—*Failure to add some of the parties in appeal—Such parties filing cross-objections—Allowing of appeal and dismissal of cross-objection—Appeal to commissioner—Objection as to non-impleading in first appeal, if open.*

Where in an appeal against the dismissal of objections to partition certain mortgagors of one of the parties were not impleaded as respondents, but they along with that party filed a cross objection to that appeal and the appeal was allowed and the cross-objections dismissed, in an appeal by such cross objectors, it was held that it was not open to them to raise the question as to the Collector's order in appeal not being binding on them as they were not impleaded in appeal. By their conduct in filing the cross appeal they had believed themselves to be actual respondents to the appeal and hence they could not raise the technical objection as to non impleading in appeal. (*Shirreff, S. M. and Sathe, J.M.*) BUDH SINGH *v.* BASHIRAN. **1942 A.W.R. (Rev.) 118=1942 R.D. 272=1942 O.W.N. (B.R.) 206=1942 O.A. (Supp). 135.**

PARTNERSHIP—*Accounts—Suit against managing partner two years after dissolution—Interest, if chargeable.*

In a suit brought nearly two years after the dissolution of a partnership against the former managing partner, who has been retaining in his hands and for his own purposes assets of the firm without accounting for them or their proceeds to his copartner, interest is properly chargeable against the accounting defendant even though he has not acted fraudulently. (*Lord Romer.*) HAKIM RAI *v.* GANGA RAM. **202 I.C. 754=47 C.W.N. 113=15 R.P.C. 48=9 B.R. 61=1942 A.L.J. 710=1942 O.W.N. 814=1943 A.L.W. 20=A.I.R. 1942 P.C. 61=(1943) 1 M.L.J. 16 (P.C.).**

———*Accounts—Suit for particular item—Maintainability.*

The general principle that as between partners there can be no suit for any particular item of partnership account is quite sound and must be enforced under ordinary circumstances. If, however, special circumstances arise which render the application of this principle unfair and inequitable there is no reason why justice and equity should not come to the help of a prrtner who is being involuntarily saddled with liability which must be shared by his co-partners and for which he has no means of relief except a suit for contribution. (*Nawal Kishore, C.J. and Ranjitmal, J.*) CHANDAN MAL *v.* BHOMRAJ. **1942 M.L.R. 13 (Civ.).**

———*Contribution — Suit by one partner against another in respect of joint decree against them—Maintainability—Prayer for dissolution and accounts—Necessity—Parties to suit—Rule.*

Where some of the partners of a firm borrow money from a third party and on a joint decree being obtained by the creditor, one of them pays up the amount, he cannot sue his co-judgment-debtors (other partners) for contribution in the absence of the other partners and with adjustment of the partnership accounts, in the absence of special circumstances such as an express promise by the co-borrowers to indemnify the plaintiffs. The only remedy of the partners against other partners in respect of partnership assets is by way of a suit for accounts and not a suit for contribution. This rule only applies where the debt is really a partnership debt. Where, however, the debt is collateral to or independent of the partnership this principle has no application. In the latter case, a partner may have a right of action against another for contribution. But when the debt is a partnership debt, a suit for contribution is not maintainable in the absence of a prayer for dissolution or for accounts. (*Meredith and Shearer, JJ.*) MUSAMMAT JAGPATI KUAR *v.* DAMRI SAHU HALKHORI RAM. **20 Pat. 811=198 I.C. 521=14 R.P. 460=8 B.R. 421=23 P.L.T. 588=A.I.R. 1942 Pat. 204.**

———Payment of common debt by one or some of the partners—Suit for contribution against others—Maintainability. *See* 1941 Dig., Col. 933. BHAGWANDAS *v.* HIRA LAL. **I.L.R. (1942) Nag. 340=200 I.C. 240=14 R.N. 328=A.I.R. 1942 Nag. 72.**

———*Suit for accounts—Appeal—Parties—Duty of appellant—Failure to add some—Effect—Abatement—Test.*

In a suit for partnership accounts all parties are interested in the directions for account and the result of the account and the presence of all such persons is necessary before the Court in appeal, and the decree of the lower Court cannot be varied in the absence of any one of them. In order to decide whether owing to the failure to add the legal representatives of deceased parties to an appeal, the appeal abates in its entirety or only against the deceased party the test often applied is whether in the event of the appeal being allowed there would or would not be two contradictory decrees in the same litigation with respect to the same subject matter. If it is likely to result in two contradictory decrees owing to non-joinder of necessary parties in appeal or on account of failure to bring on record the legal representatives of the deceased respondent who was also a necessary party to the appeal, the Court will have no alternative but to dismiss the appeal as a whole. (*Grille, C.J. and Pollock, J.*) SHEORAM SITARAM *v.* ATMARAM RAGHOJI. **1942 N.L.J. 557=A.I.R. 1943 Nag. 13.**

———*Validity—Agreement for joint acquisition of business and sharing of profits—Registration of partnership—Sale-deed referring to vendees individually and not as partners—Failure of one to pay his contribution—If affects validity of partnership.*

Where there is an agreement between two persons for the joint acquisition of a business and for the sharing of its profits in proportion to the contributions of each and the partnership is registered under the Partnership Act, there is a valid partnership and it is not affected either by the fact that the sale-deed refers to the partners individually and not as partners or that one of them had not paid his contribution at all. (*Bennett and Agarwal, JJ.*) THE OFFICIAL LIQUIDATOR, DINSHAW & CO. *v.* ANAND BEHARI LAL. **201 I.C. 69=15 R.O. 48=1942 O.W.N. 269=1942 A.W.R. (C.C.) 198=1942 O.A. 205=A.I.R. 1942 Oudh 327.**

PARTNERSHIP ACT (IX OF 1932), S. 19 (2), (c)—Partner—Implied authority of—Decree in favour

PARTNERSHIP ACT (1932), S. 29,

of firm—Assignment by one partner for less than decree amount—Validity. *See* 1941 Dig., Col. 935. KRISHNAJI BHARMALJI & Co. *v.* ABDULRAZAK AHMEDBHOY. 198 I.C. 106=14 R.B. 268=A.I.R. 1942 Bom. 22.

——S. 29—*Admission of stranger—Transfer of a partner's interest—Effect.*

The fundamental principle underlying the law of partnership is that a stranger cannot be foisted upon the partners against their will consequently even when a partner transfers his interests in a firm the transferor does not cease to be a partner nor does the transferee become one. (*Stone, C.J. and Bose, J.*) SUNDARA BAI *v.* RAMLAL MADHAO RAO. 1942 N.L.J. 229.

——Ss. 59 and 68—Effect of registration—Independent proof of membership—Necessity. *See* 1941 Dig., Col. 935 HET RAM *v.* SUBHAG CHAND. 16 Luck. 727.

——S. 69 (1) and (3) (a)—*Suit for dissolution of unregistered firm—Prayer for accounts—Competency.*

When a partner sues for the dissolution of an unregistered partnership, it is a compendious form of asking for the reliefs covered by the matters referred to in O. 20, R. 15, C. P. Code. A prayer for accounts is quite competent in such a suit, for S. 69 (3) (*a*) of the Partnership Act exempts suits for accounts of a dissolved firm from the embargo placed by S. 69 (1). (*Bose, J.*) DAMODHAR *v.* KHUSAL. 203 I.C. 43=15 R.N. 105=1942 N.L.J. 485=A.I.R. 1943 Nag. 12.

——S. 69 (2)—*Applicability and construction—Unregistered firm—Dissolution and taking of accounts—Agreement by one partner to pay definite sum of money to another—Suit to enforce—Maintainability.*

S. 69 (2) of the Partnership Act does not apply to a suit for the enforcement of an agreement entered into after the dissolution or at the time of the dissolution between the partners of an unregistered firm under which some definite sum of money was payable by one partner to another. S. 69 (2) applies only to a suit on behalf of the partnership. The section has to be strictly construed and the bar imposed by it cannot be extended to suits for recovery of money due on a contract entered into between the partners of an unregistered firm in pursuance of an agreement entered into after dissolution and taking of accounts. (*Kuppuswami Ayyar, J.*) ABDUL SUBHAN SAHIB *v.* ABDUL RAVOOF SAHIB. 203 I.C. 644=1942 M.W.N. 542=55 L.W. 547=A.I.R. 1942 Mad. 707=(1942) 2 M.L.J. 309.

——S. 69 (2)—*Applicability—Conditions—Suit by partner individually on personal contract by him—If falls under S. 69 (2)—Plea of non-maintainability of suit in appeal.*

A point of law, *e.g.*, that a suit falls within the mischief of S. 69 (2) of the Partnership Act, can be raised for the first time in appeal if all the facts necessary for its determination are on the record. S. 69 (2), which is a stringent provision and which must therefore be strictly construed, will only apply to a suit if it is instituted either by or on behalf of a firm, that is to say, *ex facie* it purports to be filed either by or on behalf of the firm or in the interests of the firm. But this must be clear from the plaint itself and must not in any case depend on the liability of a plaintiff to restore the benefits he has received out of that suit to the firm of which he is a partner eventually. Where on a reading of the plaint it is found that the suit is instituted not by or on behalf of the firm, but by a partner in his individual capacity, S. 69 (2) would not apply. A contract entered into by a partner personally constitutes a personal contract and he is entitled to bring a suit on it in his own name without joining his partners as plaintiffs

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in the action: such a suit is properly instituted by him in his individual capacity and does not fall within the mischief of S. 69 (2). (*Adur Rahman and Somayya, JJ*) GOVERDHANDOSS TAKERSEY *v.* ABDUL RAHIMAN. I.L.R. (1942) Mad. 775=1942 M.W.N. 644=55 L.W. 446=A.I.R. 1942 Mad. 634=(1942) 2 M.L.J. 636.

——Ss. 69 (2) and (3) (a)—*Debt due to dissolved unregistered firm—Suit by a partner to recover—If barred by S. 69 (2).*

A debt due to a firm is part of its property. A suit to realise such a debt is a suit to enforce a right to realise the property and it would seem to fall within the exception in S. 69 (3) (*c*) of the Partnership Act. Hence a suit by a partner to realise a debt due to an unregistered dissolved partnership is not barred by S. 69 (2) of the Act. (*Bose, J.*) MOTILAL MADANAGOPAL FIRM *v.* SHANTI. 1942 N.L.J. 227.

——S. 69 (2)—Registered firm dissolved by retirement of partner—Right of firm to sue. *See* 1941 Dig., Col. 936. TAPENDRA CHUNDER GOOPTA *v.* JOGENDRA CHUNDER GOOPTA. 199 I.C. 220=14 R.C. 527=A.I.R. 1942 Cal. 76.

——S. 69 (2)—Registration of firm subsequent to filing a suit—If can cure the defect and make suit maintainable. *See* 1941 Dig., Col. 936. PONNUCHAMI GOUNDAR *v.* MUTHUSAMI GOUNDAR. I.L.R. (1942) Mad. 355=199 I.C. 99=14 R.M. 520=A.I.R. 1942 Mad. 252=(1941) 2 M.L.J. 968.

——S. 74—*Scope—Suit on accounts—Right to sue arising and acknowledgment before 1st October, 1933—Suit by unregistered firm after 1st October, 1933—If barred—Limitation Act, Art. 85—Effect of.*

The terms of S. 74 of the Partnership Act save not only the rights accrued before 1st October, 1933, but also the remedy to enforce those rights. When the right to sue arose on 30th July, 1933, the bar of S. 69 does not apply to a suit by an unregistered firm after 1st October, 1933, in respect of the right which accrued due before that date. The fact that Art. 85 of the Limitation Act applies to the account on which the suit is brought and that time is extended under that Article to the last date of the accounting year of which the plaintiffs can take advantage, that being a date after 1st October, 1933, would not affect the date on which the cause of action accrued for purposes of S. 74 of the Partnership Act. Such last date of the accounting year if necessary and relevant only for the purpose of deciding the question of limitation, Art. 85 of the Limitation Act only extends the time for the purpose of calculating limitation, but does not affect S. 74 of the Partnership Act which saves in certain cases the right to sue for a debt due and acknowledged before 1st October, 1933. (*Davis, C.J. and Weston, J.*) GURDINOMAL *v.* USTO MAHOMED. I.L.R. (1942) Kar. 442=A.I.R. 1943 Sind 26.

PATNA HIGH COURT RULES, Ch. III, R. 3—Scope—Compliance with—What amounts to—Criminal Revision Petition—Absence of affidavit in support and of solemn affirmation—Petition merely containing verification at end by petitioner—Sufficiency—Court fee—Ch. XIII, R. 13-A—C. P. Code, O. 6, R. 15. *See* 1940 Dig., Col. 978. RADHAKRISHNA DAS *v.* HARI NAIK. 22 Pat.L.T. 1071.

——Ch. VII, Rr. 16 and 19—Stamp Reporter—Power to submit revised Stamp Report after admission of appeal by Registrar under R. 19—Taxing Officer—Jurisdiction to call for additional Court fee. *See* COURT-FEES ACT, SS. 5 AND 28. 21 Pat 720.

——Ch. XIII, R. 13 (3)—(as amended in 1940), Applicability—Solemn affirmation under Ch. III, R. 3—If liable to fee prescribed by Ch. XIII, R. 13 (3),

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See 1941 Dig., Col. 937. SUBBA RAO *v.* GOPINATH SAHU. **198 I.C. 97=8 B.R. 325=14 R.P. 382=A.I.R. 1942 Pat. 169.**

PATWARI—*Nomination—Effect of lambardar making more than one.*

Where a lambardar nominates more than one candidate all his subsequent nominations are void and only his first nomination is to be taken into consideration. (*Shirreff, S.M. and Sathe, J.M.*) JAMUNA PRASAD *v.* MAHANTU MAHENDRANAND GIR. **1942 O.A. (Supp.) 410=1942 O.W.N. (B.R.) 615 (2)=1942 A.W.R. (Rev.) 384=1942 A.L.J. (Supp.) 52.**

———*Punishment case*—Locus standi *of Zamindars and tenants in.*

In a punishment case started against a patwari, though the Zamindars and tenants can complain against the patwari, they are not parties to the case. It is the Collector's sole responsibility to decide on the punishment where necessary and hence notice to the complainants is not necessary. (*Sathe, A. M.*) RAM CHARAN *v.* RAM RATTAN. **1942 O.W.N. (B.R.) 11=1942 O.A. (Supp.) 11 (1)=1942 A.W.R. (Rev.) 11 (1)=1942 R.D. 11.**

———*Solitary instance of collection of rent on behalf of co-sharer—If merits dismissal.*

A solitary instance of collection of rent from a tenant on behalf of a female co sharer by a patwari does not deserve the punishment of dismissal (*Sathe, A. M.*) RAM CHARAN *v.* RAM RATAN. **1942 O.W.N. (B.R.) 11=1942 O.A. (Supp.) 11 (1)=1942 A.W.R. (Rev.) 11 (1) =1942 R.D. 11**

PATWARI PAPERS—*Entries in—Presumption of correctness.*

There is a presumption of genuineness of a certified extract from the Patwari papers under S. 79 and of the genuineness of the record under S 81 of the Evidence Act. But there is no presumption of the correctness of the facts recorded as there would be in the case of settlement entries under S. 57 of the U. P. Land Revenue Act. (*Shirreff, S.M. and Sathe, J.M.*) LAL BAHADUR JOHARI *v.* BANSIA. **1942 A.W.R. (Rev.) 426=1942 O.A. (Supp.) 452=1942 R.D. 739=1942 O.W.N. (B.R.) 611.**

PAYMENT OF WAGES ACT (IV OF 1936), S. 15—"Deduction"—Temporary reduction from higher to lower scale of pay. *See* 1941 Dig Col. 938. MIR MAHOMED HAJI UMAR *v.* DIVISIONAL SUPERINTENDENT, N. W. RAILWAY. **198 I C 814=14 R S. 156.**

———**S. 15 (2) and (3)**—*Jurisdiction—Application for payment of compensation alone—If can be entertained.*

An application for compensation alone is not contemplated under S. 15 (2) and (3) of the Payment of Wages Act. The application must be for the payment of delayed wages and it is only in such an application that the authority may pass an order for compensation along with the order for payment of delayed wages. An application for compensation alone is not competent and a Magistrate has no jurisdiction to entertain the same. (*Divatia, J.*) CHIMANLAL ISHWARLAL METHA *v.* JUNIOR INSPECTOR OF FACTORIES. **I.L.R. (1942) Bom. 649=202 I.C. 597=15 R.B. 172=44 Bom L R. 606=A.I.R. 1942 Bom. 273.**

———**S. 17 (1)**—"Direction"—Order rejecting claim *in toto*—Appeal. *See* 1941 Dig., Col. 938. MIR MAHOMED HAJI UMAR *v.* DIVISIONAL SUPERINTENDENT, N.W. RAILWAY. **198 I.C. 814=14 R.S. 156.**

———**S. 17 (1) (a)**—*Appeal—Order for compensation alone—Amount below Rs. 300—Right of appeal.*

S. 17 (1) (*a*) of the Payment of Wages Act provides for an appeal only if the total sum directed to be paid by way of wages as well as compensation exceeds Rs. 300. When no amount of wages is ordered to be paid, an order for compensation alone which does not exceed Rs. 300, is not appealable under S. 17 (1) (*a*) (*Divatia, J.*) CHIMANLAL ISHWARLAL METHA *v.* JUNIOR INSPECTOR OF FACTORIES. **I.L.R. (1942) Bom. 649=202 I.C. 597=15 R.B. 172=44 Bom.L.R. 606=A.I.R. 1942 Bom. 273.**

PENAL CODE (1860), S. 34.

———**S. 17 (1) (b)**—Construction—Right of appeal—Valuation of claim—Value of claim as made or as found by trial Court. *See* 1941 Dig., Col 938. MIR MAHOMED HAJI UMAR *v.* DIVISIONAL SUPERINTENDENT, N. W, RAILWAY. **198 I.C. 814=14 R.S. 156.**

PENAL CODE (XLV OF 1860)—*Unlawful assembly—Two explanations of presence of person, lawful and unlawful—Duty of Court.*

Where there are two explanations of the presence of a particular person on a particular occasion one of which is lawful and the other of which is unlawful, the Court cannot, as against an accused person assume the unlawful intention. (*Braund, J.*) KAMMOON *v.* EMPEROR. **201 I.C 518=15 R.A. 64=43 Cr.L.J. 654=1942 A.W.R. (H.C.) 109=1942 O.A. (Supp.) 222=1942 A.L.W. 233=1942 A.Cr.C. 93=1942 A.L.J. 255=A.I.R. 1942 A. 225.**

———**S. 21**—*Public servant—Sales officer of co-operative society executing decree of society—Position of.*

A sales officer of a Co-operative Society part of whose duty is to take property in execution of decrees of the society is a 'public servant.' (*Horwill, J.*) THIMMAKKA, *In re.* **201 I.C. 627=15 R.M. 393=1942 M.W.N. 375=55 L.W. 368=43 Cr.L.J. 757=A.I.R. 1942 Mad. 552 (2)=(1942) 1 M.L.J. 583.**

———**S. 34**—*Applicability—Offence under second part of S. 304.*

The provisions of S. 34 cannot be applied to an offence under the second part of S. 304. S. 34 provides for the punishment of acts which are done with a common intention by more than one person, whereas the second part of S. 304 applies only to acts where there was no intention to cause death but only knowledge that death would be caused. (*Almond, J. C. and Mir Ahmad, J.*) SHER ALI *v.* EMPEROR. **201 I.C. 705=15 R. Pesh. 29=43 Cr.L.J. 766=A.I.R. 1942 Pesh. 51.**

———**S. 34**—*Applicability—Sudden fight.*

Normally S. 34 would not apply if the fight has begun suddenly and every person who took part in the fight would be taken to be responsible for his individual acts. But where there is proof that some of the persons taking part in the fight, which has suddenly arisen, go and jointly commit an offence and there are indications that their joint object was to commit that offence, there is no bar for the Court to hold that they had formed a joint intention there and then to do the act of violence. (*Almond, J.C. and Mir Ahmad, J.*) DOST MAHOMED *v.* EMPEROR. **199 I.C 878=14 R. Pesh. 91=43 Cr. L.J. 498=A.I.R. 1942 Pesh. 29 (2).**

———**S. 34**—Construction— Mere presence—Sufficiency for conviction—Absence of proof of act of Commission or omission or of common intention—Effect. *See* 1941 Dig., Col. 938. MAHADEO NATH *v.* EMPEROR. **22 Pat.L.T. 1035.**

———**S. 34**—Conviction under — Legality—Taking active part in commission of offence—If necessary. *See* 1941 Dig., Col. 939. SYEDALI *v.* EMPEROR. **43 Cr. L.J. 47.**

———**Ss. 34 and 379**—*Two persons going to steal particular article—One of them stealing something else—Liability of both.*

If two persons go to steal a particular article and one who is actually committing the theft is not able to

PENAL CODE (1860), S 39.

find that particular article but steals something else instead and run off together, both must be held guilty of theft, inasmuch as the other who did not actually steal the article must be taken to have acted in furtherance of the common intention to commit theft. (*Almond. C J.*) GIAN CHAND *v.* EMPEROR. 202 I. C 379=15 R.Pesh. 43=43 Cr.L.J. 837=A.I.R. 1942 Pesh. 50.

——S. 39—Accused giving blow on receiving blow with heavy instrument on head—Act, if voluntary. *See* PENAL CODE, S. 299. 43 P.L.R. 721.

——Ss. 40, 511 and 75—*Attempt to cheat—Punishment—S. 75, if applies.*

An attempt to commit an offence is itself an offence within the definition of an offence as given in S. 40, I.P. Code. It is punishable under S. 511, I. P. Code, where no express provision is made in any other part of the Code for the punishment of such an offence. An attempt to cheat is hence punishable under S. 511. S. 75, I. P. Code would not apply to such an offence, because S. 75 applies in the case of a second conviction only to offences punishable under Chs. 12 and 17, I. P. Code and S. 511 is not in those chapters but in Ch. 23. (*Ganganath, J.*) CHHEDI *v.* EMPEROR. 202 I.C. 569=15 R.A. 178=1942 A.Cr.C.165=43 Cr.L.J. 858 =1942 A.W R. (H.C) 255=1942 A.L.W. 417=1942 A L.J. 324=A.I.R. 1942 A. 337.

——S. 40—Offence—Definction of—If controls S. 216, Penal Code. *See* PENAL CODE, SS. 216 AND 40. 1942 O.W.N. 682.

——S. 64—Scope—If controls S. 35, Cr. P. Code. *See* CR. P. CODE, S. 35. A.I.R. 1942 Sind 80.

——S. 67—Construction—Imprisonment in default of fine—Term of—Limits. *See* 1941 Dig., Col. 939. KARUPPANNAN, *In re.* 43 Cr.L.J. 121=14 R.M. 350=1942 M.W.N. 427=(1941) 2 M.L.J. 446.

——S. 71—Applicability—Offences under Ss. 380 and 457 I. P. Code. *See* PENAL CODE, SS. 380, 457 AND 71. 1941 O.A. 1065.

——S. 71—*Applicability—Unlawful assembly and rioting—Hurt caused by some members of assembly—Separate sentences—Legality.*

S. 71 of the Penal Code has no application to a case under S. 147, in which one of the accused commits a separate and individual act of hurt to a person. That being a separate and distinct act from the rioting, the imposition of separate sentences under Ss. 323 and 147 is perfectly legal. But where hurt is caused by some members of the assembly and it is not clear on the evidence as to which members caused such hurt, the imposition of separate and distinct sentences is illegal. (*Meredith and Shearer, JJ.*) PESH MAHOMED *v.* EMPEROR. 201 I O. 486=15 R.P. 62=8 B.R. 795 =43 Cr,L.J. 742=23 Pat.L.T. 185=A.I.R. 1942 Pat 319

——S. 75—Applicability—Attempt to cheat. *See* PENAL CODE, SS. 40, 511 AND 75. 1942 A.L J. 324

——S. 75—Applicability—Child accused—Previous convictions—If to be taken into account. *See* MADRAS CHILDREN ACT, S. 39. (1942) 2 M.L.J. 132.

——S. 75—*Applicability—Offence under S. 511—Committal for the purpose of awarding heavier sentence—Legality—Power of Sessions Judge.*

S. 75 of the Penal Code does not apply to an offence punishable under S. 511, I. P. Code. But a committal for the purpose of awarding a heavier sentence in the case of an offence under S. 511, I.P. Code, is not illegal. Under S. 28 of the Cr. P. Code, a Sessions Court can try any case; and under S. 209, if the Magistrate in a preliminary enquiry finds that the prosecution has made out its case, he should commit the accused to Sessions

PENAL CODE (1860), S. 86.

unless it appears to him that such person should be tried before himself or some other Magistrate. Even when a warrant procedure is adopted, the Magistrate may under S. 347, Cr. P. Code, commit the accused to Sessions if he thinks that the case is one which ought to be tried by the Court of Session. (*Horwill, J.*) VEERANNA *In re.* 200 I.C. 740=15 R.M. 151=1942 M W.N 297=55 L.W. 229=43 Cr.L J. 715=A.I.R. 1942 Mad 440=(1942) 1 M.L.J. 455

——S. 75—*Applicability—Offence under S. 511—Enhanced punishment.*

S. 75, I. P. Code, does not apply to an offence punishable under S. 511, I. P. Code. But the fact that the accused had several previous conviction can be taken into account for awarding a more severe sentence than would be proper if there had been no previous conviction. (*Horwill, J.*) DURAISWAMI MUDALI. *In re.* 55 L.W. 297 (1)=1942 M.W N. 376=A.I.R. 1942 Mad. 521=(1942) 1 M.L.J. 591.

——S. 75—Committal on charge under—Principles and procedure—Proof of previous convictions—Conviction slip—Sufficiency for conviction *See* 1941 Dig., Col. 941. POKAR CHUHARMAL *v.* EMPEROR. 43 Cr. L.J. 12.

——S. 75—"Previous conviction"—Meaning of. *See* 1941 Dig., Col. 941. EMPEROR *v.* CHUTTAL IMAMBAKHSH. 14 R.S. 98=43 Cr.L.J. 122.

——S. 75—*Scope and effect—Previous conviction—If should be taken into consideration in every case.*

S. 75, I. P. Code, undoubtedly provides for a special maximum sentence, but it does not also provide for a minimum. It is not incumbent upon a Magistrate in every case in assessing the punishment of an old criminal to take into consideration his previous conviction. (*Henderson, J.*) HARMOHAN DEB NATH *v.* JANA BUXA PATWARI. 203 I.C. 265=44 Cr.L.J. 66=46 C.W.N 846=A.I.R 1943 Cal 25.

——Ss. 79, 302 and 304—*Applicability—Accused taking person to be ghost and killing him—Offence.*

Where the accused a woman kills a person at dead of night, being under the impression that the object of her attack which appeared naked and dancing before her was not a livlng human being but a ghost or some object other than a living human being, she cannot be convicted under S. 302 or 304, I. P. Code. She is fully protected by S. 79 of the Penal Code. (*Harries, C. J. and Manohar Lall, J.*) BONDA KUI *v.* EMPEROR. 202 I. C 20=15 R.P. 103=43 Cr.L.J. 787=8 B.R. 829= 23 P.L.T. 670=1942 P.W.N. 175=A.I.R. 1943 Pat. 64.

——S. 84—Drunkenness—When sufficient defence. Intention—Test. *See* 1941 Dig., Col. 941. SAMMAN SINGH *v.* EMPEROR. 198 I.C. 252=14 R.L. 319= 43 Cr L J. 332.

——S. 86—Drunkenness of accused—If minimises offence of murder. *See* I. P. CODE, SS. 302 AND 86 199 I C. 307.

——S. 86—*Scope and effect of—Accused drunk and intoxicated—Stabbing with knife and causing injury sufficient to cause death—No deliberate intent to cause death—Offence—Penal Code, S. 300, paras. 1, 2 and 3.*

S. 86, I. P. Code, deals with cases where an act done is not an offence unless done with a particular knowledge or intent, and it may be noticed that there may be cases in which a particular knowledge is an ingredient, and there may be other cases in which a particular intent is an ingredient; the two are not necessarily always identical. The section does not say that a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same intention as might have been presumed if he had not been intoxicated though it

PENAL CODE (1860), S. 97.

says that he shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. There is no presumption with regard to intention although as far as knowledge is concerned, it must be taken that the accused had the same knowledge as he would have had if he had not been intoxicated. Where an accused who is drunk and intoxicated stabs the deceased with a knife and causes an injury which any sober man must surely know would be likely to cause death and which is sufficient in the ordinary course of nature to cause death, it must be held that the accused is guilty of murder under paras. 2 and 3 of S. 300, I. P. Code, although a deliberate intent to cause death cannot be said to have been formulated in his mind within the meaning of para. 1 of S. 300. (*Varma and Rowland, JJ.*) DIL MAHOMED *v.* EMPEROR. **21 Pat. 250=202 I.C. 637=15 R.P. 146=9 B.R. 36=1942 P.W.N 160=43 Cr.L.J. 883=23 P.L.T. 725=A.I.R. 1942 Pat. 420.**

——**Ss. 97 and 99**—*Applicability—Private defence of property—Complainant trespassing upon accused's land and cutting crops—Assault by accused causing simple injuries—If exceeds private defence.*

R went to a plot of land which he claimed to be his under a *benami* deed, to get possession and with the help of two labourers began to cut the crops. The accused who were rightfully in possession of the land came upon the scene armed with lathis and other weapons and one of them told *R* not to cut the crops. *R* refused to stop cutting the crops; some of the accused ordered others to assault *R*. *R* was struck with lathis, but the injuries caused to him and the labourers were simple.

Held, that the accused were exercising their right of private defence of their property and had not exceeded that right. (*Manohar Lall and Chatterji, JJ.*) JANKI PASBAN *v.* EMPEROR. **204 I.C. 271=9 B.R. 135=23 P.L.T. 577=A.I.R. 1943 Pat. 6.**

——**S. 97**—Private defence—Violent attack on party ploughing own land—Accused having no title to land or possession of same—No likelihood of theft or mischief—Plea of private defence—If available. *See* 1941 Dig., Col. 942. HARIRAM MAHATA *v.* EMPEROR. **23 Pat. L.T. 438=43 Cr.L.J. 41=A.I.R. 1942 Pat 96.**

——**S. 97**—*Persons gathered to help persons having right to defend property—Can plead private defence.*

Where persons having a right of private defence of property have gathered together other persons to help them to protect their rights, the right of private defence extends also to the latter who have been thus gathered by the former. (*Burn and Horwill, JJ.*) EMPEROR *v.* BANGARURAJU. **201 I.C. 390=15 R.M. 335=1942 M.W.N. 42=A.I.R. 1942 Mad. 58.**

——**S. 97**—*Right of private defence—Onus—Duty of Court.*

When a right of private defence is set up the onus is on the party setting up that defence to prove it. Mere suggestions unsupported by evidence cannot make out the existence of any such right. Where the accused deliberately sent for his gun and then fired at his brother after the latter had interfered with the ploughing of the land, it may well be that there was a right of private defence of property. But the Magistrate must come to a definite decision as to who were actually entitled to plough up the land on which the occurrence took place and also whether, if there was a right of private defence of property, the accused had not exceeded that right. (*Derbyshire, C. J. and Bartley, J.*) MAKHAN LAL HAZRA *v.* SASHI BHUSAN HAZRA. **198 I.C. 629=14 R.C. 507=43 Cr.L.J. 412=A.I.R. 1942 Cal. 435.**

——**S. 99**—"Not strictly justified by law"—Interpretation. *See* 1941 Dig., Col. 942. SUKAR SAO *v.* EMPEROR. **23 P.L.T. 232.**

PENAL CODE (1860), S. 100.

——**Ss 99 and 105**—*Act of Naib Tahsildar in excess of his authority—Direction to execute not authorised by law—Resistance — Private defence—'Retreat' under S. 105.*

Where a Naib Tahsildar authorised a Kurk Amin not mentioned in the warrant to execute it and himself accompanied him and certain cattle were arrested but were recovered as they were being taken away and there was a fight in which both parties suffered injuries it was *held* that though the Naib Tahsildar might have acted with thebest of intentions and might have believed himself entitled to act as he did, it was not within his power to authorise any Kurk Amin other than the one mentioned in the warrant to execute it and that hence he could not be said to have acted with due care and attention and so could not be said to have acted in 'good fath' and resistance to such act would not be an offence and S. 99, I. P. Code, could not be invoked to secure a conviction on such facts. It was *held* further that S. 105 I. P. Code would not be applicable where the attaching party had only just proceeded to take away the attached cattle when they were resisted because the attaching party could be said to have effected their retreat within the meaning of S. 105. (*Bennett, J.*) PRAG *v.* EMPEROR. **17 Luck. 591=199 I.C. 135=43 Cr.L.J. 518=14 R.O. 478=1942 A.W.R. (C C.) 71=1942 O.A. 49=1942 O.W.N. 74=1942 A.Cr.C. 57=A.I.R. 1942 Oudh 256.**

——**Ss. 99, 352, 353**—*Warrant issued by proper person sent to wrong person—Assault of such person in executing warrant—Limit to the right of private defence.*

Where a warrant for recovery of arrears of taxes was issued by an authority competent to issue it to a person to whom it could not be issued, there is not a complete want of jurisdiction with reference to that warrant. Hence when in executing the warrant the officer concerned is assaulted the limitation imposed by S. 99 on the right of private defence applies and the persons concerned are not entitled to resist the officer. In resisting such execution they are guilty under S. 352 and not S. 353, I. P. Code. (*Pollock, J.*) DASHRATH *v.* EMPEROR. **1942 N.L.J. 50.**

——**S. 99, Expl. 1**—Resistance to arrest by constables not in uniform—Right of private defence—Desirability of wearing uniform when on duty. *See* 1941 Dig., Col. 943. EMPEROR *v.* ABDUL HAKIM. **I.L.R. (1942) A 35=198 I.C. 264=14 R.A. 277=1942 A.L.J. 32=43 Cr.L.J. 338=A.I.R. 1942 All. 74.**

——**Ss. 100 and 103**—*Private defence—Extent of and limit to—Party in possession of land attacking party trying to trespass—Causing death by use of knives and daggers—Offence.*

Where the accused party is ploughing their land of which they are in possession, and another party seeks to obtain forcible possession of the land and the members of the second party are armed with sticks, the members of the accused party who use only sticks to protect their right can hardly be said to have exceeded their right of private defence. But where the members of the accused party are armed with knives and daggers, and use them against the attacking party causing death, they must be held guilty under S. 304 (1), I. P. Code, and cannot escape by pleading private defence when the progress of the fight does not suggest that the daggers and knives were used because they felt it necessary to use them for the protection of their persons and property, particularly when it is clear that in wielding their daggers and knives they are actuated not by any desire to defend but to punish those who tried to enter upon the land. And

PENAL CODE (1860), S. 100.

when the accused party, originally in greater strength than the other party, has become overwhelming by the stabbing of one or two of the other party, it must be held that the right of private defence has been exceeded. (*Burn and Horwill, JJ*) EMPEROR *v.* BANGARURAJU. **201 I C 390=15 R.M. 335=1942 M. W.N 42=A.I.R. 1942 Mad 58.**

——**S. 100**—*Private defence of body—Stabbing while being throttled—Presence of by standers, if affects the question.*

It was *held* on the facts that the stabbing by the accused of the deceased while the former was being throttled by the latter did not exceed the limit of the right of private defence of the body, even though there were a number of bystanders at the time of the occurrence to whom the accused could have applied to save him from the apprehended danger. (*Ghulam Hasan, J.*) NISAR HUSAIN *v* EMPEROR. **198 I.C 819=43 Cr.L.J. 436=14 R.O. 465=1942 A.W.R (C.C.) 1=1942 A Cr C 14=1941 O.W.N 1331=1941 O.A 1043=A.I.R. 1942 Oudh 147.**

——**S. 111**—*Abetment—When offence.*

A person is guilty of abetment provided only that the act which he does is a probable consequence of the abetment and is committed under the influence of the instigation. (*Bartley and Lodge, JJ.*) NAIMUDDI *v.* EMPEROR. **75 C.L J 410=A.I.R. 1943 Cal 47.**

——**S. 124-A**—*Law of sedition—Guiding principles—Criticism of Government—Vulgar abuse—Duty of Courts to take broad view.*

Gwyer, C.J.—The time is long past when the mere criticism of Government was sufficient to constitute sedition, for it is recognized that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of Government is not excluded, nor even the expression of a desire for a different system altogether. The language of S. 124-A, I. P. Code, if read literally, even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; no one however supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the Executive Government or even by Judges themselves; and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining overmuch in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice. Sedition embraces all those practices, whether by word, deed or writing, which are calculated to disturb the tranquillity of the State and lead ignorant persons to subvert the Government. The objects of sedition generally are to induce discontent and insurrection, to stir up opposition to the Government, and to bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or disaffection, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or Government, the laws or the constitution of the realm and generally all endeavours to promote public disorder. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence

PENAL CODE (1860), S. 147.

The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency. Abusive language, even when used about a Government, is not necessarily seditious. Sedition is a grave offence, a prosecution for which is a formidable weapon in the hands of a Government; but for that very reason it is all the more necessary to remember that opinions, and even the violent expression of opinions, do not necessarily fall within it. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) NIHARENDU DUTTA MAJUMDAR *v.* EMPEROR **55 L W. 344=14 R.F.C. 32=8 B.R. 703=43 Cr.L.J 504=23 P.L.T. 443=1942 P. W.N. 164=1942 M.W.N 417=I L R. (1942) Kar. (F.C.) 56=200 I. C 289=46 C W N. (F R.) 9=(1942) 5 Fed L.J. 47=A.I.R. 1942 F.C 22.**

——**Ss. 141 and 149**—*Applicability—Party of more than five persons seeking to maintain possession of land as against party trying to take forcible possession—Offence.*

A party of more than five persons who seek only to maintain their possession of a plot of land would not come within the definition of an unlawful assembly in S. 141, I. P. Code, and cannot be convicted under S. 149, I.P. Code, but a party of more than five persons who seek to obtain forcible possession from the former party would be members of an unlawful assembly. (*Burn and Horwill, JJ.*) EMPEROR *v.* BANGARU RAJU. **201 I C. 390=15 R.M. 335=1942 M.W.N. 42=A.I.R 1942 Mad. 58.**

——**S 141**—*Assertion of supposed right by show of force—If sufficient to constitute unlawful assembly.*

Even the assertion of a supposed right, if the right is to be asserted by a show of force, if sufficient in itself for constituting an unlawful assembly. (*Young, C.J. and Beckett, J.*) FATNAYA LAL KHAN *v.* EMPEROR. **I.L R. (1942) Lah. 470=199 I C. 870=14 R.L. 438=43 Cr.L J. 588=A.I.R. 1942 Lah. 89.**

——**S. 145**—*Conviction under—Proof required.*

Before a conviction under S. 145, I. P Code, can be recorded, it must be shown that there was an unlawful assembly and that a person joined or continued in it after the legal command to disperse had been given (*Varma and Rowland, JJ.*) SH. MAHOMED *v.* EMPEROR. **202 I.C. 579=9 B.R 19=15 R.P. 140=43 Cr.L J 871.**

——**Ss. 147, 148 and 302**—*Applicability—Attack on deceased by eight persons—One armed with spear and others with lathis—Death caused—Offence—All—If guilty of murder.*

The deceased was involved in an altercation with three of the eight accused who were armed with lathis. The deceased was attacked by these three, and they were joined by the remaining five accused of whom one had a spear and the others lathis. The deceased fell dead. At the post mortem no trace of lathi injuries were found, but the body was then in a highly decomposed condition. There were, however, three wounds which could have been caused by a spear, near the chest; and one at the back which could have been caused by a spear or gurasa. No bones were broken and it was therefore probable that any injuries inflicted by a lathi must have been of a simple nature. The prosecution failed to establish the motive suggested by them, namely that the accused came armed with the object of killing the deceased. It was however, clear that there were some old grudges between the parties.

Held, that it would be too much to say that all the accused either intended that death should be caused or contemplated it as a likely consequence of their action in collecting to beat the deceased. All of them would

PENAL CODE (1860), S. 147.

be undoubtedly guilty of rioting with the common intention of beating under Ss. 147 and 148, I. P. Code, but not of murder under S. 302, I. P. Code; only the accused who was armed with the spear could be held guilty of murder under S 302, I. P. Code. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTON. **1942 P.W.N. 219 =23 Pat L T. 684.**

——**Ss. 147 and 379**—Conviction—Sustainability—Unlawful assembly and rioting with common object of cutting crops and theft—Accused claiming right to crops and land—Prosecution—If justified—Duty of prosecution to allege and prove specific acts against individual accused. *See* 1941 Dig., Col. 946. KAILASH SINGH *v.* EMPEROR **198 I C. 68=14 R.P. 387=8 B R. 312 =43 Cr. L.J. 294**

——**S. 147**—*Offence under—Communal tension—Muhammadans assembling to protect themselves against Hindu processionists and chasing them after they recede—Stage at which they become members of unlawful assembly.*

If at a time of communal tension the Muhammadans apprehending a breach of the peace assemble either to protect themselves or to protest against the action of the Hindu processionists in taking an unlicensed route, it cannot be said that they are members of an unlawful assembly at that stage. But if after the Hindus recede on the order of the Police the Muhammadans chase them they become an unlawful assembly at that stage having the common object to drive away the Hindus and are guilty under S. 147 I P Code. (*Varma and Rowland JJ*) SH. MAHOMED *v* EMPEROR. **202 I. C. 579= 9 B.R. 19=15 R.P. 140=43 Cr.L J. 571**

——**Ss. 147 and 148**—*Scope—Conviction of same person under both Ss.* 147 *and* 148—*Legality.*

If a rioter is armed with a deadly weapon, he is punishable under S 148. It is not possible to find him guilty both under Ss. 147 and 148, because, however many the weapons he may be armed with, he commits only one offence of rioting in the course of the same riot. (*Burn and Horwill, JJ.*) EMPEROR *v.* BANGARURAJU. **201 I.C. 390=15 R.M. 335=1942 M.W. N. 42=A.I.R. 1942 Mad. 58.**

——**Ss. 147 and 326**—*Unlawful assembly—Attack on complainant by four out of an armed crowd—Attempt at rescue—Entire armed crowd taking part in resisting—Conviction under Ss.* 147 *and* 326—*Legality.*

Where the complainant was first attacked by only 4 out of a crowd of 11 armed people and when others intervened to rescue the complainant, the rest of the armed crowd rushed to resist the rescue it was *held* that the circumstances justified a finding that the armed crowd were members of an unlawful assembly whose common object was to attack the complainant and their conviction under Ss. 147 and 326 was proper. (*Agarwal, J.*) DEBI DAYAL *v.* EMPEROR. **201 I.C. 791=15 R O. 110=1942 A.W R. (C C.) 286=1942 A.Cr.C. 143 =43 Cr.L.J. 781=1942 O.W.N. 440=1942 O. A. 332=A.I R. 1942 Oudh 444.**

——**S. 148**—*Applicability—Conviction under—Essentials.*

A person cannot be found guilty or convicted under S. 148, I. P. Code, unless he actually has a dangerous weapon in his hands. (*Horwill, J.*) MUTHUSWAMI GOUNDAN. *In re.* **201 I.C. 442=43 Cr.L.J. 745=15 R.M. 352=55 L.W. 856=1942 M W N 294=A.I.R. 1942 Mad. 420=(1942) 1 M.L.J. 498.**

——**S. 149**—*Construction—"In prosecution of the common object"—Meaning of—Unlawful assembly having common object of causing hurt—Two members killing two persons—Others if guilty of murder—Principles.*

PENAL CODE (1860), S. 149.

When a person has already attained or caught up with his object and passes beyond it, he can no longer be said to be pursuing or prosecuting it. The phrase "in prosecution of the common object" in the first clause of S. 149, I. P. Code, must be strictly construed as equivalent to "in order to attain the common object." Where the common object of an unlawful assembly is found to be only to cause hurt, but two of the members of the assembly commit murder by killing two persons in prosecution of that common object, it cannot be said that the murders are committed in prosecution of the common object of the unlawful assembly so as to render the remaining members of that assembly guilty of murder under the first clause of S. 149, I. P. Code. In order to justify the conviction of the remaining members of the offence of murder it must be found definitely that the members knew that murder was likely. It is contrary to all principles of criminal responsibility to convict an offender for an offence which he neither committed himself, nor intended should be committed, nor even contemplated as likely to be committed by his associates. (*King and Byers, JJ.*) KUMARAN, *In re.* **202 I.C. 311=15 R.M. 493=43 Cr.L.J. 813= 1942 M.W N. 298=55 L W 192=A.I.R. 1942 Mad. 446=(1942) 1 M.L J 460.**

——**S. 149**—*Constructive liability of members—Extent.*

Where the common object of an unlawful assembly is to obstruct a procession but one of its members commits murder, the other members cannot be held constructively guilty of murder under S. 149, I. P. Code. (*Young, C.J. and Sale, J.*) MOHAMMAD ISHAQ *v.* EMPEROR. **198 I.C. 796=14 R L. 364=43 Cr.L.J. 428=43 P. L.R. 712=A.I.R. 1942 Lah. 59.**

——**S 149**—*Scope—Body of heavily armed men setting out to take woman back by force—One of them committing murder—Liability of rest.*

In order that S. 149 should come into effect the offence need not be committed in direct prosecution of the common object of the assembly; it is sufficient that the offence should be such that the members of the assembly knew it to be likely to be committed. When a body of heavily armed men set out to take a woman back by force they must be taken to have known that some one was likely to be killed before the day was over. Consequently in such a case if one of the party commits murder all the members of the party must be held either directly or constructively guilty of murder. (*Young, C.J. and Beckett, J.*) FATNAYA LAL KHAN *v.* EMPEROR. **I.L.R (1942) Lah. 470=199 I C. 870= 14 R.L. 438=43 Cr.L.J. 588=A.I.R. 1942 Lah. 89.**

——**S. 149**—*Several people going to protest against reaping of crops by complainant's party—Cutting of crops abandoned by latter—Some of former party attacking other party—All accused—If guilty—Omission to point out to jury distinction between those who attacked and those who took no part—Misdirection.*

A large number of persons went to a field to protest against the reaping of the crops by the complainant's party. The latter abandoned the idea of cutting the crops. Subsequently, there was an assault on the complainant's party by some of the other party:

Held, that that would not make liable to punishment all the persons who had gone there merely to protest and who took no part in the assault and did not share the common object of the assailants.

Held further, that the failure of the Judge to point out to the jury the distinction between these two classes of persons or to warn the jury that they should be careful to find guilty only those who actually took part in the assault or who shared the common object of the

PENAL CODE (1860), S. 149.

assailants amounted to misdirection. (*Agarwala and Shearer, JJ.*) JANAK SINGH *v.* EMPEROR. **203 I.C. 159=15 R.P. 158=9 R.R. 65=23 P.L.T. 699=43 Cr.L.J. 915=A.I.R. 1942 Pat 444.**

——**Ss. 149 and 436**—Unlawful assembly—Common object to get house vacated—Subsequent burning down of house—Offence. *See* 1941 Dig., Col. 946. QAMRUL HASAN *v.* EMPEROR. **14 R.O. 280=43 Cr.L.J. 115=A.I.R. 1942 Oudh 60.**

——**Ss. 161 and 116**—Offer of bribe to public servant—Public servant not in a position to do required favour—Abetment of offence. *See* 1941 Dig., Col. 947. EMPEROR *v.* PHUL SINGH. **I.L.R. (1942) Lah. 402.**

——**Ss. 161 and 116**—*Payment of money to a person to be paid as bribe to public servant—Bribe not paid—Offence committed.*

Where a person pays a sum of money to another to be paid by him as a bribe to a public officer even though the bribe is not actually paid the person paying the money is guilty of abetment of an offence under S. 161, I. P. Code and can be convicted under S. 161 read with S. 116, I. P. Code. (*Pollock and Gruer, JJ.*) PROVINCIAL GOVERNMENT, C. P. & BERAR *v.* MURLIDHAR. **1942 N.L.J. 104.**

——**S. 161**—Scope—Public servant requested to render service with another public servant, *See* 1941 Dig., Col. 947. EMPEROR *v.* PHUL SINGH. **I.L.R. (1942) Lah. 402.**

——**S. 170**—Applicability—Obtaining services by posing as Government officer. *See* 1941 Dig. Col. 947. BASHIRULLAKHAN *v.* EMPEROR. **I.L.R. (1942) Nag. 484=43 Cr.L.J. 79.**

——**Ss. 171-G and 499**—Relative scope. *See* 1940 Dig., Col. 989. BHAGOLELAL *v.* EMPEROR. **I.L.R (1942) Nag 208.**

——**S. 174 and Cr. P. Code, (1898), S. 195 (a)**—*Absence of complaint from public servant before whom accused failed to appear—Conviction under S. 174, I. P. Code, if illegal.*

In as much as an offence under S. 174, I. P. Code, is against the public servant before whom the accused fails to appear, in the absence of a complaint from him as required by S. 195 (*a*) Cr. P Code, a conviction under S. 174, I. P. Code, cannot be sustained. (*Agarwal, J.*) SHEOMANGAN SINGH *v.* EMPEROR. **201 I.C. 228=15 R.O. 73=1942 O.A. 302 (1)=1942 O.W.N. 434=43 Cr.L.J. 641=1942 A.W.R. (C.C.) 274 (1)=1942 A.Cr.C. 142=A.I.R. 1942 Oudh 425.**

——**S. 182**—*Offence under—Relevant considerations.*

In the case of an offence under S. 182, I. P. Code, the only question that has to be considered is whether the report in question is false and whether it was calculated to induce the public officer to do something or omit something which he ought not to have done or omitted. No question of a cognizable or a non cognizable offence arises, for S. 182 says nothing about it. (*Allsop, J.*) KAULESHAR AHIR *v.* EMPEROR. **1942 A.L.W. 580 (1)=1942 A.W.R. (H.C.) 336 (2)=1942 A.L.J. 576=1942 A.Cr.C. 198=A.I.R. 1943 A. 96.**

——**Ss. 182 and 211** — *Scope of — False report to Police—Subsequent false complaint to Magistrate—Proceedings under S. 182—Validity.*

An offence falling under S. 182, I.P.Code, is included in the more serious offence falling under S. 211, I.P. Code and a prosecution for false charge may be either under S. 182 or S. 211, though clearly if S. 211 does apply and the false charge is serious, prosecution should be under the more serious S. 211. But this does not mean that where an offence under S. 182 is complete, and the prosecution is lodged under S. 182, the proceedings under S. 182 must subsequently be quashed because the accused not content with the false report to the police, subsequently makes a false complaint to a Magistrate in addition and thereby exposes himself to a prosecution under S. 211, I.P. Code. (*Young, C.J. and Sale, J.*). NOTA RAM *v.* EMPEROR. **I.L.R. (1942) Lah. 675=A.I.R. 1943 Lah. 31.**

PENAL CODE (1860), S. 86.

——**S 186**—*Applicability—"Obstruction"—Co operative society—Decree in favour of— Execution—Sales office going to house to seize property—Wife of debtor slamming door in face of officer—Offence—Jurisdiction of 2nd class Magistrate to try—Madras Co-operative Societies Act. Ss 52 and 56.*

Prosecution witness who was a sales officer of a credit co operative society went to a house in a village with the intention of entering it to seize some moveables in the house alleged to belong to the second accused, in execution of decree obtained by the society against the 2nd accused. The 1st accused who was the wife of the second accused, slammed the door in the face of P. W. 1 just when he was about to enter the house, and prevented him from entering the house to do his duty. It was undoubtedly part of the duty of P W. 1, to take property in execution of the decree of the society.

Held, (1) that the shutting of the door in P.W. 1's face amounted to "obstructing" him within the meaning of S. 186, I. P. Code, and there was no more effective method of obstructing P. W. 1 in the performance of his duty of attaching the property inside the house than by shutting the door in his face, and the accused were therefore liable under S. 186; (2) that it did not appear that the offence fell under S. 52 of the Co operative Societies Act so as to be triable only by a First Class Magistrate under S. 56 of that Act, but even if it did fall under that section, the offence under S. 186 being more serious, a second class Magistrate was competent to try the accused for that offence; it could not therefore be said that the second class Magistrate clutched at jurisdiction and acted improperly. (*Horwill, J.*) THIMMAKKA, *In re.* **201 I.C. 627=15 R.M. 393=1942 M.W.N. 375=55 L.W. 368=43 Cr.L.J. 757=A.I.R. 1942 Mad. 552 (2)=(1942) 1 M.L.J. 583.**

——**S. 186 and Cr. P. Code (1898), S. 195**—*Prosecution under S. 353, I. P. Code but conviction under S. 186—Absence of written complaint of process server—Legality of conviction.*

Where on the oral complaint of a process-server the accused was prosecuted for an offence under S. 253, I. P. Code, but the Court convicted him of an offence under S. 186, it was *held*, that the conviction was illegal because under S. 195 (*a*), Cr.P. Code, the court could not take cognizance of an offence under S. 186 I. P Code except on the complaint in writing of the public servant concerned and admittedly there was no such complaint. (*Rose, J.*) BABAN *v.* EMPEROR. **1942 N.L.J. 335.**

——**S. 188 (2)**—Applicability—Raising of crops on land—Subsequent proceedings under S. 145, Cr. P. Code—Final order declaring possession in party other than the one raising crops—Subsequent harvesting of crops by party raising before restoration of possession to his opponent—Offence. *See* 1941 Dig., Col. 949. NARASIMHAPPADU, *In re.* **A.I.R. 1942 Mad. 275 (1).**

——**Ss. 193 and 465**—Attesting forged document purporting to discharge decree debt—Offence. *See* 1941 Dig., Col. 949. RAMA NAIDU *v.* EMPEROR. **197 I.C. 630=14 R.M. 377=43 Cr.L.J. 227=A.I.R. 1942 Mad. 92 (1)=(1941) 2 M.L.J. 746.**

——**S. 193**—*Ingredients of offence under—Conviction when proper under.*

Intention is the essential ingredient in the constitution of the offence of perjury. No one can be convicted of

PENAL CODE (1860), S. 193.

giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible, but it is impossible that the statements of the party accused made on oath can be true. (*Niyogi J.*) ASGARALI MULLA IBRAHIMJEE *v.* EMPEROR. **I.L.R. (1942) Nag. 695 = 201 I.C. 170 = 15 R.N. 45 = 43 Cr. L.J. 649 = 1942 N.L J. 257 = A.I.R. 1942 Nag. 80.**

——**S. 193** – *Perjury—Conviction based on oath of a party, when justified.*

Before a conviction for perjury can be sustained on the strength of one man's oath against another it must be shown either that that person is of such outstanding and respectable character that it is impossible to conceive of him telling a lie in circumstances with which the Court is dealing or that that person's word is so strongly corroborated that no reasonable Judge could do otherwise than believe him (*Bose, J.*) RAMBHAU *v.* EMPEROR **1942 N.L.J 327.**

——**S. 195**—Applicability—Execution of Civil Court decree—Attachment—Attached properties left with sureties—Removal by judgment-debtor—Complaint under S. 379 I. P. Code—Complaint by Court—Necessity. *See* 1941 Dig. Col. 949 PONNUSAMI PADAYACHI *v.* EMPEROR. **199 I.C. 210 = 14 R.M. 614 = 43 Cr.L.J. 438.**

——**S. 197**—*Offence under—False medical certificate—Issuing of.*

A certificate in respect of which a man may be punished under the second part of S. 197, I. P. Code, must be one that relates to any fact of which such certificate is by law admissible in evidence without further proof. A medical certificate is not so admissible, and therefore, the issuing of a false medical certificate will not render a person liable under S 197, I. P. Code. (*Bartley and Lodge, JJ.*) PRAFULLA KUMAR KHARA *v.* EMPEROR. **I.L.R (1942) 1 Cal. 573 = A.I.R. 1943 Cal. 40.**

——**Ss. 199 and 193 and C P. Code, O. 11, R. 6**—*Declaration contemplated by S.* **199**—*Verified statement of person summoned to produce document found to be false—Offence under S.* 199, *if committed.*

There are two essential ingredients in S. 199, I. P. Code, and they are (1) a declaration and (2) a declaration which a Court of Justice is bound or authorized by law to receive as evidence. The declaration contemplated by S. 199 is a species of the genus of declarations contemplated in S. 191. Where a person summoned to produce a document under O. 11, R. 6, C. P. Code, makes a statement that he is not in possession or control of it, there is no law which compels him to verify such a statement. But if he goes out of the way and does verify it, when the law does not require him to verify it, he does not thereby render himself liable to punishment. It cannot be used as evidence and it cannot found a prosecution for an offence under S. 199. I. P. Code. (*Niyogi, J.*) ASGARALI MULLA IBRAHIMJI *v.* EMPEROR. **1942 N.L.J. 547 = A.I.R. 1943 Nag. 17.**

——**S. 201**—Construction—"Any person"—If includes offender also—Same person committing crime and causing disappearance of evidence—Liability of. *See* 1941 Dig., Col. 950. MAHADEO NATH *v.* EMPEROR. **22 Pat L T. 1035.**

——**Ss. 201 and 302**—*Principal offenders—Conviction under both sections—Legality.*

The conviction of the principal offenders under S. 201, I. P. Code, in addition to their conviction under S. 302, I. P. Code, is not illegal, if the disposal of the bodies was a separate transaction from the actual murder. (*Tek Chand and Sale, JJ.*) GHULAM MAHOMED *v.* EMPEROR. **203 I.C. 488 = 44 Cr.L.J. 77 = 44 P.L. R. 429 = A.I.R. 1942 Lah. 271.**

PENAL CODE (1860), S. 229.

——**S. 211**—Accused under—Opportunity to impugn false report—Notice to accused—Necessity. *See* 1941 Dig., Col. 950. BALAK RAM *v.* EMPEROR. **A.I.R. 1942 Oudh 100.**

——**S. 211**—Case taken on file after investigation—Discharge of accused—Complaint and prosecution under S. 211, I. P. Code—Legality. *See* 1941 Dig., Col 950. SESHADRI AYYANGAR, *In re.* **43 Cr. L J. 32.**

——**S 211**—Construction—False charge—"Instituted"—Meaning of—Giving information to Police—If amounts to institution of criminal proceedings. *See* 1941 Dig., Col. 951. EMPEROR *v* KARSAN JESANG. **I.L.R. (1942) Bom. 22 = 197 I.C. 598 = 14 R B. 246 = 43 Cr.L J. 240.**

——**S. 211**—Institution of criminal proceedings—Meaning. *See* 1941 Dig., Col. 951. BALAK RAM *v.* EMPEROR. **A.I.R. 1942 Oudh 100.**

——**Ss. 215, 379 and 511** — Alternative charge under Ss. 379 and 215—Conviction for either offence—Legality—Difference between an offence under S. 215 and an attempt to commit such offence. *See* 1941 Dig., Col. 951. THE KING *v.* MAUNG HLA PE. **43 Cr.L.J. 57.**

——**Ss. 215 and 379**—Applicability of S. 215—Double conviction under Ss. 215 and 379 of thief—Legality. *See* 1941 Dig., Col. 951. THE KING *v.* NGA PO NEIN. **198 I.C. 766 = 14 R R. 229 = 43 Cr.L.J. 426.**

——**Ss 216 and 40**—*Scope and applicability of S.* 216—*Definition of offence in S.* 40, *if controls S.* 216.

The general definition of the word 'offence' in S. 40, Penal Code, cannot affect the clear provision made in S. 216, Penal Code, for the punishment of a person who harbours an offender. The latter section very clearly provides for the punishment of harbourers only where the person harboured is wanted for an offence for which certain punishment is provided. No provision whatever is made in S. 216 for the punishment of a harbourer where the man harboured is wanted for an offence punishable with imprisonment less than a year and hence such a harbourer cannot be convicted under that section. (*Bennett, J.*) DEO BAKSH SINGH *v.* KING-EMPEROR. **203 I.C. 499 = 15 R.O. 224 = 1942 O.A. 565 = 1942 O W.N. 682 = 1942 A.W.R. (C.C.) 353 (2) = 1942 A.Cr.C. 206 = 44 Cr.L.J. 90 = A.I.R. 1943 Oudh 51.**

——**S 223**—"*Charged with any offence*"—*Meaning.*

Obiter.—The words "charged with any offence" as used in S. 223, I. P. Code, should not be taken to refer and mean that stage of the trial when "formal charges have been framed against the accused person." These words only mean inculpation or accusation of an alleged offence. (*Pal, J.*) NURUL HUQ *v.* OBAYEDULLA. **46 C.W.N. 163.**

——**S. 223**—*Ingredients of offence—Persons arrested by private persons made over to custody of* dafadars *—Latter negligently suffering them to escape—If can be convicted—Bengal Village Self-Government Act, Ss.* 23 *and* 24—*Cr. P. Code, S.* 59.

It is an essential ingredient of the offence under S. 223, I P. Code, that the public servant in question must be found to have been legally bound to keep in confinement the escaping persons. Under S. 24 of the Bengal Village Self-Government Act a *dafadar* as such becomes "legally bound to keep in confinement" any person only when that person is arrested by himself under S. 23 of that Act. If the arrest was made by certain private persons who placed the arrested persons in the custody of the *dafadars* to be taken to the Police Station, this would not render them "legally

PENAL CODE (1860), S. 228.

bound as *defadars* to keep such persons in confinement" as they are not police officers within the meaning of S 59, Cr P. Code, and consequently they cannot be convicted under S. 223, I. P. Code for negligently suffering them to escape from confinement. *(Pal, J.)* NURUL HUQ *v.* OBAVEDULLA. **46 C W N. 163.**

——S. 228—*Contempt—Statement in application for stay to enable applicant to apply for transfer—Intention to insult—Test—Duty of Court.*

Where in an application for stay to enable applicant to apply for transfer, the application contained a statement that the transfer application was made because the Court had acquired a bias against the applicant by reason of which he was afraid he would not get a fair trial, it was *held* it was a gratuitous and insulting statement and amounted to contempt. It was further *held* that it must be a matter for consideration in each case how insulting the expressions used were and whether there was any necessity to make those statements in those applications: that it was not wise for courts to press the principle of taking no notice too far: that in cases where the words used and the absence of necessity for including insulting suggestions in applications suggested that there was an intention to insult the Court it was not wise for courts to pass over such action in silence. *(Yorke, J.)* NAROTAM DAS *v.* EMPEROR. **1942 A W.R. (H.C) 398 = 1942 A.L.W. 698 = 1942 A.L.J. 677.**

——S. 228—*'Interruption'—Lawyer appealing to Magistrate during pendency of proceedings against rude behaviour of chaprasi.*

If a lawyer steps forward to appeal to the Magistrate against the rude behaviour of his chaprasi to a member of the public who has entered the Court, he does the only proper thing that he could do in the circumstances. 'Interruption' as used in S. 228, I P. Code, contemplates something far more serious, and far more obstructive. By no stretch of language can the mere act of addressing a presiding officer of Court during the pendency of a proceeding amount to a culpable interruption. *(Din Mahomed, J.)* HAKUMAT RAI *v.* EMPEROR. **204 I.C. 299 = 44 P.L.R. 511 = A.I.R. 1943 Lah. 14**

——S. 228—*Offence under—Remark not addressed to Court but overheard by it.*

There is ample authority for the proposition that if a remark is not addressed to a Court, however rude or vulgar it may be it cannot be made the subject of an offence under S. 228, I.P Code, even if the Court happens to overhear it. *(Din Mahomed, J.)* HAKU MAT RAI *v.* EMPEROR. **204 I.C. 299 = 44 P.L. R. 511 = A.I.R. 1943 Lah. 14.**

——S. 228—*Proceeding against lawyer—Latter refusing to apologise and stating he would make test case.*

In a proceeding against a lawyer under S. 228, I.P. Code, neither the magistrate nor any other person has any right to coerce him into submission or to extort any abject guarantee out of him. If therefore, on being hard pressed by his colleagues, he frankly asserts that he would not tender any apology on the ground that he has committed no offence, and that on the question of law involved in the case he would like to secure a pronouncement from the highest tribunal, he is perfectly within his right and does not transgress any law. *(Din Mahomed J.)* HAKUMAT RAI *v.* EMPEROR. **204 I.C. 299 = 44 P.L.R 511 = A.I.R. 1943 Lah. 14.**

——S 247—*Applicability — Warrant case - Complaint disclosing offence under S. 427, I.P. Code—Sworn statement consistent with complaint—Magistrate unable to judge extent of damage caused but taking case under S. 426, I. P. Code—Adoption of summons proce-*

PENAL CODE (1860), S. 298.

dure—Propriety — Complainant absent—Acquittal of accused—Legality of.

Petitioner filed a complaint against several persons disclosing an offence punishable under S. 427, I.P.Code. The Magistrate recorded his sworn statement there was nothing in it at variance with the allegations made in the complaint. The Magistrate however, without giving any reasons ordered the complaint to be taken on file under S. 426 I. P Code, although he was not in a position to judge the extent of the damage caused (which is the only distinction between an offence punishable under S 426 and one under S. 427), when the accused came before the Court the complainant was absent; and so the Magistrate passed an order under S. 247, Cr. P. Code, acquitting the accused.

Held that the Magistrate in issuing processes and mentioning S 426, I. P. Code, acted under a misapprehension and acted without jurisdiction in acquitting the accused under S. 247, Cr. P Code, which did not apply to warrant cases. *(Horwill, J.)* ARUNACHALA REDDY *v.* SELLAMUTHU GOUNDAN **201 I.C. 451 = 15 R.M. 396 = 1942 M.W.N. 373 = 55 L.W. 372 = 43 Cr.L.J. 760 = A.I.R. 1942 Mad. 594 = (1942) 1 M.L. J. 594.**

——S 290—*Offence—Ingredients of—Slaughtering cattle in house fifty feet distant from village pathway—No finding of intention to annoy—Offence.*

Under S. 290, I. P. Code, no question of intention arises for a conviction. If a person wilfully slaughters cattle in a public street so that the groans and blood of the beasts are heard and seen by the passers by, he would be guilty of an offence punishable under S 290. It will be a question of fact in each case whether the killing was done in such circumstances as to constitute a public nuisance. The accused, who were Mahomedans killed during Bakrid, a cow at dawn at a place 50 feet distant from a village pathway. It was actually done within a room in a house, though persons walking along could see within and could see at least a portion of the floor. There was nothing to suggest that there was any intention to annoy the Hindus or any one.

Held, that no offence was committed either under S. 290 or under S. 298, I P. Code, and the accused could not therefore be convicted under either section. *(Meredith and Shearer, JJ.)* SHEIK AMIAD *v.* EMPEROR **21 Pat. 315 = 203 I.C. 282 = 15 R.P. 165 = 9 B.R. 77 = 44 Cr.L.J. 30 = 24 P.L.T 16 = A.I.R. 1942 Pat. 471.**

——S. 294-A—*Gist—Conviction when there has been no "drawing"—Not legal.*

The word "drawing" in S. 294 A, I. P Code, cannot be ignored and must be given its natural meaning. In the first as well as the second part of the section, the Legislature contemptated an actual drawing from a receptacle. An accused cannot be held guilty under S 294 A if there has been no actual "drawing". *(Horwill, J.)* PUBLIC PROSECUTOR *v.* KALKURA. **I.L.R. (1942) Mad. 802 = 201 I.C. 617 = 15 R.M. 354 1942 M W N. 170 = 43 Cr.L.J. 751 = 55 L W. 95 = A.I.R. 1942 Mad. 404 = (1942) 1 M.L.J. 228.**

——S. 295—Offence under—Hut on agricultural holding used as a mosque—Destruction of such hut by landlords and others. *See* 1941 Dig., Col. 953. BECHAN JHA *v.* EMPEROR **23 Pat.L.T 81.**

—— S. 298—Applicability—Killing of the cow in place fifty feet distant from village pathway—Offence. *See* PENAL CODE, S. 290 **21 Pat. 315.**

——S 298—*Conviction—Sustainability—Clear finding of deliberate intention to wound religious feelings based on sufficient materials—Necessity for.*

PENAL CODE (1860), S. 299

There can be no conviction under S. 298, I. P. Code for uttering insulting words, or making insulting gestures, without a definite finding that the acts were done with the deliberate intention of wounding religious feelings. There must be sufficient materials before the Court upon which it could base a finding that anything was done with the deliberate intention of wounding the feelings. In the absence of such materials or a clear finding, a conviction under S. 298 cannot be sustained. (*Meredith and Shearer, JJ.*) SHEIK AMJAD *v.* EMPEROR. **21 Pat. 315=203 I.C. 282=15 R P. 165=9 B.R. 77=44 Cr.L.J. 30=24 P.L.T. 16=A.I.R. 1942 Pat. 471.**

——**S. 299**—*Accused giving blow on receiving blow with heavy instrument on head—Act, not voluntary.*

Any blow on the head with a heavy implement is liable to cause a momentary disturbance of the faculties, if not actual concussion. The first normal reaction of a person so injured would be to make any possible movement which might have the effect of warding off any further blow, but without any fully conscious realisation of what he was doing. If the victim was carrying anything in his hand, the first reaction would be to raise it in the direction from which a blow had been directed. If a blow was given by him while he was reeling under the effect of the blow received on the head it is reasonable to assume that it was given as a purely defensive measure and probably without any conscious intention beyond that. His act can hardly be called voluntary in any sense that will make it criminal, although it results in death. (*Beckett, J.*) HAFIZUL-UL REHMAN *v.* EMPEROR. **198 I.C. 860=14 R.L. 372=43 Cr.L.J. 439=43 P L.R 721=A I.R. 1942 Lah. 33.**

——**Ss 300 and 299**—Murder—Intention—Injury on vital spot—Plea of absence of intention to injure fatally—If available. *See* 1941 Dig., Col. 954. NGA KHWET *v.* THE KING. **197 I.C. 786=14 R.R. 146=43 Cr. L.J 266.**

——**S. 300, paras 1, 2 and 3**—Applicability—Drunken man stabbing with knife—Injury causing death—Offence. *See* PENAL CODE, S. 86. **21 Pat 250.**

——**S. 300, Cls. (2) and (3)**—*Applicability.*

It is incorrect to say that the words "sufficient in the ordinary course of the nature" in the third clause of S. 300 can only be applied when death must be an almost certain result. If a person knowingly causes injuries which are more likely to cause death than not in the ordinary way, his offence falls under either the second or third clause of S 300 When a person dies as a result of what is usually called a "merciless beating" the offence is one of murder. (*Young, C.J. and Beckett, J.*) ARJAN SINGH *v.* EMPEROR. **I L.R. (1942) Lah. 145=202 I.C 315=15 R.L. 116=43 Cr.L.J. 812=A.I.R. 1942 Lah. 255.**

——**S. 300, Excep. (4)**—*Applicability.*

Under the fourth Exception to S. 300, I. P. Code, it is not sufficient that the fight was unpremeditated. It is further essential that the accused should not have taken undue advantage or acted in a cruel manner. (*Tek Chand and Sale, JJ.*) EMPEROR *v.* PREM SINGH. **203 I.C. 605=44 Cr.L.J. 117=44 P.L.R. 457=A.I.R 1942 Lah. 301.**

——**S. 302**—Applicability—Accused administering dhathura—Death caused by pneumonia developed consequent upon exposure occasioned by unconsciousness produced by Dhathura—Offence—Conviction for murder—Sustainability. *See* 1941 Dig., Col. 955. VENKATACHALAM CHETTY, *In re.* **198 I.C 225=14 R M. 421=43 Cr L J. 320=A.I.R. 1042 Mad. 100=(1941) 2 M.L.J. 691.**

PENAL CODE (1860), S. 302.

——**S. 302**—*Applicability—Accused stabbing deceased to prevent latter from causing further injuries to accused—Offence—Right of private defence—Burden of proof.*

When an accused commits an act of violence upon another person apprehending further violence from that person, nothing further need be proved to establish that the accused is acting in the exercise of his right of self defence. Where the deceased struck the accused with a stout stick and was prepared to strike him a second time, and the accused took out his knife and stabbed the deceased who was physically a more robust man the accused could not be convicted of murder, but only of culpable homicide not amounting to murder, and it would be wrong to throw upon the accused the burden of proving that he had in fact consciously exercised his right of self-defence when he used his knife. (*King and Lakshmana Rao, JJ.*) AMMU PUJARI, *In re.* **201 I.C. 609=15 R.M. 391=55 L.W. 125=1942 M.W.N. 172=43 Cr.L.J. 753=A.I.R. 1942 Mad. 295=(1942) 1 M L J. 200.**

——**Ss. 302 and 304**—Applicability—Accused striking and killing believing object of her attack to be a ghost and not a living human being—Offence. *See* PENAL CODE, SS. 79, 302 AND 304. **1942 P.W N. 175.**

——**S. 302**—Applicability—Attack on deceased by several accused—One alone armed with spear and others with lathis—Death—Offence — All accused if guilty of murder. *See* PENAL CODE, SS. 147, 148 AND 302. **23 Pat.L.T. 684.**

——**Ss 302 and 304**—Applicability—Blow on head of old woman with heavy stick with ferrule at end—Death resulting—Offence— Sentence— Public prosecutor representing only lesser offence committed—Effect *See* 1941 Dig., Col. 955. KANDASWAMI SOLAGAR, *In re.* **199 I C 139=14 R.M. 561=43 Cr.L.J. 516=A I.R. 1942 Mad 213.**

——**S. 302** – Applicability—Blow with heavy stick—Severe injury sufficient to cause death inflicted—Death—Offence — Intention—Death if should be necessary consequence—S. 304. *See* 1941 Dig., Col. 955. KARUPPAYYA THEVAR, *In re.* **199 I C. 133=14 R. M. 565=43 Cr.L.J. 521=A.I.R. 1942 Mad. 227=(1941) 2 M.L.J. 999.**

——**S. 302**—*Applicability—Injury by hatchet on chest with violence—Offence.*

Where injury has been caused with a hatchet by a deliberate blow on the chest, struck with violence causing a mortal injury, the offence committed is murder. (*Davis, C. J. and Weston, J.*) SIDIK SUMAR *v.* EMPEROR. **I L.R. (1941) Kar. 525=198 I.C. 110=14 R.S. 136=43 Cr.L.J. 308=A.I R. 1942 Sind 11**

——**Ss. 302 and 86**—*Drunkenness of accused—If minimises offence.*

The mere fact that the accused was drunk at the time of the occurrence does not minimise the nature of the offence especially, when the finding is that he ran to his house to fetch a *balna* and gave a severe blow with it. (*Varma and Rowland, JJ.*) JHIKTU BHOGTA *v.* EMPEROR **199 I C. 307=14 R.P. 585=8 B R 542=43 Cr.L.J. 544=23 P.L.T. 763=A.I.R. 1942 Pat. 427.**

——**S. 302** — Sentence — Considerations — Lesser penalty. *See* 1941 Dig., Col. 957. NGA KHWET *v.* THE KING. **197 I.C. 786=14 R.R. 146=43 Cr.L.J. 266.**

——**S. 302**—Sentence—Drunkenness of accused—If justifies lesser penalty. *See* 1941 Dig., Col. 957. SAMMAN SINGH *v.* EMPEROR. **198 I.C. 262=14 R. L. 319=43 Cr. L.J. 330.**

PENAL CODE (1860), S. 302.

——S. 302—Sentence—Existence of mitigating circumstances—Power of Sessions Judge to impose lesser penalty—Judge—If bound to pass death sentence and to make recommendation for commuting it. *See* 1941 Dig., Col. 958. SURIMUTHU PILLAI, *In re.* **43 Cr. L.J. 56=(1941) 2 M L.J 399.**

——S. 302—Sentence—Mitigating circumstance—Rest of the accused acting under the influence of the one responsible for the murder—Lesser penalty. *See* 1941 Dig. Col. 958. SHEO PRASAD *v.* EMPEROR. **17 Luck. 376=197 I C 701=43 Cr L.J. 243=14 R.O. 353=1941 A.Cr.C. 306=A I R. 1942 Oudh 193.**

——S. 302—*Sentence—Mitigation of—Blow by hatchet at chance meeting after exchange of abuses—Proper sentence.*

The meeting of the accused and the deceased was a chance meeting. The blow was not struck until there had been some interchange of abuse between the two. Only one blow was struck, though deliberately there was no meditation to kill.

Held, that the sentence should be reduced from death to transportation for life. (*Davis, C. J. and Wetton, J.*) SIDIK SUMAR *v.* EMPEROR. **I.L.R (1941) Kar 925=198 I.C. 110=14 R.S. 136=43 Cr.L.J. 308=A.I.R. 1942 Sind 11.**

——S 302—Sentence of death—Separate sentence of imprisonment under S. 201—Propriety of. *See* 1941 Dig., Col. 958. RAMA GOUNDAN, *In re.* **199 I.C. 310=14 R.M. 581=43 Cr.L.J. 543=A.I.R. 1942 Mad. 275 (2).**

——Ss 304 and 325—*Death caused in long drawn out fight—Absence of intention to kill—Offence committed.*

In a case of sudden fight in the heat of passion upon a sudden quarrel where no undue advantage is taken, death is caused in the course of a long drawn out fight and there was no intention to kill, the accused should properly be convicted only under S. 325, I. P. Code, and not under S. 304, I. P. Code. (*Yorke, J.*) NATHOO *v.* EMPEROR **203 I.C. 546=1942 A.W.R (H C.) 259 =1942 A.L.W. 586=1942 A.Cr.C. 204=44 Cr.L.J. 110=A.I.R. 1942 A. 400**

——Ss. 304 and 300, Exc 1—Killing under grave and sudden provocation—Sentence—Relevancy of number of injuries. *See* 1941 Dig., Col. 959. EMPEROR *v.* MEHDI ALI. **I L R. (1941) All 608.**

——Ss. 304 and 149—*Mob chasing deceased, overtaking him and beating him to death—Accused only shown to have been members of mob—Conviction—Legality.*

An Excise Sub-Inspector was chased by a mob, was overtaken and beaten to death. The only evidence for the prosecution was that the accused were members of the mob which had collected round the Sub Inspector. Whether they took part in the chase and beating of the Sub-Inspector could not be ascertained,

Held that the accused could not be convicted under S. 304 read with S. 149. The accused might have been present when the noisy mob sorrounded the Sub-Inspector in the village but the crucial question was whether they chased the Sub Inspector with the intention of overtaking him and beating him to death. (*Harries, C.J. and Manohar Lall, J.*) BESANGI KUI *v.* EMPEROR. **199 I.C. 317=14 R.P 588=8 B.R. 539=43 Cr.L.J. 549=23 P.L.T. 131=A.I.R. 1942 Pat 321.**

——S. 304—*Scope of the first part of the section—Duty of a Judge in dealing with a charge under S. 302.*

It is wrong to think that the first part of S. 304, I. P. Code, creates a special kind of offence and may be applied in all cases if the act by which the death is caused is done with the intention of causing such bodily

PENAL CODE (1860), S. 324.

injury as is likely to cause death. In the case of a charge under S. 302, I.P.Code, it is the duty of the Judge to consider first of all whether the case is not murder as defined in S. 300 and if he considers that it does not fall within the definition, to give reasons. Knowledge in such a case is a matter of presumption and a person must be presumed to know the natural consequences of his act. If the accused intended to cause such injuries as were likely to cause the death of the deceased it must be presumed that they knew that such injuries were likely to cause death. The first part of S. 304 should be applied only where the offence is not murder by reason of its falling within one of the exceptions in S. 300. (*Bennett and Ghulam Hasan, JJ.*) GAJRAJ *v.* EMPEROR. **200 I.C. 500=15 R O. 17=1942 O.W N 316 =1942 O A 224=1942 A.W.R. (C.C.) 211=1942 A. Cr.C. 102=43 Cr.L.J. 634=A.I.R. 1942 Oudh 368.**

——Ss. 304 (1 and 325—No intention to cause death—Death actually caused—Common intention to cause grievous hurt—Offence made out. *See* 1941 Dig., Col. 959. SULAIMAN *v.* THE KING. **43 Cr.L J. 123.**

——Ss. 304 A 304 and 302—Accused driving lorry at high speed and causing death—Offence committed. *See* 1941 Dig., Col. 959. GURDEV SINGH *v.* EMPEROR. **197 I.C. 650=14 R.L 272=43 Cr L.J. 229.**

——S. 304-A—Applicability—Accused keeping poison in farm house—Farm servants drinking same taking it to be arrack—Death caused—Offence. *See* 1941 Dig, Col. 960. AGASTHYALINGA GOUNDAN *v.* EMPEROR. **14 R.M. 348=43 Cr. L J. 126.**

——S 304-A—*Negligent act—Accused with loaded gun watching dramatic performance—Death caused by gun going off in an unexpected sham scuffle—If an offence under S. 304-A.*

Where the accused who was in fear of being attacked by dacoits had with him a loaded gun while he was watching a village dramatic performance and he was attacked by an actor acting the part of a drunken dacoit with a view to merely give a realistic effect and in the unexpected scuffle following the gun went off and wounded the actor who died, it was *held* that the accused by merely standing quietly in a corner and looking on at the performance while holding a gun which was loaded and cocked and thereby creating a situation in which a third person might come to his death by an unprovoked assault on the accused, could not be said to be guilty of a negligent act or of causing death by a negligent act. (*Yorke, J.*) BABU RAM *v.* EMPEROR. **203 I.C. 128=43 Cr.L.J. 921=1942 A.Cr.C. 132=1942 A W R. (H C) 253=1942 A.L.W. 393=1942 A.L J. 321=A.I.R. 1942 A. 328.**

——S. 307—Applicability—Tests—Administration of powdered glass mixed with food—If an offence under S. 307. *See* 1941 Dig., Col. 960. EMPEROR *v.* GANGOO. **I.L.R. (1942) Nag. 122=43 Cr.L.J. 54.**

——S. 307—*Scope.*

The only act which could fall within the purview of S. 307 is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events and accused's criminal liability must be limited to the act which he in fact did, and cannot be extended so as to embrace the consequences of another act which he might have done but did not do. (*Almond, J.C.*) GHULAM SABIAR *v.* EMPEROR. **199 I.C. 799 =14 R. Pesh. 90=43 Cr.L.J. 595=A.I.R. 1942 Pesh. 21 (2).**

——Ss 324 and 326—*Applicability—Cut to bone—Evidence inconclusive as to extent of damage to bone—Offence.*

The cutting of a bone does not necessarily involve a fracture of that bone. Where the evidence merely is

PENAL CODE (1860), S. 324.

that a bone has been cut and there is nothing whatever to indicate the extent of the cut, whether deep or a mere scratch upon the surface, the evidence as to the damage to the bone being inconclusive, it is impossible to say that it amounts to grievous hurt so as to render the offender liable to conviction under S. 326, I. P. Code. He can only be convicted under S. 324, I. P. Code. (*Meredith and Shearer, JJ.*) MATUKDHARI SINGH *v.* EMPEROR 200 I.C. 296=14 R.P. 654=1942 P. W.N. 106=8 B.R. 658=43 Cr.L.J. 511=23 P.L.T. 633=A.I.R. 1942 Pat. 376.

——Ss. 324, 325, 426 and 452—*Conviction under—Mere proof of presence in the unlawful assembly—If enough to justify conviction—Proof of part played by each accused—Necessity.*

The mere fact certain persons are proved to have been members of an unlawful assembly would be enough to support a conviction of them for the offences under Ss. 324, 325, 426 and 452, I.P. Code, in respect of acts done by the riotous crowd. It is not necessary to establish precisely what part each of these persons took in all or any of those incidents or acts. (*Yorke, J.*) IQBAL AHMAD *v.* EMPEROR. 1942 A.W.R. (H. C.) 379=1942 A.L.W. 686=1942 A.L.J. 637=A.I.R. 1943 A. 49.

——S. 325—*Sentence — Sentence of mere fine—Legality.*

The wording of S. 325, I. P. Code, makes it clear that on a conviction under that section there must be a sentence of imprisonment, whether a fine is imposed or not. A sentence of mere fine is not a legal one. (*Horwill, J.*) VENKATASUBBAYYA, *In re.* 203 I.C. 425=1942 M.W.N. 377 (1)=55 L.W. 354 (1)=44 Cr.L.J. 65=A.I.R. 1942 Mad. 550=(1942) 1 M.L.J. 595.

——S. 332—*Applicability—Police officer investigating into offence under S. 363, I. P. Code—Attempt to search house believing that kidnapped girl and offender are in that house—Absence of warrant under S. 100, Cr. P. Code—Assault by owner or occupier of house—Offence.*

S. 165, Cr. P. Code, empowers an investigating Police Officer to make a search for anything necessary for the purposes of his investigation. Where in the investigation of an alleged offence under S. 353, I. P. Code, the police officer has reason to believe that the kidnapped girl and the person who is alleged to have kidnapped the girl are in a particular house, he can search the house though he is not empowered with a warrant under S. 100, Cr. P. Code. The owner or occupier of the house is bound to allow the police officer ingress into the house and afford all reasonable facilities for a search therein. The officer is doing this in the discharge of his duty. If the owner or occupier of the house assaults the police officer, he is guilty of an offence under S. 332, I. P. Code, and liable to conviction. It is no defence to the charge to plead that the police officer had no warrant under S. 100, Cr. P. Code. (*Dhavle, J.*) LACHUMAN SINGH *v.* EMPEROR. 197 I.C. 827=14 R.P 376=8 B.R 307=43 Cr.L.J. 279=A.I.R. 1942 Pat. 281.

——S. 342—*Applicability—Offence under S. 5, Bombay Prevention of Gambling Act—Arrest and confinement by Police Officer without warrant—Legality—Liability of Police Officer—Offence.*

It cannot be held that offences under the Bombay Prevention of Gambling Act are all cognizable. Offences for which special authority to arrest is given to special officers are not cognizable offences within the definition of S. 4 (1) (*l*) of the Cr. P. Code. An offence under S. 5 of the Bombay Prevention of Gambling Act is not a cognizable offence, and consequently the arrest and

PENAL CODE (1860), S. 372.

confinement of a person without a warrant for an offence under that section must be held to be unlawful and a police officer who so confines a person is guilty of an offence under S. 342, I. P. Code. (*Davis, C.J.*) HAJI MAHOMED KHAN *v.* EMPEROR. I.L.R. (1942) Kar. 94=202 I.C. 681=15 R.S. 58=43 Cr.L.J. 888=A.I.R. 1942 Sind 106.

——Ss. 352 and 353—Resistance to warrant not completely without jurisdiction—Offence made out. *See* PENAL CODE, SS. 99, 352 AND 353. 1942 N.L.J. 50.

——S. 353—Assault in resisting time expired warrant of attachment—If an offence. *See* 1941 Dig., Col. 963. RAGHUBIR *v.* EMPEROR. 17 Luck. 311=43 Cr.L.J. 60=A.I.R. 1942 Oudh 57.

——S. 361—*Corroboration of complainant's story—Necessity when accused admits sexual intercourse—Proof of absence of consent of complainant.*

It is not correct to say that in a case of abduction involving sexual intercourse, that there must be always corroboration of the complainant's story. When the sexual intercourse is admitted by the accused, it is not necessary that the details of the alleged sexual intercourse should be corroborated, although any Court would normally require corroboration of the woman's statement that intercourse was without her consent. That does not, however, rest on any technical rule of law or practice. (*Beaumont, C.J., Wadia and Sen JJ.*) EMPEROR *v.* KASAMALLI MIRZALLI. I.L.R. (1942) Bom. 384=199 I.C. 202=14 R.B 357=43 Cr.L.J. 529=44 Bom.L.R. 27=A.I.R. 1942 Bom. 71 (F.B.).

——S. 361—Explanation—"Lawfully entrusted" Interpretation—Entrustment—If may be presumed *See* 1940 Dig., Col. 1006. NATHU SINGH *v.* EMPEROR I.L.R. (1942) Nag. 34.

——S. 361—Minor voluntarily leaving guardian's house—Effect. *See* 1941 Dig., Col. 963. ISRAR HUSAIN *v.* EMPEROR. 17 Luck. 128.

——S. 361, Expl.—De facto *guardianship—If can be set up against legal guardian.*

Meredith, J.—Although the Explanation to S. 361, I. P. Code, extends the accepted definition of the words "lawful guardian" under the civil law, yet as against a person who in fact is the civil law guardian of the minor. Mere *de facto* guardianship cannot be set up so as to convict the real civil law guardian of an offence under S. 361, I.P.Code. (*Meredith and Shearer, JJ.*) DHUMA MANJHI *v.* EMPEROR. 203 I.C. 163=15 R.P. 161=9 B.R.67=43 Cr.L.J. 918.

——S. 366—*Offence under — Husband removing minor wife from father's custody.*

It may well be that, when the husband of a minor girl seeks the assistance of the Civil Court in obtaining the custody of his wife, the Civil Court may, for good and sufficent reason, decline to give him the custody of her and permit her parents to retain her in their custody until she reaches maturity. But it by no means follows that, if such a husband seizes an opportunity that presents itself to him of taking his wife into his own custody, he commits an offence under S. 366, I.P.Code. A husband becomes the lawful guardian of his wife as soon as the marriage ceremony has been performed, and it is immaterial whether or not his wife has then attained puberty. (*Meredith and Shearar, JJ.*). DHUMA MANJI *v.* EMPEROR. 9 B.R. 67=43 Cr.L.J. 9 8=203 I.C. 163=15 R.P. 161.

——Ss. 372 and 373—Relative scope—If correlative of each other. *See* 1941 Dig., Col. 964. EMPEROR *v.* GORDHAN KALIDAS. I.L.R. (1942) Bom. 7=198 I.C. 561=14 R.B. 337=43 Cr.L.J. 400=A.I.R. 1942 Bom. 23.

PENAL CODE (1860), S. 373.

——S. 373—Applicabliity—Girl of 17½ years voluntarily going with accused—Accused exercising no control over the girl and not preventing her from doing what she liked—Offence. *See* 1941 Dig., Col. 964. EMPEROR *v.* GORDHAN KALIDAS. I.L.R. (1942) Bom. 7=198 I.C. 561=14 R.B. 337=43 Cr.L.J. 400=A.I.R. 1942 Bom. 23.

——S. 376—*Conviction—Charge of rape—Necessity for corroboration of complainant's evidence—Nature of corroboration—Charge to jury—Duty of Judge—Non-direction—Effect of.*

It is a very well-settled rule of practice in India that in rape cases the evidence of the complainant must be corroborated The nature of the corroboration must necessarily depend upon the facts of each particular case. Where rape is denied, the sort of corroboration to be looked for is medical evidence showing injury to the private parts of the complainant, injury to other parts of her body, which may have been occasioned in a struggle, seminal stains on her clothes or the clothes of the accused or on the places where the offence is alleged to have been committed; and in all cases importance is attached to the subsequent conduct of the complainant whether she makes a charge promptly or not is always relevant. Subsequent conduct, by itself, though important, is not enough, because a witness cannot corroborate himself or herself. It is the duty of a judge in a trial on a charge of rape to sufficiently direct the jury on he question of corroboration. He is bound to tell the jury that it is a rule of the Court, in cases of rape, not to act on the evidence of the complainant without some corroboration, and when there is no corroboration, to direct the jury that their proper course is to return a verdict of not guilty. Where the Judge does not tell the jury that it was their duty not to act on the uncorroborated testimony of the complainant in view of the experience of the Courts that such evidence is not sufficiently reliable, there is in law non-direction and a verdict of guilty cannot stand. (*Beaumont, C.J., Wadia and Wassoodew, JJ.*) EMPEROR *v.* MAHADEO TATYA. 200 I.C. 261=15 R.B. 1=43 Cr.L.J. 621=44 Bom. L.R. 216=A.I.R. 1942 Bom. 121 (F.B.).

——S. 376—*Proof of offence—Essentials of.*

It is an essential part of the proof in rape that there should have been not only an assault but actual penetration. The only witness who can prove that is the woman. In practice, a conviction for rape almost entirely depends on the credibility of the woman so far as the essential ingredients are concerned, the other evidence being merely corroborative. Her testimony is vital in a case where the woman is married and the medical evidence in no way corroborates the charge of rape. The presence of spermatozoa indicating semen found in the woman's genitals or on her saree is by no means final in the case of a married woman (*Mockett, J.*) KARICHIAPPA GOUNDAN, *In re.* 199 I.C. 742=14 R.M. 667=43 Cr.L.J. 576=A.I.R. 1942 Mad. 285.

——S. 376—*Sentence—Sentence of transportation for life on ground of case being very grave—Propriety.*

The ordinary sentence, for rape varies from 3 years' to 5 years' rigorous imprisonment In very bad case a sentence of seven years is sometimes given. But a sentence of transportation for life is indefensible in a rape case, even if it be a very grave case of rape by a police constable. (*Beaumont, C.J., Wadia and Wassoodew, JJ.*) EMPEROR *v.* MAHADEO TATYA. 200 I.C. 261=15 R.B. 1=43 Cr.L.J. 621=44 Bom. L.R. 216=A.I.R. 1942 Bom. 121 (F.B.).

——S. 378—*Seisure of motor lorry bought under hire purchase agreement—Consent of driver and cleaner to taking possession—If amounts to consent of purchaser of lorry—Question of ownership, relevancy.*

PENAL CODE (1860), S. 379.

Where a motor lorry bought under a hire purchase agreement is seized for non-payment of the instalments due by the purchaser complainant, the taking over of possession of the lorry without the consent of complainant even if it be with the consent of the driver and cleaner thereof, is an offence under S. 378, Penal Code. The possession of the driver and cleaner is only possession of the master and when their master that is the complainant has not consented to such possession being taken by the accused, it amounts to taking possession without the consent of the person in whom the legal possession is vested and the offence falls under S.378. In such a case the question whether the ownership had or had not passed to the complainant is wholly immaterial, as S. 378 deals with possession and not ownership. (*Ghulam Hasan, J.*) RANSOM *v.* TRILOK NATH. 17 Luck. 663=199 I.C. 757=14 R.O 530=1942 A.Cr. C. 82=43 Cr.L.J. 578=1942 A.W.R (C C) 112=1942 O.W.N. 161=1942 O.A. 91=A.I.R. 1942 Oudh 318.

——S. 378—*Theft—Fish in pond—When can form the subject of theft.*

As long as water flows in and out of a pond thereby enabling fish to enter and leave it, the fish are free and in a state of nature, and so no more belong to the owner of the pond than a bird that settles on a tree in a person's garden belongs to that person; but when once the water has fallen to such a level that fish cannot leave it, then they are trapped and consequently in the possession of the owner of the pond. Then any person who takes fish from that pond without the owner's consent with intent to cause him loss, necessarily commits theft. (*Horwill, J.*) KRISHNA REDDI *v.* MUNIAPPA REDDI. 204 I.C. 267=55 L.W. 696=1942 M.W.N. 728 (1)=A.I.R. 1943 Mad. 34=(1942) 2 M.L.J. 556.

——Ss. 378, Expl. 2 and 379—*Mere cutting of crops—When amounts to theft.*

Under Explanation 2 to S. 378, I. P. Code a moving effected by the same act which effects the severance may be a theft. Hence the mere cutting of crops would amount to theft and it is not necessary to show that they had been removed. (*Agarwal, J.*) JADONATH *v.* EMPEROR. 201 I.C. 243=15 R.O. 74=1942 O.A. 305=43 Cr.L.J. 646=1942 O.W N. 444=1942 A.W. R. (C.C.) 277=1942 A.Cr.C. 147=A.I.R. 1942 Oudh. 423.

——S. 379—*Applicability—Accused lifting purse from pocket of complainant but caught by complainant—Offence.*

The accused was caught while attempting to take the purse of P.W. 1 who seized the purse from outside his pocket and also the accused's hand, so that although the accused did move the purse for the purpose of committing theft, he did not actually commit theft as he was unable to move the purse.

Held, that the offence was one punishable under S. 511, and not under S. 379, I. P. Code. (*Horwill, J.*) DURAISWAMI MUDALI, *In re.* 55 L W. 297 (1) =1942 M.W.N. 376=A.I.R. 1942 Mad. 521=(1942) 1 M.L.J. 591.

——S. 379—*Offence under—Complainant purchasing fish from local dealer—Accused snatching it away from his hands asserting monopoly in matter of purchase—If guilty.*

The complainant purchased some fish from a local dealer who was a new comer. The accused as leader of the local dealers trying to maintain monopoly in the matter of purchase from the fishermen snatched the fish

PENAL CODE (1860), S. 380.

away from his hand at the same time taking all the fishes of the local dealer, and when the complainant protested, he threatened to assault him.

Held, that the accused clearly infringed the provisions of S. 379, I. P. Code. (*Roxburgh, J.*) RISHI HALDAR *v.* MONORANJAN PRAMANIK. **202 I C. 659 = 15 R.C. 390 = 43 Cr.L.J. 886.**

——**Ss. 380 457 and 71**—*Conviction both under S. 380 and S. 457—Legality—S. 71, if applies.*

S. 457, Penal Code, cannot be considered to be a bar to a conviction for the offence committed after the house trespass or house-breaking. Hence conviction under both S. 380 and S. 457 is not illegal. S. 71, I. P. Code, has no application to such a case because the offence of theft is no part of an offence under S. 457. (*Bennett, J.*) SITAL *v* EMPEROR. **17 Luck. 513 = 197 I.C. 710 = 14 R.O. 351 = 1941 O A. 1065 = 1941 O.W.N. 1365 = 1942 A.W.R. (C.C.) 5 = 43 Cr.L.J. 252 = 1942 A.Cr.C. 48 = A.I.R. 1942 Oudh 214.**

——**S. 384/109**—*Offence under—Instituting false complaint to bring pressure on debtor to pay debt.*

The institution of a false criminal complaint against a debtor in order to bring pressure on him to pay his debt is not dishonest within the meaning of S. 383, I. P. Code, read with Ss. 24 and 23, if the complainant is legally entitled to realise his debt, and will not, therefore, amount to an offence of attempted extortion. But if the debt had been cancelled by the Debt Conciliation Board, there will *prima facie* be a dishonest intention within the meaning of the section as the complainant is not legally entitled to recover it, and his act will fall within the definition of attempted extortion. (*Bhide and Blacker, JJ.*) BHAI LAL CHAND *v* EMPEROR. **202 I.C. 452 = 15 R.L. 148 = 43 Cr.L.J. 849 = 44 P.L R. 429 = A.I.R. 1942 Lah. 253.**

——**Ss 390 and 394**—"For that end"—Meaning—Accused assaulting complainant during quarrel and then committing theft—If guilty of offence. *See* 1941 Dig., Col. 966. BISHAMBAR NATH *v.* EMPEROR. **1941 A. Cr.C 322.**

——**S. 392**—*Robbery on the highway—Deterrent sentence.*

Highway robbery is a very heinous offence and it should be punished adequately in order to deter other persons who may be inclined to commit it. In such a case the value of the stolen property should not be the criterion whereby the amount of punishment is to be determined. (*Thomas, C.J.*) JAGANNATH *v.* EMPEROR. **17 Luck. 516 = 198 I.C. 714 = 14 R.O. 449 = 1941 A.W.R. (C.C.) 402 = 1941 O A. 1018 = 1942 A. Cr.C. 20 = 1941 O.W.N. 1369 = 43 Cr.L.J. 416 = A.I. R. 1942 Oudh 221.**

——**S. 395**—Motive—Relevancy—Evidence of past conduct of accused in guise of evidence of motive—Conviction based on—Sustainability. *See* 1941 Dig., Col 966. ARJUN PANDA *v.* EMPEROR. **21 Pat. 130 = 197 I C. 647 = 8 B.R. 264 = 14 R.P 367 = 43 Cr L. J. 230 = 1942 P.W.N 124 = 23 P.L.T. 494 = A.I.R. 1942 Pat. 199.**

——**Ss 395 and 397**—Offences—Sentences—Principle. *See* 1941 Dig., Col. 967. BANSI *v.* EMPEROR. **43 Cr.L.J. 97.**

——**S. 395**—Sentence—Offence on Highway between sunset and sunrise—If aggravation of offence. *See* 1941 Dig., Col 967 ADHIK LAL PATHAK *v.* EMPEROR. **200 I.C. 208 = 14 R.P. 655 = 8 B.R. 647 = 23 P.L.T. 475 = 43 Cr.L.J. 615 = A.I.R. 1942 Pat 156.**

——**S. 396**—Sentence. *See* 1941 Dig., Col. 967 HLA SAN *v.* THE KING. **199 I.C. 147 = 14 R.R. 269 = 43 Cr.L.J. 525 = A.I.R 1942 Rang. 49.**

PENAL CODE (1860) S. 403.

——**S. 399**—*Ingredients of offence*—"*Preparation*"—*What constitutes—Preparation and assembly—Distinction—Inference of intention from conduct of members of party—Relevancy and value of—Presumption as to intention.*

Ordinarily it is no offence to make preparation for committing a crime until the stage of preparation has passed and that of attempt is reached. But under S. 399, I.P.Code, it is an offence to make any preparation for committing dacoity. S. 399 is one of the three sections in the Code in which the preparation to commit an offence is made punishable. It is not possible to lay down any hard and fast rule that any particular act or any particular kind of step towards the commission of the offence is necessary to constitute "preparation." The essential thing is that the prosecution must prove that there were persons who had conceived the design of committing dacoity. Once the existence of such a conspiracy has been established, then any step taken with the intention of forwarding that design may justify the Court in holding that there has been "preparation" within the meaning of S. 399, I. P. Code. Where it is found that a large number of persons from neighbouring villages had gone in one or more groups to a destination to which they have not shown that they had any lawful purpose to go, and that there were meetings at a near place of persons who were subsequently found absent from their homes at the relevant time, that is an indication from which a concerted purpose can be inferred in the departure. The conduct of those members of the party, who are found at a near village, in failing to give any satisfactory explanation of their presence and also in the inquiries made by some of them as to who in those villages had money, can be taken to suggest that the object of the journey of these persons was a raid on property. Inference from these individual acts is no way conclusive, but the intention underlying the conduct of any individual can seldom be conclusively established. But if the prosecution does establish that the character and circumstance of an act suggest that it was done with a particular intention, then under S. 106, Ill, (*a*) of the Evidence Act it may be assumed that he has that intention unless he proves the contrary. Where all the circumstances proved are in every way consistent with the setting out of an expeditionary party with a view to the commission of a violent crime, and lead to the inference of a design to commit dacoities it can be taken that it was for this purpose that the members of the party had gone out, although it is not proved that they were carrying arms when that was the intention in their minds, the going out for that purpose would be a "preparation" for the fulfilment of that purpose, *i.e.*, dacoity.

Varma J.—From the wording of Ss. 399 and 402, I.P. Code, it is clear that the Legislature wanted to draw a distinction between preparation for a dacoity and assembling for the purpose of committing dacoity. In the case of assembling for dacoity there may be assembling for dacoity without preparation and something would be required before members of an assembly can be said to be preparing to commit dacoity. When it has been proved that the members of the assembly covered a distance of about forty miles and that some of them were inquiring about substantial men, it must be held that they passed the stage of assembly and were making preparation to commit dacoity so as to be liable under S. 399. (*Varma and Rowland, JJ.*) JAIN LAL *v.* EMPEROR. **21 Pat. 667 = A.I.R. 1943 Pat 82.**

——**Ss 403 and 405**—Partner—Liability to be convicted under. *See* 1941 Dig., Col. 968. V. V. REDDY

PENAL CODE (1860), S. 405.

v. K. C. REDDY. 197 I.C. 797=14 R.R. 143=43 Cr. L.J. 263.

——S. 405 and Cr. P. Code (1898), S. 181 (2)—*Breach of trust—Jurisdiction—Trust to be carried out at place* M—*Misappropriation of trust funds at place* B—*Proper forum.*

Where the object of a certain trust was the spending of monies on charity and religious purposes at place *M* and the trustee was alleged to have misappropriated the money at place *B*, it was held that it was the Court at place *B*, that had jurisdiction to try the case and not the Court at place *M*, for the alleged breach of trust was committed only at the former place. (*Allsop, J.*) KUNJ BEHARI LAL *v.* BRAHAM DATTA. 203 I C 530 =1942 A.L.W. 576=1942 A.Cr.C. 194=44 Cr.L.J. 102=1942 A.W.R. (H.C.) 313=1942 A.L.J. 559= A.I.R. 1942 A. 439.

——Ss. 405 and 409—*Purchase on behalf of Bank by authorised agent—Sale by agent and proceeds withheld from bank—Offence committed.*

Where a person authorised to act on behalf of a Bank purchases G. P. Notes, he becomer at once entrusted with them on behalf of the Bank. It cannot be said that there is no trust. Hence when he subsequently sells the G. P. notes and withholds the sale amount from the Bank, he misappropriates money entrusted to him within the meaning of S. 405, I. P. Code. (*Agarwal, J.*) RAMNATH DAVE *v.* EMPEROR. 202 I.C. 382=15 R.O. 123=1942 O.A. 341=1942 O.W.N. 485 =1942 A.W.R. (C.C.) 295=1942 A.Cr.C. 151=43 Cr.L.J. 830=A.I.R. 1942 Oudh 473.

——Ss. 406 and 420—*Applicability—Property obtained by trick—Offence—Conviction under S.* 406—*Sustainability—"Entrustment".*

When a person obtains possession of property from another by means of a trick, he is not *entrusted* with that property within the meaning of S. 405, I. P. Code, so as to be liable to conviction under S 406, I. P. Code. Once a person obtains property by means of a trick, an offence of cheating under S. 420, I. P. Code, is completed and he cannot be convicted of an offence under S. 406, with respect to the same property. A trust implies confidence and it implies necessarily that the confidence was freely given and that there is a true consent. There is no true consent if confidence is obtained as a result of a trick. (*Davis, C.J.*) ARAB MIHAN *v.* EMPEROR. I.L.R. (1942) Kar. 284=203 I.C. 609=15 R.S. 84= 44 Cr.L.J. 123=A.I.R. 1942 Sind. 167.

——Ss. 406 and 420—*Stay of trial for offences under, pending decisions in civil suits in respect of same matter—Necessity.*

The fact that civil suits in respect of the same matter as that involved in criminal proceedings for the trial of offences under Ss. 406 and 420 of the Penal Code are pending, is no reason for staying the criminal proceedings which are quite independent of the decisions in the civil suits which would only be decisions between the complainant and accused and not decisions between the Crown and the accused. (*Allsop, J.*) PANNA LAL *v* EMPEROR. 1942 A.L.J. 610=1942 A.W.R. (H C) 327=1942 A.L.W. 540= 1942 A.Cr.C. 185=A.I.R 1943 A. 14.

——S. 407—Essentials of offence—Dishonest intention—Necessity to prove—Act done in anticipation of law which would later make it offence—If offence. *See* 1941 Dig., Col. 968. BARON VON DINCKLACE *v.* EMPEROR. 198 I.C. 543=1942 M W.N. 41=14 R. M. 483=43 Cr.L.J. 395=A.I R. 1942 Mad. 182= (1941) 2 M.L.J. 748.

——S. 408 and Cr. P. Code (1898), S. 222—Charge in respect of offences under S, 408, I. P. Code

PENAL CODE (1860), S. 411.

—Item and time, if should be given. *See* 1941 Dig., Col 968. WAZIR SINGH *v.* EMPEROR. 17 Luck. 353 =197 I C. 255=14 R.O. 306=43 Cr.L.J. 153=A.I R. 1942 Oudh 89.

——S. 408—Offence under—Manager receiving employee's money and failing to account—Nature of liability. *See* 1941 Dig., Col. 968. WAZIR SINGH *v.* EMPEROR. 17 Luck. 353=197 I C. 255=14 R.O. 306=43 Cr.L.J. 153=A.I.R. 1942 Oudh 89.

——S. 409—Applicability—Village Munsif retaining revenue collections for short time before remitting same to the treasury—Offence. *See* 1941 Dig., Col. 969. MUTHUSAMI UDAYAN, *In re.* 198 I.C. 893=14 R. M. 510=43 Cr.L.J. 445.

——S. 409—Banker failing to repay money paid into current account—If guilty of offence—Banker and customer—Nature of relationship. *See* 1941 Dig., Col. 969. PAKKASHI *v.* EMPEROR. 199 I.C. 47=43 Cr. L.J. 451=14 R.C. 525=1942 Comp.C. 17.

——S. 411—Conviction—Basis of—Person in possession of stolen property not asked to explain possession—Doubt as to prosecution case about possession—Conviction—Sustainability. *See* 1941 Dig., Col. 970. BAIDYA NATH MOHANTY *v.* EMPEROR. 197 I.C 664=8 B. R. 248=14 R.P. 366=43 Cr.L.J. 234=1942 P.W.N. 128=23 P.L.T. 500=A I.R. 1942 Pat. 145.

——S. 411—*Conviction—Essentials to be proved—Duty of prosecution—Accused when bound to explain possession.*

Before a person can be convicted of an offence under S. 411, I. P. Code, it must be shown that the property in his possession is stolen property. A Court might suspect that it was stolen property, but it is for the prosecution to prove affirmatively that the property is stolen. Once the prosecution proves that it is stolen property, the Court may presume that the person in possession is either the thief or receiver of stolen property. In the absence of an explanation by him he may be convicted, but before he can be asked to explain, it has to be established that he was in possession of property proved to have been stolen. (*Harries, C.J.*) GOBINDA MAHARANA *v.* EMPEROR. 201 I.C. 206=43 Cr.L.J. 648=8 B.R. 773=15 R.P. 51=8 Cut L.T. 17=A.I. R. 1942 Pat 304 (1).

——S. 411—Conviction — Sustainability—Prosecution not proving possession of stolen property—Failure of accused to give explanation—Conviction—Legality. *See* EVIDENCE ACT, S. 114, ILL. (*a*) AND PENAL CODE, S. 412. 8 B.R. 393.

——S. 411—*Proof—Stolen buffalo—Possession 4 or 5 months after theft—Inference of guilt.*

Possession of a stolen buffalo five or six or even four or five months after the theft, is not such possession as will constitute proof of an offence. (*Davis, C. J. and Weston, J.*) HASHIN *v.* EMPEROR. I.L.R. (1942) Kar. 186=201 I.C. 732=15 R.S. 22=43 Cr.L.J. 771 =A.I.R. 1942 Sind 85.

——S. 411—*Stolen goods found in room of which accused was sole occupant—Inference of his knowledge of their presence in room—If justified.*

Although the accused was the sole occupant of the room in which the stolen articles were found, it does not necessarily follow that he must have been aware of the presence in the room of all the articles that were found therein. It is incumbent upon the Judge to consider the circumstances of the occupation of the room and to consider whether it was reasonably possible for other persons to introduce the articles into the room without the accused's knowledge. The mere fact that he failed to prove that he had guests in his house in the previous night is not in itself sufficient to prove that the circum-

PENAL CODE (1860), S 412.

stances of his possession of the house were such as to preclude the reasonable possibility of the other persons introducing the stolen goods into the house. (*Lodge and Roxburg, JJ.*) INDU BHUSAN PAL *v.* EMPEROR. 199 I.C 442=14 R.C. 631=43 Cr.L.J. 561=A.I.R. 1942 Cal. 440.

——S. 412—*Burden of proof—Possession of property taken away by dacoits—If proof of offence.*

Mere possession of property taken away by dacoits at the time of commission of dacoity will not be sufficient to bring home a charge under S. 412. It must be proved that the accused had knowledge or had reason to believe that the possession of the property was transferred by the comission of dacoity. (*Rowland and Manohar Lall, JJ.*) MEGHU CHAMAR *v.* EMPEROR. 203 I.C. 16=9 B.R. 54=15 R.P. 154=43 Cr.L. J. 911=A I.R 1942 Pat. 439 (1).

——Ss. 415, 419 and 420—Offence under—Causing false entry to be made in Mutation Register by practising deception on Mutation Officer. *See* 1941 Dig., Col 971. MAHOMED BAKHSH *v.* EMPEROR. 197 I.C. 711=43 Cr.L.J. 254=14 R.L. 278.

——S. 417—*Offence under—Inducing complainant to compromise case under S.* 408.

The charge under S. 408, I. P. Code, is not compoundable and even if the accused made some promise, and the case was dropped, the promise would not be enforcible and it would be always open to the complainant to have the case revived if the Magistrate was so disposed. Therefore the accused cannot be prosecuted under S. 417, I. P. Code, for having induced the complainant to compromise the case under S. 408, I. P. Code. (*Roxburgh and Akram, JJ.*) BANAMALI CHARAN BHUNIA *v.* DHARANIDHAR BHUNIA. 203 I. C. 180=43 Cr.L.J. 926=15 R.C. 424=A.I.R. 1943 Cal. 41.

——S. 419—Proof of offence. *See* 1941 Dig., Col. 971. THAKUR MANDAL *v.* EMPEROR. 43 Cr.L.J. 65=A.I.R 1942 Pat 53.

——S. 420—Applicability—Property obtained by trick—Offence. *See* PENAL CODE, SS. 406 AND 420. I.L.R. (1942) Kar. 284.

——S. 424—*Applicability—Illegal warrant of attachment—Warrant bearing no date and not addressed to any one who is to attach—Removal of property attached under—Offence.*

A warrant of attachment which is a blank one addressed to no one and which does not mention the name of the person who is to execute it, and which is also undated must be held to be an illegal warrant and no valid execution can be made under it. If property is attached under such a warrant, the removal of the property so attached does not amount to an offence under S. 424, I. P. Code. (*Harries, C.J.*) LALCHANNA *v.* EMPEROR. 202 I.C. 123=8 B.R. 854=15 R.P. 104=43 Cr.L.J. 795=8 Cut.L.T. 40=A.I.R. 1942 Pat. 480.

——Ss. 425 and 379—*Cattle grazing crops on land—Complaint for destruction of property—Question, whether grazing amounted to destruction of property or theft—The gravamen of charge same—Conviction under either section justified.*

Construing S. 425, Penal Code strictly there can be no doubt that in allowing one's cattle to graze on land belonging to the complainant, there is destruction of property within the meaning of the section. The question whether the offence was one of destruction of property under S. 425 or theft under S. 379 is, however, rather academic; for the Court could change the conviction from S. 425 to S. 379 of the Penal Code, the ingredients of the charge being properly set out and the evidence being the same; for the gravamen of the offence was that the cattle grazed the crop belonging to the complainant. (*Horwill, J.*) PALANIANDI MUTHIRIAN *v* KAMASWAMI REDDI. 204 I.C. 67=44 Cr.L.J. 140=1942 M.W.N. 756 (2)=55 L.W. 695=A.I.R. 1942 Mad. 724 (1)=(1942) 2 M.L.J. 545.

PENAL CODE (1860), S. 480.

——S. 426—*Applicability—Charge of mischief to "Kabaristan of Moslems" at particular place—Finding that no grave existed at or near place—Conviction—Sustainability.*

There can be no conviction under S. 426, I. P. Code, on a charge of committing mischief to a "Kabaristan of the Moslems of a place," when the Court has come to a finding that no grave was touched as no grave existed in or near the place. (*Varma, J.*) LALO MAHTO *v.* EMPEROR. 199 I.C. 218=8 B.R. 534=1942 P.W.N. 13=43 Cr.L.J. 537=14 R.P. 577=22 Pat.L.T. 976=A.I.R. 1942 Pat. 150.

——S. 441—Land in possession of tenant—Trespass on, with a claim thereto—Offence if made out. *See* 1941 Dig., Col. 971. BANSIDHAR *v.* EMPEROR. 197 I.C. 401=1942 A.Cr.C. 9=43 Cr.L.J. 162=14 R.O. 325=A.I.R. 1942 Oudh 104.

——S. 447—*Conviction—Sustainability—Conditions.*

Before there can be a conviction under S. 447, I. P. Code, it must be shown that the trespass was one mentioned in S. 441. When there is no satisfactory finding on that point, and there is an element of doubt about the guilt of the accused, it is not safe to convict the accused. (*Varma, J.*) LALO MAHTO *v.* EMPEROR. 199 I.C. 218=1942 P.W.N. 13=8 B.R. 534=43 Cr.L.J. 537=14 R.P. 577=22 Pat.L.T. 976=A.I.R. 1942 Pat. 150.

——S. 448—*Applicability — Criminal trespass—Ingredients of offence—Intention — Necessity—Mere knowledge that annoyance may be caused—Sufficiency.*

In order to constitute criminal trespass under S. 448, I. P. Code, there must be intention on the part of the accused to intimidate, insult or annoy. Mere knowledge that he will annoy the owner of the house is not sufficient. Though the dominant intention of the accused might be to set up a civil title to the house in question to which he has no lawful claim, if he has the subsidiary and subordinate intention of intimidating or annoying the owner or the persons in possession, he must be held guilty under S. 448, I. P. Code. (*Horwill, J.*) NAGI REDDI *v.* SANJEEVA REDDY. 201 I.C. 654=43 Cr. L.J. 755=15 R.M. 390=1942 M.W.N. 371=55 L.W. 367=A.I.R. 1942 Mad. 532 (2)=(1942) 1 M.L.J. 585.

——S. 456—Offence under—Entry to commit clandestine adultery with unmarried woman by invitation. *See* 1941 Dig., Col. 971. EMPEROR *v.* TAKBIRULLAH. 43 Cr.L.J 96.

——S. 463—*Offence under—Fabrication of document to support false defence.*

If the accused, in order to make good a false defence and to cause justice to miscarry, fabricates a document, his act clearly comes strictly within the definition in S. 465, I. P. Code, within the part of the definition which relates to the intent to cause damage or injury to the public or to any person. The proper administration of justice is so vital to the ordered existence of a civilized community that an intent to defraud justice is something very closely, very nearly, affecting the public, and the complainant. (*Davis, C.J. and Weston, J.*) EMPEROR *v.* AHMAD KHAN. 202 I.C. 773=43 Cr. L.J. 905=15 R.S. 66=A.I.R. 1943 Sind 46.

——S. 480—*Essential ingredients which go to prove use of a false trade mark—Fact of identity of the marks, if dispenses with proof of their use as required by S.* 480.

PENAL CODE (1860), S. 486.

There are two essential ingredients which go to prove the use of a false trade mark as defined by S. 480, Penal Code. They are (1) Marking any goods or any case, package or receptacle containing goods or using any case, package or receptacle, with any mark thereon and (2) such marking or using must be in the manner reasonably calculated to cause it to be believed that the goods so marked, or the goods in the marked receptacle, are the manufacture or merchandise of a person whose manufacture or merchandise they are not. The mere fact of identity of the marks concerned cannot dispense with proof of their use as required by the section. Hence where the evidence on the point as to whether the trade mark in dispute was used by the party complained against in the manner reasonably calculated to cause it to be believed that the goods marked were the manufacture or merchandise of the complainant is unsatisfactory a conviction for the false use of the trade mark cannot be upheld. (*Ganga Nath, J.*) WALKINS MAYOR & CO. *v.* RAMJI LAL. 1942 O.W.N. 117=1942 A.L.W. 134=1942 A.Cr.C. 86.

——S. 486—*Counterfeiting of trade marks—"Side by side" test—If sound.*

In a case under S. 486, I. P. Code, the test of comparison of the marks side by side is not a sound one, since a purchaser will seldom have the two marks actually before him when he makes his purchases and marks with many differences may yet have an element of similarity which will cause deception, more especially if the goods are in practice asked for by a name which denotes the mark or the device on it. (*Davis, C.J. and Weston, J.*) KIMATRAI TARACHAND *v.* CHELLARAM JHANGALDAS. 203 I.C. 181=43 Cr.L.J. 927=15 R. S. 74=A.I.R. 1943 Sind 55.

——S. 494—*Essentials of offence.*

In order that an offence of bigamy can be committed, there must be, at the time of the second ceremony of marriage, a previous valid subsisting marriage. (*Davis, C.J. and Weston, J.*) USMAN *v.* BUDHU. I.L.R (1942) Kar. 3=201 I.C 163-15 R.S. 10=43 Cr.L.J 647=A.I.R. 1942 Sind 92.

——S. 498 and Cr. P Code (1898), S. 199—*Husband living in place of his employment and wife living with her father-in-law in different place—Enticement during a temporary visit to her father—Competency of father-in-law to make complaint.*

Where a husband lived in the place where he was employed and his wife lived with his father in another place and she was enticed away from her father's place where she had gone on a temporary visit, it was *held* that a complaint by the father of the husband was by a proper person. (*Agarwal, J.*) ISHWAR DIN *v.* EMPEROR. 201 I.C. 146=43 Cr.L.J. 643=1942 O. W.N. 431=1942 A.W.R. (C.C.) 274 (2)=15 R.O. 75 =1942 A.Cr.C. 139=1942 O.A. 302 (2)=A.I.R. 1942 Oudh 434.

——S. 499—*Fair comment—Conditions—Press, if has any special privilege—Position of men in public positions.*

"In order that a comment may be fair it (1) must be based on facts truly stated; (2) must not contain imputations of corrupt or dishonourable motives on the person whose conduct or work is criticised, save in so far as such imputations are warranted by the facts; and (3) must be the honest expression of the writer's real opinion." The question to be considered would be, would *any* fair man, *however prejudiced he might be*, or *however exaggerated or obstinate his views*, have written the criticism in question. The press and the authors and publishers of books have no special privilege. They are in no better position than any other man. If they make assertions of facts as opposed to comments on them and those assertions are defamatory they must either justify those assertions, or, in the limited cases specified in the ninth exception to S. 499, I.P. Code, show that the attack on the character of another was for the public good and that it was made in good faith. Men in public positions can claim no immunity from criticisms even when the positions they hold are official. It is the penalty they pay for the honour and privilege of occupying posts of exceptional responsibility, power and advantage. But there are limits to the attacks which may be made upon them. (*Bose, J.*) N. B. KHARE *v.* M. R. MASSANI. 202 I.C 543=43 Cr.L.J. 856=15 R.N. 95=1942 N.L.J. 503 =A.I.R. 1942 Nag. 117.

PENSIONS ACT (1871), S. 11.

——S. 499, Exception 1—Applicability—Publication of matter concerning particular caste or community only—If falls under exception. *See* 1941 Dig., Col. 973. VINAYAK ATMARAM *v.* SHANTARAM JANARDAN. 197 I.C. 502=14 R.B. 230=43 Cr.L.J. 174.

——S. 499, Ex. 1, 2 and 9—*When available.*

Where a newspaper editor is accused of having published defamatory statements about the conduct of a Jail Superintendent with reference to the treatment of the prisoners, in order to claim the benefit of the first, second and ninth exceptions the accused must show that the opinion respecting the conduct and character of the official concerned was confined to his character so far as it appeared in his conduct in the discharge of his official duties and that the opinion was expressed in good faith. He must show that he had reasonable grounds for believing the allegations to be true and that the complainant was responsible for the mismanagement and that he could have remedied it, but he being naturally disposed to cruelty, preferred not to. Where the accused had accepted the allegations against the Jail Superintendent, as true upon an *ex parte* enquiry, after hearing one party only, and that party a very interested party, without giving the other party concerned an opportunity to refute them, it was held that it was impossible to hold that the accused acted with due care and attention and that his opinion was expressed in good faith. (*Bennett, J.*) RAMA RAO *v.* EMPEROR. 203 I.C. 143=15 R.O. 171=44 Cr.L.J. 33=1942 O.A. 478=1942 A.L.W. 520=1942 A.Cr.C. 166=1942 A. W.R. (C.C.) 333=1942 O.W.N. 530=A.I.R. 1943 Oudh 1.

——S. 499, Exceptions 9 and 10—Applicability—Onus—Facts to be proved. *See* 1940 Dig., Col. 1016. BHAGOLELAL *v.* EMPEROR. I.L.R. (1942) Nag. 208.

——S. 504—*Applicability—Use of filthy abuse—If punishable under S. 504.*

S. 504, I. P. Code, is intended to deal with persons who are as responsible for breaches of peace or the commission of offences as those who openly abet or incite them. It would be a misuse of the section to punish filthy abuse without discussing whether such abuse was intended to provoke a breach of the peace or the commission of an offence or whether the accused knew that it was likely to cause a breach of the peace. (*Horwill, J.*) SUBBIAH *v.* VENKATASUBBAMMA. 203 I.C. 321=44 Cr.L.J. 10=1942 M.W.N. 437=55 L.W. 421=A.I.R. 1942 Mad. 672=(1942) 2 M.L.J. 101.

——S. 511—Applicability — Accused lifting purse from pocket of complainant but latter seizing purse from accused's hand—Offence. *See* PENAL CODE, S. 379. 55 L.W. 297 (1)=(1942) 1 M.L.J. 591.

PENSIONS ACT (XXIII OF 1871), S. 11—*Grant of right to receive land revenue on account of past services rendered—If a pension and exempt from attachment.*

PLEADINGS.

Where a *sanad* under which a grant of a right to receive land revenue was made showed that it was made in recognition of the prayers which were made day and night by the grantee and which brought about prosperity in all respects it was held that the grant was on account of the past services rendered by the grantee and it therefore clearly came under S. 11 of the Pensions Act and was hence not liable to attachment and sale in execution of any decree against the heirs of the grantee. (*Ganga Nath, J.*) BAIJ NATH *v.* GOVIND LAL. 1942 A.L.W. 449.

PLEADINGS. *See* PRACTICE—PLEADINGS.

POLICE ACT (V OF 1861), S. 11—"Pension"—Jagir. *See* 1940 Dig., Col. 1018. DHANWANT SINGH *v.* SANT LAL 44 P.L.R. 204.

——**S. 29**—Offence under—Tampering with police records. *See* 1941 Dig., Col. 976. JAGDISH NARAIN *v.* EMPEROR. 197 I.C. 277=1941 A.Cr.C. 315=43 Cr.L.J. 139=14 R.O. 298=A.I.R. 1942 Oudh 163.

——**S. 30**—Conditions of licence—Duty of licensee to explain to processionists. *See* 1941 Dig., Col. 977. EMPEROR *v.* BHAGWAT SINGH RAM SINGH. I.L.R. (1941) Lah. 820=197 I.C. 339=14 R.L. 233=43 Cr.L.J. 145=14 R.L. 233.

——**Ss. 30 and 32**—Licence, if required for every procession—Joining unlicensed procession—If offence. *See* 1941 Dig., Col. 977. EMPEROR *v.* BHAGWAT SINGH RAM SINGH. I.L.R. (1941) Lah. 820=197 I.C. 339=14 R.L. 233=43 Cr.L.J. 145.

——**S. 30-A**—Procession ordered to disperse—Disobedience of order by processionists—Offence—Penal Code, S. 143. *See* 1941 Dig., Col. 977. EMPEROR *v.* BHAGWAT SINGH RAM SINGH. I.L.R. (1941) Lah. 820=197 I.C. 339=14 R.L. 233=43 Cr.L.J. 145.

——**S. 32**—Applicability—Processionist—Onus of proof. *See* 1941 Dig., Col. 978. EMPEROR *v.* BHAGWAT SINGH RAM SINGH. I.L.R. (1941) Lah. 820=197 I.C. 339=14 R.L. 233=43 Cr.L.J. 145.

——**Ss. 47 and 53**—*False complaint—Conviction for offence—No period of limitation laid down.*

Where a person was accused of having sent a false report to the Deputy Superintendent of Police against an Inspector and was convicted under S. 47 of the Police Act and sentenced to a fine, on the question whether the complaint should have been made within the time laid down in S. 53.

Held, that the Act does not make provision for the filing of a false complaint against police officer and there was no period of limitation laid down for the bringing of complaints of the nature with which the present case was concerned. (*Horwill, J.*) PUBLIC PROSECUTOR *v.* KOLA SAHIB. 201 I.C. 455=43 Cr.L.J. 758=15 R.M. 392=1942 M.W.N. 383=A.I.R. 1942 Mad. 530 (2)=(1942) 1 M.L.J. 602.

POSSESSION — *Proof—Possession of document—Element of knowledge—If necessary.*

To prove possession of a document, it is necessary to establish some element of knowledge on the part of the person said to be in possession. This element of knowledge can be established from the attendant circumstances. (*Bartley and Lodge, JJ.*) BIMAL PROTIVA DEBI *v.* EMPEROR. 202 I.C. 150=43 Cr.L.J. 793=(1942) F.L.J. (H.C.) 180=15 R.C. 309=75 C.L.J. 90=A.I.R. 1942 Cal. 464.

POWER OF ATTORNEY—*Construction—Power to sell—If confers power to receive sale price.*

An agent who under a power of attorney is given the power to sell must not only be taken to have authority to do every lawful act which is necessary to effect a sale but also what is usually done in the course of conducting a sale. The power to receive the sale price must be ordinarily, and in the absence of any stipulation or direction to the contrary, considered to be implicit in the power of sale. (*Abdur Rahman and Somayya, JJ.*) GOVERDHANDOSS TAKERSEY *v.* ABDUL RAHIMAN. I.L.R. (1942) Mad. 775=1942 M.W.N. 644=55 L.W. 446=A.I.R. 1942 Mad. 634=(1942) 2 M.L.J. 636.

PRACTICE—Adjournment—Suit against alien enemy—Defendant internee and unable to appear in Court—His presence essential for defence of suit—If ground for adjournment of suit. *See* 1941 Dig., Col. 980. VAIKUNTH P. MUNIM *v.* PRAHLAD SHANKER K. SHUKLA. 198 I.C. 232=14 R.B. 277.

——Admission by pleader—Question of law—Binding nature of. *See* 1941 Dig., Col. 981. RAM KISHAN *v.* OM PRAKASH. 197 I.C. 481=14 R.L. 241.

——*Appeal—Abandoned plea, if can be raised.*

Where a plea was not only not raised in the Court below but was expressly abandoned cannot be raised in appeal. (*Madeley, J.*) GANGA GHULAM *v.* SHEO MANGAL BAJPAI. 204 I.C. 237=1942 A.W.R. (C.C.) 356 (3)=1942 O.A. 588=1942 O.W.N. 725=A.I.R. 1943 Oudh 83.

——*Appeal—Appellate Court—Appreciation of oral evidence—Weight to be attached.*

The appreciation of oral evidence by the trial Judge is no doubt entitled to great weight by the appellate Court, but that appreciation must be tested by the other proved facts in the case, especially if the evidence is substantially corroborated by those facts. (*Divatia and Macklin, JJ.*) SECRETARY OF STATE *v.* CHIMANLAL JAMNADAS. I.L.R. (1942) Bom. 357=201 I.C. 420=15 R.B. 76=44 Bom.L.R. 295=A.I.R. 1942 Bom. 161.

——*Appeal—Appellate Court—Power to set up new case inconsistent with plea in trial Court—Remand of suit for trial of new case—Propriety.*

An appellate Court has no power to set up a new case for a party, which is inconsistent with his pleas in the trial Court and to send back the suit for trial of the new case that it has set up. Such a procedure would cause irreparable injury to the other party. (*Abdul Ghani and Subrahmanya Aiyar, JJ.*) BASKARIAH *v.* CHENNABASAPPA. 20 Mys L.J. 17=46 Mys. H.C.R. 539.

——*Appeal—Appellate Court—Setting up new case for party—Error of law.*

The judgment of a lower appellate Court is vitiated by a clear error of law if it sets up a case for a plaintiff which he himself had not set up in the trial Court. (*Ghulam Hasan, J.*) HASHMAT JAHAN *v.* SHEO DULARY. 17 Luck. 472=198 I.C. 184=14 R.O. 380=1941 O.W.N. 1340=1941 A.W.R. (Rev.) 1148=1941 O.A. 1038=A.I.R. 1942 Oudh 180.

——Appeal—Binding nature—Person unsuccessful in getting impleaded—Not bound by result of appeal. *See* 1941 Dig., Col. 981. SHANTI LAL *v.* HIRA LAL SHEO NARAIN. I.L.R. (1942) Lah. 603=198 I.C. 726=14 R.L. 351.

——*Appeal—Competency—Application to Court—Order on not appealable—Subsequent making of rule giving right of appeal—Effect of—Right of appeal and right to final judgment—Distinction.*

When at the time an application is made to a Court no right of appeal exists against an order on such application, the fact that subsequently a rule is made establishing a right of appeal would not make an appeal maintainable unless there is something in the rule which expressly or by necessary implication gives it retrospective effect. There is no logical distinction between a right of appeal and a right to a final judgment withou

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an appeal. Both are equally vested rights. (*King and Kuppuswami Ayyar, JJ.*) EXAMINER OF LOCAL FUND ACCOUNTS *v.* SUBRAMANIA MUDALIAR. 55 L W. 778=1942 M.W.N. 755=A.I.R. 1943 Mad. 208 (1)=(1942) 2 M L J. 667.

———*Appeal—Competency—Mortgage suit—Order directing preparation of account and making out of final decree—Appealability.*

An order in a mortgage suit directing that an account be prepared and final decree made out is not appealable; the party aggrieved must await the completion of the final decree and then file a regular appeal against that. (*Rowland and Chatterji, JJ.*) SHANTI DEVI *v.* KHOJAI PRASAD SINGH. 199 I.C. 511=14 R.P. 590 =8 B.R. 550=23 Pat.L T. 615.

———Appeal—Finding based on an inadmissible evidence—Value. *See* 1941 Dig., Col. 982. FATIMA BEE BEE *v.* OFFICIAL TRUSTEE. 198 I.C. 564=14 R.R. 207.

———*Appeal—Finding of fact—Duty of appellate Court.*

Where the law gives a right of appeal from a judgment of a trial Court on questions of fact as well as on questions of law, the Court of appeal has to consider and weigh the judgment appealed against. It has to examine the materials on the record and to come to its own conclusions. (*K. C. Mitter, Khundkar and Pal. JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. 202 I.C. 551=15 R.C. 355=47 C.W.N. 9=A. I.R. 1942 Cal 498 (S B.).

———Appeal—Incompetent appeal entertained and dismissed on merits—Second appeal—Maintainability—Procedure—High Court's power to interfere—Extent of —Revision. *See* C. P. CODE, S. 100. (1942) 2 M.L. J. 450.

———*Appeal—Jurisdiction to hear—Inherent power—Absence of formal order—Effect—Appeal—Revision—Competency.*

No Court has an inherent right to sit in appeal over another Court. The jurisdiction to hear appeals is conferred by statute. Where in an inquiry in a case no formal order is drawn up, there is no decree or order from which an appeal will lie. Nor can an application in revision lie when no order has been drawn up. (*Beaumont, C.J. and Sen, J.*) KARIMMIYA HAMDUMIYA *v.* JAFARALI BAWAMIYA. 202 I.C. 574=15 R.B. 171= 44 Bom L.R. 666=A.I.R. 1942 Bom. 279.

———Appeal—New case—If can be set up. *See* 1941 Dig., Col. 984. RAM KISHAN *v.* OM PRAKASH. 197 I.C 481=14 R.L. 241.

———*Appeal—New plea changing character of suit in second appeal—Permissibility.*

A vendee instituted a suit alleging that the vendor's title being defective he was entitled to return of the consideration money paid by him under the sale deed. In second appeal he prayed that the suit should be allowed to be regarded as one for rescission of the conveyance.

Held, that the nature of the suit could not be allowed to be changed at the late stage in second appeal. (*Davies, C.J. and Weston, J.*) ALLAHDINO BACHO *v.* UDHOOMAL. I.L.R. (1942) Kar. 32=202 I.C. 584 =15 R.S. 51=A.I.R. 1942 Sind. 81.

———*Appeal—New plea—Plea as to maintainability of suit or application.*

A point about the maintainability of a suit or application which goes to the root of the jurisdiction of the Court can be raised and urged for the first time in appeal. (*Divatia, J.*) CHIMANLAL ISHWARLAL MEHTA *v.* JUNIOR INSPECTOR OF FACTORIES. I.L.R. (1942) Bom. 649=202 I.C. 597=15 R.B 172=44 Bom.L.R. 606=A.I.R. 1942 Bom. 273.

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———Appeal—New plea—Plea of estoppel—If can be raised for first time in appeal or second appeal. *See* 1941 Dig., Col. 984. JADO SINGH *v.* BISHUNATH LAL. A.I.R. 1942 Pat. 71.

———Appeal—New plea—Plea of limitation given up before issues in trial Court. *See* 1941 Dig., Col. 1023. SHARIFA BEGAM *v.* COURT OF WARDS. I.L.R. (1941) Lah 843.

———*Appeal—New plea—Plea of limitation—If can be raised in appeal.*

A plea of limitation which depends upon a question of fact cannot be raised for the first time in appeal as a matter of right. Where the question cannot be decided without taking fresh evidence, the appellate Court will generally refuse to entertain the plea. (*Abdul Ghani and Subrahmanya Aiyar, JJ.*) BASKARIAH *v* CHENNABASAPPA. 20 Mys L J. 17=46 Mys. H.C.R. 539.

———Appeal—New plea—Plea of *res judicata*—If can be entertained and given effect to in appeal for first time—Sub-equent events—Duty of Court to take note of. *See* 1941 Dig., Col. 985. RANGAYYA *v.* RAMAYYA. 197 I.C 448=14 R.M. 367.

———Appeal—New plea—Plea that suit falls under S. 69 (2) of Partnership Act—If can be raised in appeal. *See* PARTNERSHIP ACT, S. 69 (2). 55 L.W. 446.

———Appeal—New plea—Question of fact—Plea of non-access between spouses—If permissible in appeal. *See* 1941 Dig., Col. 985. MANICKA MUDALIAR *v.* AMMAKANNU. 201 I.C. 39=15 R.M. 180=A.I.R. 1942 Mad. 129.

———*Appeal—New plea—Question of jurisdiction.*

A point that the civil Court had no jurisdiction to entertain suit in view of the provisions of S. 21, Punjab Alienation of Land Act, can be raised for the first time in appeal. (*Almond, J.C.*) NAWAB KHAN *v.* PIR NAZIR AHMAD. 203 I.C. 203=15 R. Pesh. 57=A. I.R. 1942 Pesh. 81.

———*Appeal—New plea—Second appeal.*

The High Court in second appeal cannot entertain an entirely new point if for its decision fresh facts have to be found. (*Harries, C. J. and Manohar Lall, J.*) BADRI MAHTO *v.* LOCHAN SAH. 198 I.C. 821=8 B. R. 465=14 R.P. 505=A.I.R. 1942 Pat. 264.

———Appeal — New point—Execution Sale—Order rejecting application to set aside—Appeal—New plea of fact requiring investigation of facts—If can be raised for first time. *See* 1941 Dig., Col. 986 SHANMUGAM CHETTIAR *v.* NAGASWAMI AYYAR. 201 I.C. 156= 15 R.M. 247=A.I.R. 1942 Mad. 97=(1941) 2 M.L. J. 550.

———*Appeal—New point in Letters Patent Appeal—If open.*

It is not the practice of the Bombay High Court to allow new points to be raised or argued in Letters Patent appeals. (*Broomfield and Macklin, JJ.*) GANESH RAMCHANDRA *v.* GOPAL LAKSHMAN. 44 Bom.L.R. 819=A.I.R 1943 Bom. 12.

———Appeal—New point—Question of law—If can be raised. *See* 1941 Dig., Col. 986. SAGAR MAL *v.* PARSOTAM DAS. 198 I.C. 385=14 R.A. 279=1941 A.L.J. 770=A.I.R. 1942 All. 36

———*Appeal—Parties—Addition of—Limitation—Rent reduction case—Appeal by landlord with regard to some tenants—Subsequent addition of other tenants after period of limitation for appeal—Competency.*

Where the landlord does not appeal against the decision in a rent reduction case with regard to some of the tenants, he cannot subsequently add such tenants as parties to the appeal after the time for appeal has ex-

pired. (*Middleton.*) THALOO MAHTON *v.* MATHURA PRASAD. 8 B.R. 247.

———*Appeal — Parties—Non-inclusion of party not interested in appeal—If fatal to appeal.*

The non-inclusion of a party to the suit as a party to an appeal is not fatal to the appeal, if such a party is not interested in the subject-matter of the appeal. (*Shirreff, S.M and Sathe J.M.*) RUDHU SINGH *v.* BASANT RAI. 1942 O A. (Supp) 494 (1) = 1942 O. W.N. (B R.) 728 = 1942 A W.R. (Rev.) 468 (1).

———*Appeal—Procedure when appellate Court in doubt.*

When an appellate Court is in doubt as to the correctness of the lower Court's order, the order of the trial Court should be maintained. (*Shirreff, S.M. and Sathe, J.M.*) RAGHUNATH PRASAD SINGH *v.* MAHOMMED NOOH. 1942 O.W N (B R.) 519 (2) = 1942 A.W.R. (Rev.) 337 = 1942 O.A. (Supp.) 363

———Appeal—Reopening of case—Failure to adduce evidence on a point in the trial Court owing to wrong legal advice. *See* 1941 Dig., Col 986. JOGENDRA SINGH *v.* PEOPLE'S BANK OF NOTHERN INDIA, LTD. 17 Luck. 441 = 197 I.C. 791 = 14 R.O. 359 = A I.R. 1942 Oudh 122.

———*Appeal—Right of—Suit for declaration of tenancy rights—Dismissal—Tenant only appealing—Zamindar only made a respondent—Dismissal—Zamindar if can appeal against.*

Where on the dismissal of a suit for declaration of tenancy rights the tenant alone appeals and the zamindar is only made a party and it is dismissed the zamindar cannot appeal against it, for he not having appealed from the first Court's decree it had become final as against him. (*Sathe, J.M.*) JAGARNATH PRASAD SINGH *v.* SHYAM SUNDER DUBE 1942 R.D. 714 = 1942 A W. R (Rev.) 389 = 1942 O.W.N. (B.R.) 586 = 1942 O.A. (Supp) 415.

———Attachment—Effect of—If gives right to sue for mesne profits. *See* 1941 Dig., Col. 987. MAHOMED AKBARKHAN *v.* MUSHARAF SHAH. 197 I.C. 273 = 14 R. Posh. 47.

———Burden of proof—Claim to damages from ex-trustee for negligence — Allegation that defendant allowed rents to become barred—Onus—What plaintiff has to prove. *See* TRUST—TRUSTEE. 55 L.W. 749.

———*Burden of proof—Collusion.*

The onus of proving a plea of collusion in regard to an entry in the patwari papers is on the person alleging it and in the absence of any evidence on the matter the Court is entitled to believe the entries. (*Sathe, J. M.*) SHANKAR RAI *v.* CHANDI MISIR. 1942 A W R. (Rev) 361 (1) = 1942 O.A. (Supp.) 387 (1) = 1942 O. W.N (B.R.) 494.

———*Burden of proof —Importance— Evidence adduced by both sides—Adoption and gift under suspicious circumstances—Plea of fraud.*

Where both sides have produced evidence the question of burden of proof is not of much importance. It was held that the question, whether the rule that where a will executed under suspicious circumstances is challenged on the ground of fraud, before the question of fraud could arise the party propounding the will must remove the suspicion arising from the circumstances connected with the execution of will applies also to the cases of adoptions and gifts under suspicious circumstances was not necessary to be decided for the purposes of the case before their Lordships. It was held that even if the rule was applied to the facts of the case before them, the trial Judge could not be said to have misdirected himself or to have not applied his mind to the right issue. (*Allsop and Hamilton, JJ.*)

KARAN SINGH KUAR *v.* BIRENDRA SINGH. 1942 A L.W. 196.

———Burden of proof—Rectification of land register. *See* 1941 Dig., Col. 987. HEIRS OF PRINCE MAHOMED SELIM *v.* ATTORNEY-GENERAL OF PALESTINE. 8 B R 184 = 14 R.P.C. 78.

———*Burden of proof—Succession—Claim by Government to property on title by escheat—Onus of proof—*Prima facie *proof of non-existence of preferential heir to last male owner.*

Where a suit is instituted by the Crown for declaration of title to and possession of property on the ground that the property had devolved on the Crown by escheat, it has first to be ascertained whether the necessary requisites for the establishment of that title have been made out. Where the Crown's title to get the property rests not in possessing any special qualification but in the assertion that no other preferential claimant was in existence at the time of the last owner's death, the onus of proving that no such person was in existence would lie on the plaintiff and since a negative fact has to be established by the plaintiff, the *prima facie* proof of such non-existence would be obviously enough. But that proof must be of such a character that firstly it may put the matter beyond any reasonable doubt, thereby discharging the *onus probandi*, and secondly, of such a nature as may shift the burden of proof on to the defendant to rebut the evidence adduced on behalf of the plaintiff which, if not rebutted would entitle the latter to the relief asked for. (*Venkataramana Rao and Abdur Rahman, JJ.*) KRISHNASWAMI NAIDU *v.* SECRETARY OF STATE. 55 L.W. 578 = A.I R. 1943 Mad. 15 = (1942) 2 M.L.J. 431.

———Burden of proof—Suit for eviction and arrears of rent—Plea that land is inam and that defendant is occupancy ryot not liable to be ejected—Further plea that Civil Court has no jurisdiction—Onus. *See* 1941 Dig., Col. 988. SINGARACHARYULU *v.* SESHA RAO. 200 I.C. 433 = 15 R M. 44 = (1941) 2 M L J. 432.

———*Certiorari*—Writ of—Order without jurisdiction—Liability to be set aside—Order substantially correct —If ground for non issue of writ. *See* MADRAS HINDU RELIGIOUS ENDOWMENTS ACT S. 44-B (2) (*d*) (*i*). 55 L W. 616 = (1942) 2 M L J. 470.

———*Certiorari*—Writ of—When to be issued—Jurisdiction of High Court. *See* MADRAS CITY MUNICIPAL ACT. S. 54 (1). (1942 1 M.L J. 70.

———*Compromise—Allotment of properties under—One of the parties dispossessed of property allotted to him and obtaining compensation—Suit by other for share in it—Right to relief if exists.*

Where a suit for partition is compromised and different properties are allotted to the different parties according to their rights and subsequently one of the parties is dispossessed of the property allotted to him and compensation is paid to him, it is not open to the other parties to sue for a share in that compensation money because, the property which was not specifically given to them under the compromise must be deemed to have been refused or denied to them by the compromise and so they would not be entitled to the money obtained in lieu of that property. (*Allsop and Hamilton, JJ.*) RAFIUNNISA BEGAM *v.* COLLECTOR OF MUTTRA. 1942 A.L.J 681 = 1943 A.L.W. 47.

———*Compromise — Binding nature—Subsequent attempt to effect compromise on different lines—Failure of —Effect.*

Where the parties to an appeal who have agreed upon a compromise subsequently, without any intention of either resiling from or abandoning the agreement that had already been arrived at, prepare a draft petition

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which is no more than an attempt to carry the existing agreement into effect though in a way that would minimise the risk of future litigation, but the attempt fails owing to the default of one of the parties, the failure of such attempt will remit the parties to the position in which they stood at the time of the first agreement. (*Lord Romer.*) GADADHAR DHIR SAMANTA *v.* LABANYABATI DEI 202 I.C 373=15 R.P.C. 31=1942 A.L.J. 650=1942 A.L.W. 671=1942 O.W.N. 715=9 B.R. 1=47 C.W.N. 68=56 L.W. 3=1943 Pat.W.N. 18 (P C.).

——Compromise. *See also* PRACTICE—DECREE—COMPROMISE.

——*Compromise—Promissory note—Execution proceedings ending in compromise—X acting as adviser to decree-holder—Defendant agreeing to pay off creditors of decree-holder including X, and executing promissory notes—Suit on promissory note by X's representatives—Defences available to defendant—Improper conduct of X—If relevant.*

While certain Ranees sought execution of a decree obtained by them, negotiations for a compromise ensued, in which X acted as adviser to the Ranees. The negotiations resulted in a compromise under which the defendant agreed, among other things, to pay certain creditors of the Ranees, of whom X was one. It was arranged that the Ranee's creditors thus to be paid by the defendant should be given promissory notes by the defendant to the amount of their respective debts, and that the Ranees should thereupon be absolved by them from liability for those debts. In a suit by the representatives of X for the balance due on the promissory note given by the defendant to X.

Held, (*i*) that the defendant was not entitled to establish that the Ranees, if they had been sued by X could have resisted the payment to him of the whole or part of the amount which, as part of the compromise, the defendant had bound himself to the Ranees to pay to X; (*ii*) that the defendant could not suggest that X had intervened in the litigation between the defendant and the Ranees as adviser to the Ranees for the purpose of making money for himself out of the litigation, and was on that ground disentitled as against the defendant to derive any advantage for himself. When it was once admitted by the defendant that he did not seek to upset the compromise (as indeed he could not possibly do in the present suit, to which the Ranees were not parties), it must be taken as against him that the sum which he had by the compromise undertaken to pay, by virtue of the promissory note, to X, was, as he had agreed with the Ranees, a sum for which he was liable to X, and the impropriety of X's conduct in regard to the litigation became, as between the defendant and X or his representatives, completely irrelevant. Nor could the defendant's case be bettered by the fact that he paid to X and X accepted a bribe to facilitate the negotiations. While that circumstance might well give the Ranees certain rights, it could not possibly operate to relieve the defendant in any measure from the obligation he had undertaken to the Ranees as well as to X to discharge the burden which he had taken upon his own shoulders as part of the compromise. (*Sir Charles Clauson.*) SHIVA PRASAD SINGH *v.* TINCOURI BANERJI. 1942 A.W.R. (P.C.) 20=1942 O A 327=55 L W 474=8 B.R 787=201 I C. 1=15 R.P.C. 9=1942 P.W.N. 196=46 C.W.N. 923=44 P.L.R. 435=1942 O.W.N. 471=1942 A L.W. 487=23 Pat.L.T. 563=44 Bom. L.R. 782=A.I.R. 1942 P.C. 42=(1942) 2 M.L.J. 656 (P.C).

——*Costs—Appeal and cross-appeals dismissed with costs—Costs in cross-appeal considerably less than those in appeal—Form of order of costs.*

Where both an appeal and a cross-appeal are dismissed with costs but the costs occasioned by the cross-appeal are considerably less than those occasioned by the appeal, to avoid a double and a somewhat difficult taxation of costs with a set-off the Court can order the appellant in the appeal to pay a portion of the respondent's costs of the two appeals. (*Lord Romer.*) HAKIM RAI *v.* GANGA RAM. 202 I.C 754=15 R.P.C. 48=9 B.R. 61=1942 A L J. 710=47 C.W.N. 113=1942 O.W.N. 814=1943 A.L.W 20=A.I.R. 1942 P.C. 61=(1943) 1 M.L.J. 16 P.C.).

——*Costs—Decree for against benamidar—If can be executed against real owner.*

A decree for costs against a benamidar is not executable against the beneficial owner. The question of the liability of the beneficial owner must be raised in the suit in which the decree was passed. It cannot be raised in the execution proceedings much less by a separate suit. (*Iqbal Ahmad, C. J., Ganga Nath and Dir. JJ.*) CHANDRA SEKHAR *v.* MANOHAR LAL. 1942 A.L.J. 367 201 I.C. 695=15 R.A. 79=1942 A.W.R. (H.C) 241=1942 A.L.W. 478=A.I R. 1942 All. 233 (F.B.).

——*Costs—Discretion—Company—Winding up proceedings—Costs of company, shareholders and creditors—Separate sets—Company and shareholders appearing by different counsel but instructed by same solicitor—Right to separate set of costs.*

It is clear that when a petition for winding up a company is dismissed, the company is entitled to its costs. The shareholders are entitled to one set of costs and the creditors are also entitled to one set of costs. Where the company and the shareholders appear by the same solicitor, separate counsel should not be briefed and separate set of costs should not be allowed to them especially when the shareholders have solely relied on the affidavits filed on behalf of the company and have not put in any separate affidavit. A creditor who appears by separate counsel and takes a non-contentious attitude cannot get his costs. (*Chagla, J.*) *In re* THE CINE INDUSTRIES AND RECORDING CO., LTD. 203 I.C. 116=15 R B. 193=1942 Comp. C. 215=44 Bom L R 387=A.I.R. 1942 Bom. 231.

——Costs—Discretion—Court acting on basis of events subsequent to suit and refusing relief to plaintiff on such ground—Power to disallow costs to successful defendant. *See* MADRAS CO-OPERATIVE SOCIETIES ACT, S. 57 AND R. 22 (1) (iii). 55 L.W. 702.

——*Costs—Dismissal of suit—Separate sets of costs to different defendants—Rule—Different charges of fraud against different defendants—Appearance and defence by separate counsel—If justified.*

As an ordinary rule, each of the defendants appearing and succeeding in the suit is entitled to have a separate set of costs, the broad principle being that a person who is brought before the Court, wrongly as it turns out, is entitled to defend himself in his own way and by the employment of such advocate as he thinks fit. There are of course exceptions to this general rule. If parties to a suit are charged with fraud or mi-appropriation or breach of trust, they are fully entitled in defence of their character to employ such solicitor and such counsel as they think fit. Where there are different charges of fraud against different defendants, they are entitled to employ different counsel separately, as it cannot be said that the defences are common. (*Chagla, J.*) TRIMBAK YESHWANT *v.* ABDUL LA ABDUL RAHIMAN. I. L.R. (1942) Bom. 163=199 I.C. 434=14 R.B. 355=44 Bom L R. 105=A.I.R. 1942 Bom. 81.

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——*Costs—Intervener—Right of.*

As a usual rule an intervener is not entitled to costs. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKHIA. I.L.R. (1942) Kar. (F.C.) 40=I.L.R. (1942) Lah. 623=14 R.F.C. 25=200 I C 198=5 Fed.L J. 33=1942 M.W.N. 403=23 Pat.L.T. 502=55 L.W. 484=46 C.W.N. (F. R.) 61=8 B.R. 695=44 P.L.R. 437=A.I.R. 1942 F. C. 27.

——*Costs—Party failing to appear on date fixed for scrutiny of processes—Costs, if may be imposed.*

The Court cannot impose an order for costs on a party for his failure to appear on the date fixed for scrutiny of processes, which is not a date fixed for the hearing of a case and on which the attendance of the parties is not compulsory, since the object of such a date is to enable a Court to ascertain whether the case is likely to be ready for trial on a date next fixed for hearing. There is no rule of procedure which enables a Civil Court to impose fines on a party in this manner. (*Tek Chand and Beckett, JJ.*) MAHOMED BAKSH *v.* SHAHU 201 I.C. 240=15 R.L. 36=44 P.L.R. 186 =A.I.R. 1942 Lah. 162 (2).

—— *Costs*—Pendente lite—*Discretion of Court.*

The rate of interest to be allowed after the institution of the suit is entirely a matter within the discretion of the Court. (*Lord Romer.*) HAKIM RAI *v.* GANGA RAM 202 I.C. 754=15 R.P.C 48=9 B.R. 61=1942 A.L.J. 710=47 C.W.N. 113=1942 O.W.N. 814= 1943 A.L. W. 20=A.I.R. 1942 P.C. 61=(1943) 1 M.L.J. 16 (P.C.).

——Court-fees—Duty of Court in fixing time for payment of deficit Court fee—Plaintiff not guilty of laches and fairly large amount asked for as Court-fees—Peremptory order fixing short date and directing dismissal of suit on default—Propriety. *See* 1941 Dig., Col., 988. RAMLAKHAN PANDEY *v.* TRIBENI DAS. 197 I.C. 433=14 R.P. 302=8 B.R. 204=A.I.R. 1942 Pat. 284.

——*Decree—Binding nature—Sufficiency of representation*—Bona fide *addition of some only of the legal representatives.*

Where a suit is brought *bona fide* without any fraud or collusion against certain persons impleaded as legal representatives of the deceased leaving out others who should or might have been joined, the decree will be binding upon the estate of the deceased on the ground that the estate was sufficiently represented. (*Ghulam Hasan, J.*) ANANT LAL *v.* RAM ADHAR. 198 I.C. 443=14 R.O. 397=1941 O A. 1071=1941 O.W.N. 1359=1942 A.W.R. (C.C.) 16=1942 R.D. 25=A I.R. 1942 Oudh 216.

——Decree — Compromise — Compromise decree—Executability. *See* 1941 Dig., Col. 989. LAL BHAGWAT SINGH *v.* HARI KESHAN DAS. 17 Luck. 249= A.I.R. 1942 Oudh 1.

——*Decree — Compromise decree—Terms, if within scope of suit—Elements for consideration.*

The question whether any particular term of a petition of compromise incorporated in a decree relates to the suit or is covered by its subject-matter must be decided from the frame of the suit, the relief claimed, and the relief allowed by the decree on adjustment by lawful agreement. The mutual connection of the different parts of the relief granted by a consent decree is an important element for consideration in each case in deciding whether any portion of the relief is within the scope of the suit. The facts undoubtedly have to be looked at as a whole and matter which is not covered by any of the issues in the suit may come within its scope if it constitutes a consideration for any of the matters in

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the suit and formed an integral part of the adjustment of the claim in relation thereto. (*Mukherjea and Blank, JJ.*) DINDAYAL SHAH *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA. 46 C W.N. 713.

—— Decree—Compromise—Consent decree—Binding nature. *See* 1941 Dig., Col. 989. GOPAL MADHORAO *v.* ACHUT SADASHEO. I.L.R. (1942) Nag. 498.

——*Decree—Consent decree—Nature of—Provision for sale or conveyance of land on terms—Rules applicable—If same as in the case of a contract.*

In the case of a compromise decree which provides for sale or conveyance of immovable property on certain payments being made, the same considerations will apply as would apply to an ordinary contract of sale in the terms of the compromise. The contract of the parties is not the less a contract and subject to the incidents of a contract, because there is superadded the command of a judge. (*Davis, C. J. and Weston, J.*) MADHAVDAS PARMANAND *v.* JAN MAHOMED. I L.R. (1941) Kar. 495=199 I.C. 438=14 R.S. 181=A.I.R. 1942 Sind 37.

——*Decree—Consent decree—Setting aside—Remedy—Separate suit — Inherent power of Court—Party shown not to have consented to compromise—Effect—Power to set aside in review on ground of fraud.*

A Court is not competent either in review or in exercise of its inherent powers, to set aside a compromise decree on the ground that the consent of the parties to the compromise was obtained by fraud. The only remedy of the injured party is to institute a suit to set aside the decree on the ground of fraud. Where, however, it is found that the aggrieved party had not in fact consented to the compromise and was not party to it, the Court has inherent power to set aside a decree based on such a compromise. (*Rowland and Chatterji, JJ.*) CHUTUR PRASAD SAH *v.* BISHUNI KUER. 202 I.C. 666=15 R.P. 137=9 B.R. 43=1942 P.W.N. 186= A.I.R. 1943 Pat. 13.

—— *Decree—Consent decree—What is—Defendant* ex parte—*Decree, if consent decree.*

The fact that the defendant in a suit remains *ex parte* does not mean that the decree passed in such suit is a consent decree; it can only be a consent decree if the defendant appears and admits the claim. (*Horwill J.*) NARASINGA RAO *v.* RANGAYYA. 1942 M W N 685= 55 L.W. 808=A.I.R. 1943 Mad. 133=(1942) 2 M.L. J. 610.

——*Decree—Construction—Decree for one's brother as well as for one's self—Creation of trust.*

There is no legal difficulty in holding that where one obtains a decree for his brother as well as for himself, he must be regarded as a trustee for his brother and that he cannot plead that he alone should benefit because his name alone is entered in it. (*Bennett and Madeley JJ.*) APARNA BAKHSH SINGH *v.* CHANDRA SHEKHAR SINGH 1942 O A 527=1942 O.W.N. 639=1942 A. W.R. (C.C.) 345 (2).

——*Decree—Construction—Decree passed on compromise—Reference to pleadings and agreement—Natural meaning of words.*

The appellant and respondent were interested as tenants-in-common in a village, the appellant being entitled to one-third and the respondent to two-thirds, of the *nanja* and *punja* lands in the village. In 1908, the respondent brought a suit against the appellant on the allegation that the appellant used the water of a channel marked B in the plan filed along with the plaint, for irrigation of about 14 *Kulis* of his punja land, marked C in the plan and praying for a permanent injunction against such use and against obstruction of the water flowing as wanted to the old *nanja* lands through the

channel C. The suit ended in a compromise decree dated 7-7-1911, which provided that "the defendant shall irrigate only the 14 *Kulis* of land marked C in the plan filed along with the plaint, with the water from the channel marked B in the said plan. In other respects, the defendant should not, in future, convert the *punja* lands belonging to him in the village, as *nanja* lands, and irrigate them with water." The description of property and the plan attached to the plaint were subjoined to the decree. On 13—11—1935, the respondent applied for execution of the decree under O. 21, R. 32, C.P. Code, for breach of the decree by the appellant on the ground that the appellant, "for the first time after the compromise decree, had newly brought under *nanja* cultivation in addition to the extent of 14 *Kulis* and extent of about 5 Kulis which were *punja* and situate adjacent to and around the plot marked C in the plan in or about the last two months, despite the protest of the plaintiff and his men and is attempting to extend the *nanja* cultivation in the plots marked blue around the land marked C in the plan. The appellant in answer pleaded that the 5 *Kulis* only received water from channel B by percolation and drainage from the 14 *Kulis* and were extensively watered by a well sunk in the five *Kulis*, and contended that the decree only prevented the direct taking of water from channel B to any new land, and did not prevent him from taking water from another channel marked A in the plan to the 5 *Kulis*. It appeared that water channel A, flowed towards the north and into a tank, passing on the way the 14 *Kulis* marked C, which lay near to the channel A on its east side. Channel B took off from Channel A, at an earlier point and turned eastwards along the southern edge of the 14 *Kulis*. The *punja* lands of the appellant lay round about the 14 *Kulis* marked C, in the west, north and east sides of the 14 *Kulis* and adjoined channel A on its east side for a certain distance, with a small portion of them on the other side, the western side of channel A.

Held, confirming the order of the High Court, (1) that there was no serious ambiguity in the language of the decree and that there could be no doubt that the 14 *Kulis* referred to in the first sentence formed part of the *punja* lands belonging to the defendant in the village; (2) that the opening words of the second sentence, taken along with the description of property and plan attached to the plaint which were sub-joined to the decree, sufficiently identified the 14 *Kulis* as such without recourse to the pleading of the compromise agreement, which would equally place the matter beyond doubt; (3) that the words used in the prohibition in the second sentence in their natural meaning, referred to all the *punja* lands belonging to the defendant in the village other than the 14 *Kulis*, and the language used did not limit "water" to water from channel B; (4) that the appellant was, on a proper construction of the decree, prohibited from making use of the water not only of channel B. but also of other existing sources of irrigation in the village for any extra land which he might have converted or might thereafter convert from *punja* into *nanja*. (*Lord Thankerton.*) GURUVAPPA NAICKER *v.* MOUNA GURUSWAMI NAICKER 201 I C 298=15 R P C 12=1942 A W.R. (P C.) 18=8 B.R. 796=A.I.R. 1942 P.C. 37 (P.C.).

——*Decree — Construction—Mesne profits—Decree against several defendants holding definite shares—Liability—If joint and several.*

Where various sets of people, possessing different interests in land, are held liable for mesne profits, the executing Court will adjust and apportion the respective amounts of such mesne profits to be paid by each. Certain co-sharer maliks who had definite shares in the village and who claimed the right to settle certain *diara land* settled that land with third persons. The respondents brought a suit against the former on the ground that the co-sharer maliks had no right to settle the land and praying for possession and mesne profits. The suit was decreed and mesne profits were awarded against all the defendants (co-sharer maliks)

Held, that though the decree was in form a joint and several decree, it was in substance not a joint and several decree, but was, on a true construction, a decree against the defendants for their respective shares of mesne profits. Each of them would not therefore be liable for anything more than his proportionate share. (*Harries, C.J. and Dhavle, J.*) SHEO BALAK SINGH *v.* ACHUTANAND SINGH. 203 I.C. 662=15 R.P. 183=9 B.R. 99=1942 P.W.N. 198=A.I.R. 1943 Pat. 80.

——*Decree—Construction—"Suit dismissed with costs"—Meaning of—Separate sets of costs for different defendants.*

It is settled that the expression "Suit dismissed with costs" means that the plaintiff is to pay the costs of all the defendants, *i.e.*, two or more sets, if separate costs have been incurred. It cannot be read as meaning that only one set of pleaders' fees should be taxed in all cases. An order for a single set of costs must be asked for at the time of hearing. Defendants having independent cases and engaging separate pleaders should ordinarily get separate sets of costs. (*Broomfield and Sen, JJ.*) KASHINATH BALKRISHNAN *v.* ANANT MURLIDHAR. 203 I.C. 352=15 R.B. 228=44 Bom. L.R. 629=A.I.R. 1942 Bom. 284.

——*Decree—Declaratory or executory—Test—Decree to be taken as a whole—Directions as to rights to be ascertained in future on the happening of uncertain events—Executability of.*

Where it is clear from the terms of a decree that it seeks to fix over a period of years the rights and duties of the parties, and particularly penalties to be incurred, on the happening of future contingencies, it must be held that the decree is clearly concerned not so much with the present right of the plaintiff to money or property, but as to his future rights on uncertain happenings in future, and since it is not possible to separate one term from another term of the decree (because the decree has to be taken as a whole), the decree cannot be held to be executable but merely declaratory. While the agreement contained therein may be an appropriate matter for a suit, it is not an appropriate matter for execution. An order or decree to be executable must be an absolute direction and not one dependent on any uncertain event in future; only absolute orders in respect of rights ascertained at the date of the decree are enforceable in execution. (*Davis, C.J. and Tyabji, J.*) GODHUMAL *v.* MT. BHAMBHO. I.L.R. (1942) Kar. 326=A.I.R. 1943 Sind 11

——Decree—Executability—Construction of decree—Instalment decree—Entire amount becoming due in case of default and property hypothecated to be taken as foreclosed. *See* 1941 Dig., Col. 991. TULSA DEVI *v.* SURAJ NARAIN. 17 Luck. 121.

——*Decree — Execution application—Nature of—Objections how dealt with—If can be allowed without dismissing execution application.*

There is no such thing as an application for execution of a decree properly so called. There is an application for the attachment and sale of certain property in execution of a decree or an application for the arrest of the judgment-debtor in execution of a decree or an application asking the Court to take some other steps. If, on objection taken, it is found by the Court that the

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steps prayed for cannot be taken, it follows that the application must be dismissed. An objection cannot be allowed without at the same time dismissing the execution application. To allow an objection without dismissing the execution application so as to allow an amendment for execution by some other means is not possible (*Allsop J.*) RHANPAL SINGH *v.* SIVA RAM. 203 I.C. 590=1942 A.L.W. 574=1942 A L J 533=1942 A.W.R. (H.C.) 296=A.I.R. 1942 A. 442.

——Decree—Satisfaction—Joint decree owned by several persons—Payment of amount to one decree holder—Effect—If valid discharge. *See* HINDU LAW—JOINT FAMILY—COPARCENER 21 Pat. 322

——Decree—Setting aside—Fraud—Nature of. *See* 1941 Dig., Col. 991. MAHOMED HASHIM ALI KHAN *v.* IFFAT ARA HAMIDI BEGAM. 200 I.C. 392=15 R.C. 7=46 C.W.N. 561=A.I.R. 1942 Cal. 180

——*Decree—Setting aside — Grounds— Perjury—Finality of decision—Principle underlying.*

There must be some finality to litigation and the rule that a title once settled by a decision should not be questioned again between the same parties is intended not only to prevent a new decision but also to prevent a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same question. Hence a decree cannot be set aside merely because it is obtained by perjured evidence because, if the contrary were held, it would be necessary to hold new investigations again and again into the same questions, and would allow defeated litigants to avoid the operation, not only of the law which regulates appeals, but that of that which relates to *res judicata* as well. (*Allsop and Verma, JJ.*) MAHANT RASDEVANAND GIR *v.* SHANTANAND. 202 I.C. 458=15 R. A. 165=1942 A W.R. (H.C.) 205=1942 A.L.W. 463 =1942 A.L.J. 561=A.I.R 1942 A. 302.

——Decree—Setting aside—Right of third party—Collusion—Proof required. *See* 1941 Dig. Col. 991. SHANTI LAL *v.* HIRA LAL SHEO NARAIN. I.L.R. (1942) Lah. 603=198 I.C. 726=14 R.L. 351.

——Decree—Setting aside—Suit for—Maintainability—Grounds for—Fraud—Nature of fraud to be alleged and proof—Fraud extraneous to suit — What amounts to—Conspiracy and trick to deceive Court and defendant. *See* 1941 Dig., Col. 992 KONDA BOYAN *v.* PALANISWAMI GOUNDAN. 200 I.C. 798=15 R.M. 160=1942 M.W.N. 673=A.I.R. 1942 Mad. 114= (1941) 2 M.L.J. 640.

——Decree—Validity—Decree against wrong legal representative of deceased—True legal representative—When bound. *See* MYS. C. P. CODE, O. 22. 20 Mys. L.J. 313.

——*Decree—Validity—Mortgage suit—Preliminary decree—Modification in appeal—Final decree based on original preliminary decree and not on modified appellate decree—If a nullity—Regularity of decree—If can be questioned in execution.*

A final decree passed in a mortgage suit is not a nullity merely because it is based on the original preliminary decree and not on the modified preliminary decree made subsequently by the Court of appeal before the passing of the final decree. The Court passing the final decree has complete seisin of the suit and has jurisdiction to pass a final decree; and if it errs in passing the final decree on the original preliminary decree, though it had been modified in appeal, such error is one curable in appeal but does not make the final decree a nullity. The decree would still be binding on the parties unless it is corrected or set aside in appropriate proceedings. But the regularity of such a decree cannot

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be questioned in execution proceedings. (*Harries, C.J. and Dhavle, J.*) GULAB CHAND *v.* KISHORE KUER. 199 I.C. 625=14 R.P. 591=8 B.R. 584=23 Pat.L.T. 162=A.I.R. 1942 Pat. 348.

—— English Law—Importation—Rule of personal law inconsistent with English Law—If opposed to public policy. *See* MAHOMEDAN LAW—DIVORCE. 46 C.W. N. 465.

—— Estoppel—Approbate and reprobate—Acceptance of costs under order of Court—Permission to withdraw suit with liberty to bring fresh suit—Award of costs—Payment of cost and acceptance—Fresh suit beyond time—Plea of limitation—If barred—Estoppel. *See* C. P. CODE, O. 23, RR. 1 AND 2. (1942) 2 M.L.J. 442.

——Estoppel—Approbate and reprobate—Contract—Arbitration clause—Party repudiating liability on contract—Plea in suit on contract that arbitration clause bars suit—If open. *See* CONTRACT—ARBITRATION CLAUSE. 44 Bom L.R. 692.

—— Estoppel—Approbate and reprobate—Decree—Application for instalments—Decree-holder objecting—Order allowing instalment payment—Withdrawal by decree-holder of amount deposited under instalment order—If bars revision application challenging order. *See* C. P. CODE, S. 115. 23 Pat L.T. 194.

——*Estoppel—Award—Acceptance—Decree — Bar against questioning award.*

Where one accepts an award and a decree passed in accordance with it and the award has only declared the rights of both parties it is not open to such a party to deny the rights given by the award and the decree to the other party. (*Shirreff, J.M.*) RASDEO PANDE *v.* SATDEO. 1942 A.W.R. (Rev.) 358 (1)=1942 O.W. N. (B.R.) 511=1942 O.A. (Supp.) 384 (1).

——*Estoppel—By conduct—Party succeeding on particular construction of deed suggested by him—If can put forth different construction in later suit.*

There would be monstrous injustice if a party, having suggested one construction of a deed in a previous suit and succeeded on that footing were allowed to turn round and win the new suit upon a diametrically opposite construction of the same deed. (*Collister and Raipai, JJ.*) MAHOMED KHALIL KHAN *v.* MAHBOOB ALI. I.L.R. (1942) A. 103=199 I.C. 190=14 R A. 346=1941 A.W.R. (H.C.) 379=1941 A.L.J 721=A.I.R. 1942 All. 122.

——Estoppel—Election of reliefs—Rejection of claim as grove holder—Claim as full proprietor in later proceedings. *See* 1941 Dig., Col. 993. MAHOMED YUSUF *v.* SARJU SINGH. 198 I.C. 496=14 R A. 285 =A I.R. 1942 All 42.

—— Estoppel—Landlord and tenant—Lease for residential purposes created after Transfer of Property Act —Absence of registered instrument—Tenant building *pucca house*—Landlord not protesting—Effect—Plea of permanent tenancy by tenant—Denial by landlord—Estoppel. *See* T. P. ACT, S. 107. 23 Pat.L.T 294.

—— Estoppel — None against statute—Company—Purchase of own shares—Legality—Plea that purchase was by itself and therefore *ultra vires*—If estopped—Representation by officers that purchase was for constituent—If binds company. *See* COMPANY—PURCHASE OF OWN SHARES. 55 L.W 653.

——*Estoppel—Plea based on defendant's attitude in previous suit between parties—Mode of proving plea.*

Where a plaintiff wants to show that the defendants are estopped from raising a certain plea by reason of their attitude in a previous suit between the parties he should not be permitted to do so by merely producing a copy of the judgment in the earlier suit which might contain the summary of the pleadings in that suit, but

the plaintiff must produce the written statement filed by the defendants in that suit in order to give the Court where the plea of estoppel is raised, a full and clear idea of the attitude adopted by the defendants. (*Collister and Raipai JJ.*) MAHOMED KHALIL KHAN *v.* MAHROOB ALI. I.L.R. (1942) A. 103=199 I.C. 190 =14 R.A. 346= =1941 A.W.R. (H.C.) 379=1941 A. L.J. 721=A I.R. 1942 All. 122.

——*Evidence—Use of records of prior proceedings—Proper procedure.*

Where records of prior proceedings have to be referred to in a later suit, they must be brought on record as evidence in the later suit and then used. They cannot be used and referred to without so being brought as evidence on record. (*Shirreff, S.M. and Sathe, J.M.*) CHOLHAN *v.* MAHOMED HUSAIN. 1942 O W N (B. R.) 209=1942 A W.R (Rev.) 130=1942 R D 275= 1942 O.A. (Supp) 150.

——Execution—Application for—Duty of decree holder—Subsequent application filing supplementary list of properties to be proceeded with—Discretion of Court to allow—Such application, if continuation of old *See* 1941 Dig. Col. 994 SHEKENDARALI MEAH *v.* ABDUL GAFUR. 201 I.C. 31=15 R.C. 118=A.I R 1942 Cal 306.

——Execution—Application for—Technical defect—Procedure—If a ground to refuse execution. *See* 1941 Dig., Col 904 V. M. R M P CHETTYAR FIRM *v.* HAJEE MAHOMED SULTAN. 1941 Rang.L.R. 774= 198 I.C. 404=14 R.R. 198.

——*Execution—Dismissal of proceedings in default—Remedy.*

A person against whom an order of dismissal in default has been passed in execution proceedings can certainly apply to the Court to use its inherent powers in order to restore proceedings dismissed in default. If this is dismissed and a fresh application is presented, the effect of the earlier dismissal can then be considered. Probably the safest course would be to ask for both in the alternative. In one case or the other an appeal would have to be accepted since at some stage the rights of the parties are to be finally determined, unless it could be held that an order of dismissal in default, is not only not appealable but final, so that no appeal would lie at any stage. (*Reckett, J.*) PARTAP SINGH *v.* BHAGAT RAM. 190 I.C. 160=14 R.L. 381=43 P. L R. 727=A.I.R. 1942 Lah. 71.

——Execution—Executability of decree—When to be raised—Duty of judgment debtor. *See* C. P. CODE S. 11. I.L.R. (1942) Kar. 326.

——Execution—Executing Court—Construction of decree—Reference to judgement—Permissibility. *See* C. P. CODE, S. 47. 8 R R 401.

——*Execution—Executing Court—Jurisdiction—Agreement between parties—If can confer.*

The principle is established that when there is no inherent want of jurisdiction in the executing Court over the subject-matter of the dispute or in respect of the parties before it, it is open to the parties to arrange the procedure by agreement among themselves and give jurisdiction to the executing Court which it otherwise would not possess. (*Mukherjea and Blank JJ.*) DINDAYAL SHAH *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA. 46 C W N. 713.

——*Execution—Executing Court—Powers of—Correction of decree passed by it.*

Where the executing Court is the very same Court which made the decree, there is nothing in law to prevent it from amending the decree by bringing one portion of it in conformity with the other. (*Mukherjea and Akram, JJ.*) SITANATH *v.* HARI RANI. 46 C. W N. 509.

——*Execution—Executing Court—Powers—Declaration of decree to be null and void.*

An executing Court cannot question the validity of a decree prepared by an appellate Court and say that since no decree should have been prepared it is null and void and unexecutable. (*Sathe, J.M.*) KRISHNA MURARI *v.* SURAJ BALI. 1942 R D 527=1942 O W.N. (B. R.) 437=1942 A.W.R. (Rev.) 296=1942 O.A. (Supp) 322.

——Execution—Executing Court—Powers of—Express decision as to point raised in suit—If open to attack in execution—Power of executing Court to go behind. *See* 1941 Dig., Col 995. RADHAMONI DEVI *v.* GOBIND CHANDRA DAS 198 I.C 250=14 R.P. 414=8 B.R. 401=A I.R 1942 Pat. 196.

——Execution—Executing Court—Powers of—Sale contrary to decree—Legality. *See* 1941 Dig., Col. 995. RHAN KUMAR CHAND *v.* LACHMI KANTA RAI. 8 B. R 507=199 I.C. 169=14 R.P. 557.

——*Execution—Executing Court—Power to revoke its own stay order.*

An execution Court is competent at any time to revoke its own stay order without invoking S. 151, C.P. Code (*Bennett and Agarwall, JJ.*) BIRENDRA BIKRAM SINGH *v.* BAJRANG BAHADUR SINGH. 1942 A W.R. (C.C.) 338=1942 O.A. 495.=1942 O.W.N. 648.

——*Execution—Executing Court—Powers of—Validity of award under Co-operative Societies Act.*

The executing Court can always decide whether the Court which passed the decree had or had not inherent jurisdiction to pass the decree in question, and this will involve a certain enquiry, however limited, the scope of that enquiry may be. The Court is not robbed of this power when the decree happens to be an award under the Co-operative Societies Act, which is to be enforced and executed as a decree. (*Dalip Singh and Din Mohammad, JJ.*) MAHBUB HUSSAIN SHAH *v.* ANJUMAN IMDAD QARZA 201 I.C. 311=15 R.L. 38=44 P.L.R. 31=A.I.R. 1942 Lah. 129.

——Execution—Executing Court—Validity of decree—If can be questioned—Mortgage suit—Preliminary decree modified on appeal—Subsequent final decree based on original decree without taking modification into account—Effect — Decree—If nullity—Regularity—If can be questioned in execution. *See* PRACTICE—DECREE—VALIDITY. 23 Pat.L T. 162.

——*Execution—Joinder of parties in—Procedure.*

The C. P. C. does not contemplate joinder of parties in execution and the provisions of the Code relating to joinder of parties in a suit have no application to proceedings taken for the execution of a decree after it is passed. (*Krishnaswami Avyangar and Kunhi Raman, JJ.*) ILEELAVATHI AMMAL *v.* NENI KAVUR RAI. 1942 M.W N. 740=A.I.R. 1943 Mad. 179=(1943) 1 M.L.J. 139.

——*Execution—Minor—Plea of want of proper representation when decree was passed—Burden of proof.*

Where in the final decree which was being executed the judgment-debtor was shown as a minor under the guardianship of his mother whereas in the preliminary decree he was shown as being under the guardianship of a pleader guardian, and there was nothing to show that the pleader guardian had been discharged.

Held, that it was for the judgment-debtor to show that he had not been properly represented when the final decree was passed and not for the decree-holder to show that the pleader guardian had been discharged and the mother appointed a guardian, that the presumption

would be that all things were done properly and that the executing Court could assume that at the time the final decree was passed the minor was properly represented. (*Harries, C J. and Manohar Lall, J*) BADRI MAHTO *v.* LOCHAN SAH. 198 I C 821 = 8 B.R. 465 = 14 R.P. 505 = A.I.R. 1942 Pat. 264.

——*Execution— Mortgage decree—Application dismissed as time barred—Appeal by decree-holder—Appeal dismissed against some respondents for non-prosecution —Order as against others—If can be reversed.*

Where an application for execution of a mortgage decree was dismissed as barred by limitation and the decree holder filed an appeal but the appeal was dismissed as against some of the respondents for non payment of process fees the appellate Court can reverse the order of the trial Court as against the other respondents and direct execution to proceed against them for their share in the mortgage debt as well as in the property. (*Mukherjea and Roxburgh, JJ.*) TARAN ROY BAIN *v.* SHYAM MONDAL. 201 I.C. 454 = 15 R.C. 201 = 74 C.L.J. 495 = A.I.R. 1942 Cal. 226.

——*Execution— Mortgage decree—Appointment of receiver of estate to pay rents and profits to decree-holder in discharge of his debts—Subsequent money decree against judgment-debtor and receiver in possession— Sale of property in execution—If barred—Extent of rights which can be put up for sale.*

Where, in execution of a mortgage decree obtained by a Raj against an estate, a receiver is appointed to manage the estate and to collect the rents, etc. and to pay to the Raj the amounts due under the mortgage decree and other decrees held by the Raj, and subsequently another creditor obtains a money decree against the proprietor of the estate and the receiver in possession, it cannot be held that the holder of the money decree has no right to bring the estate to sale in execution of his decree. The right, title and interest of the judgment debtor (proprietor of the estate) can be put up for sale, *viz*, an equity of redemption in the estate, with no right to immediate possession and with no right to the rents and profits until the dues of the Raj have been settled Though the holder of the money decree cannot sell he estate free of the mortgage held by the Raj and of the order appointing the receiver, there is no reason why such rights as the judgment-debtor has should not be put up for sale. (*Harries, C.J and Manohar Lall, J.*) BUDHU LAL *v.* JAGDISH NANDAN SINGH. 1942 P. W N. 55.

——Execution — Mortgage decree of British Indian Court—Part of property in Berar—If can be executed in Berar—Suit on British Indian judgment —Necessity. *See* 1941 Dig., Col 906. JAGNIRAM PREMSUKH *v.* GANPATI. 198 I.C. 873 = 14 R.N. 251 (F.B.)

——Execution—Objection as to limitation not taken —If bars similar objection regarding subsequent pplications. *See* 1941 Dig., Col. 996. PEOPLE'S BANK OF NORTHERN INDIA LTD. *v.* AIJAZ ALI. 17 Luck 449 = 14 R.O. 506 = 199 I.C. 636 = A.I.R. 1942 Oudh 219.

——*Execution—Plea in bar—Pre-decree agreement not to execute decree against particular defendant without proceeding against others—Agreement entered into before suit—If can be pleaded in bar of execution.*

A pre-decretal arrangement cannot be pleaded in bar of execution if it attacks or varies the decree, but it can be pleaded if it relates only to the execution of the decree. A pre-decretal arrangement between the plaintiff and one defendant, compelling the decree holder to take out execution as against the other defendants before he proceeds either for the balance or for the whole of the decree amount against the particular defendant can be pleaded in bar of execution. Whether the agreement set up was entered into pending the suit or before the suit was filed makes little differences. Where such an arrangement is proved, the decree holder cannot claim to have fulfilled the terms thereof, by simply serving notices on the other defendants and taking no further action to attach their property or realise anything from them when they did not appear in answer to the notices. (*Happell, J.*) KANDASWAMI MUDALIAR *v.* PALANISWAMI GOUNDAR 202 I.C. 23 = 15 R.M. 421 = 1942 M W N 237 = 55 L W. 190 = A.I.R. 1942 Mad. 460 = (1942) 1 M.L J. 396.

——*Execution—Plea in bar—Pre-decree agreement —When can be pleaded in bar of execution.*

A pre-decree agreement which relates to execution only and does not strike at the decree itself is pleadable in bar of execution. There is little difference between a case where the decree is rendered inexecutable against some only of the defendants or against some only of the properties and a case where a decree is rendered inexecutable against all the defendants or all the properties. Nor is there any sound principle of distinction on the ground that the agreement was made before suit and not after the institution of the suit. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SANKARA RAO *v.* BALAVENKATAPPA 55 L.W 646 = 1942 M.W.N. 822 = A.I.R. 1942 Mad. 734 = (1942) 2 M L.J 520

——*Execution—Revival—Application under O. 24, R. 95, C. P. Code—Delivery of all items except one— Applicant desiring police help in respect of same due to apprehension of obstruction—Duty of Court— Dismissal of application— Effect— Subsequent application— If revival of prior one.*

A purchaser at an execution sale applied under O. 21, R. 95, C. P. Code, for delivery of possession and he was given possession of all the items purchased by him except one in respect of which he apprehended that there would be obstruction by the defendant. He therefore endorsed on the warrant that he would take possession of that item later on with police help. The Court recorded this on 21—9—1936 and dismissed the application. The purchaser filed an application on 26—8—1936, which was more than three years after the confirmation of the sale.

Held, that when the purchaser apprehended obstruction and desired to get police help, it was the duty of the Court to post the petition to another date in order to enable the purchaser to get the necessary police help. Since that was not done and the purchaser was not at default, the order of dismissal must be regarded as one adjourning the petition *sine die* and the second application must be regarded as a continuation or reminder of the previous application and hence not barred. (*Kuppuswami Ayyar, J.*) VYDIALINGA SWAMIGAL *v.* KARRUPPANNA GOUNDAN. 55 L.W. 569 (2) = 1942 M.W N. 554 = A.I.R. 1942 Mad. 718 = (1942) 2 M. L.J. 355.

——*Execution—Revival — Compromise pending execution—Darkast "disposed of" as decree fully satisfied —Compromise subsequently held to be invalid—If revives or restores darkhost*

Where in the course of an execution application, the parties settle the matter and the Court records that the decree being fully satisfied "the darkhast is disposed of" that clearly means that the application is dismissed. The fact that the compromise is subsequently held to be invalid does not have the effect of restoring or reviving the application for execution so as to save limitation for execution. A fresh execution application filed

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beyond 12 years of the decree must therefore be held barred under S. 48, C P Code. (*Beaumont, C J. and Sen, J.*) CHANNAPPA GIRIMALLAPPA *v.* SHANKARDAS VISHNUDAS. 202 I.C. 660=15 R.B. 181=44 Bom.L R. 656==A.I.R. 1942 Bom. 282.

——Execution—Revival—Execution sale set aside after recording of full satisfaction and dismissal of execution application—Subsequent application for sale of same property—Former application if revived—Fraud on part of decree-holder in respect of sale--If bar to revival. *See* LIMITATION ACT, ART. 181. 22 Pat L T 992.

——*Execution—Revival—Expiry of limitation.*

Where an applicant failed to give particulars of property to be proceeded against and as no property was found the application for execution was dismissed it was held that it could not be revived after the expiry of the period of limitation fixed for such execution. (*Shirreff S.M. and Sathe, J.M.*) RAM LAL SINGH *v.* MOAZZAN ALI 1942 O A (Supp.) 170 1942 R D 391 = 1942 O.W.N. (B.R.) 302=1942 A.W R. (Rev.) 150.

——*Execution—Revival—Right of decree-holder—Execution case dismissed on full satisfaction—Pleader of decree-holder misled by agent of judgment-debtor regarding payment.*

Although an execution case has been dismissed on full satisfaction, the decree-holder is entitled to have the execution proceedings re-opened when his pleader had been misled by an agent of one of the judgment-debtors which had resulted in credit being given to them of a certain sum which in fact they had not paid. (*Edgley and Biswas, JJ.*) RAJKUMARI PROFULLANALINI DASI *v.* MOHINI MOHAN DUTT. 201 I C 702=15 R.C. 274=75 C.L.J. 18=A.I.R. 1942 Cal. 451.

——*Execution — Sale—Charge created by decree against several properties—Order in which properties are to be sold—Option of decree-holder—Discretion of Court to interfere and direct order in which properties are to be sold.*

It is not always in the option of the decree holder to proceed for sale in execution against whichsoever properties (upon which a charge has been created by the decree) he likes although there is no specific direction in the decree as to the order in which he should proceed The Court has an undoubted discretion in the matter and can for good reasons direct that the charge should be enforced in the order in which it appears in the decree or in some other order. (*Dhavle and Chatterji, JJ.*) KRISHNA CHANDRA KAR *v.* SREEMATYA SEETA DIBYA. 8 Cut L.T. 88.

——Execution—Sale—What passes—"Right, title and interest"—Meaning of—Decree against manager of Hindu joint family—Execution against family property *See* 1941 Dig., Col. 997. MULGUND CO OPERATIVE CREDIT SOCIETY *v.* SHIDLINGAPPA ISHWARAPPA. I.L.R (1941) Bom 682=197 I.C. 428=14 R.B. 215.

——*Finding on point not raised in pleadings—Suit by Hindu son to declare property not liable in execution of decree against father—Finding on question of legal necessity when not raised in pleadings, if justified.*

Where in a suit by a Hindu son for a declaration that certain property is his and that hence it is not liable to be sold in execution of a decree against his father and the defendant only pleads that it is the father's property and no question of legal necessity is raised by any party and there is no issue on it, a Court is not justified in giving a finding as to legal necessity when the party concerned has had no notice and opportunity to meet such a point. (*Allsop and Verma, JJ.*) JAGANNATH PRASAD BHARGAWA *v.* NATHMAL. 1942

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A.L.W. 547=1942 A.W.R. (H.C.) 305=1942 A.L. J. 589=A.I.R. 1943 A. 17.

——Fraud—Decree declared null and void on ground of—Decree holder if can be declared entitled to continue suit from stage prior to impugned decree. *See* 1941 Dig. Col. 998. JAGRUP *v.* RAM SABAD. 17 Luck. 341=14 R.O. 278=A.I.R. 1942 Oudh 217.

——Fraud—Party to fraud--If can set up own fraud —Joint fraud by both plaintiff and defendant—Benami sale-deed by defendant in favour of plaintiff—Suit by plaintiff for possession as beneficial owner- Duty of Court—Dismissal of suit. *See* 1941 Dig., Col. 999. GUDDAPPA CHIKKAPPA *v.* BALAJI RAMJI. I.L.R. (1941) Bom 575.

——Fraud—Proof of. *See* 1941 Dig., Col. 999. NARAYANAN CHETTIAR *v.* OFFICIAL ASSIGNEE. 1941 O W.N. 1392=44 P.L R. 18=23 Pat.L.T. 67.

——*Fraud—Proof of—Plea of* res judicata—*Documents relied on in prior decision relating to different mahal—If proof of judgment being obtained by fraud.*

Even if it is assumed that the judgment which is pleaded as a bar to a subsequent suit relied on documents relating to a different mahal, that fact cannot constitute sufficient evidence of fraud. (*Shirreff, S.M. and Sathe, J.M.*) CHOB SINGH *v.* GURBAKSH 1942 O A. (Supp.) 244 = 1942 A.W.R. (Rev.) 218=1942 O.W.N. (B.R.) 394=1942 R.D. 483.

——Fraud—Revenue sale—Mortgagor's fraud in allowing property to be sold for arrears of revenue—Mortgagee's right to obtain reconveyance from purchaser. *See* 1941 Dig., Col 1000. HARIDAS SAHA *v.* DULAL CHANDRA. 199 I.C. 728=14 R.C. 620.

——*Fraud*—What constitutes—Application to High Court for adjudication in insolvency—False allegation deliberately made in application and affidavit of residence of applicant within jurisdiction of High Court —Order of adjudication—If vitiated as being procured by fraud. *See* PRACTICE—JURISDICTION—ABSENCE OF. (1942) 2 M.L. J. 198.

——*Illegal transaction—Relief to either party.*

Whichever party seeks the help of the Court in order to get over an illegal transaction in which he has himself entered cannot get the help on the principle of *pari delicto valent defendentis causa.* (*Shirreff, S.M. and Sathe, J.M.*) GAYA *v.* SHFODASS. 1942 O A. (Supp.) 163=1942 O W N. (B.R.) 243=1942 R.D. 332=1942 A.W.R. Rev. 143.

——Inventory- Partition suit—Plaint insufficiently stamped—Matter of Court-fee not decided—Jurisdiction to issue order for inventory of movables before deciding Court fee. *See* 1941 Dig., Col 1000. BHUWNESHWAR KUER *v.* RAGHUBANSMANI PRASAD NARAIN SINGH. A.I R. 1942 Pat. 43.

——*Issues—Duty of Court—Framing of expressive issues—Suit under O. 21, R. 63, C. P. Code.*

The object of framing an issue is to direct the attention of the parties to the main questions of fact or law to be decided, and the duty of framing and recording the proper issues has been placed on the Court by C. P. Code. In framing such issues Courts of law should exert themselves so as to make them sufficiently expressive of the matters which they desire to consider under such issues. Where in a suit filed under O. 21, R. 63, C.P. Code, the issue raised was: "Is the suit maintainable according to law and in its present form?"

Held, that the issue did not cover the point whether the decree sought to be executed was not available against the execution debtors named in the application for execution, as it was not defect in the frame of the suit and did not touch the maintainability of the suit

(*Akram and Pal, JJ.*) HIRANMOY *v.* PROBAL KUMAR. **46 C.W.N. 289=A.I.R. 1942 Cal. 338**

———*Judge—Competency—Trial Court referring in its judgment to order passed by Judge in his capacity as Collector—Judge, if precluded from dealing with case in revision.*

A Judge is not precluded from dealing with a case in revision merely because the trial Court has referred in its judgment to an order passed by the Judge in his capacity as a Collector when the order was not passed by the Judge in the capacity of a Judge subordinate to the High Court. (*Almond, J.C.*) NAWAB KHAN *v.* PIR NAZIR AHMAD. **203 I.C. 203=15 R. Pesh. 57=A.I.R. 1942 Pesh 81.**

———Judgment— Contents—Appealable cases. *See* 1940 Dig Col. 1029. SULEMAN *v.* ABDUL SHAKOOR **I.L.R. (1941) Nag. 735**

———*Judgment —Provisional judgment —Modification—Power of Judge.*

Where a Judge has passed a judgment which is a provisional one and is understood to be so by all concerned, he can subsequently modify the same. (*R. C. Mitter, Khundkar and Pal, JJ.*) BIBHABATI DEVI *v.* RAMENDRA NARAYAN ROY. **202 I.C. 551=15 R.C. 355=47 C.W.N. 9=A I R. 1942 Cal. 498 (S.B.).**

———*Jurisdiction—Absence of—Application to High Court for adjudication in insolvency—False allegation of residence within jurisdiction—Effect—Order of adjudication—If nullity for want of jurisdiction or for fraud.*

A person really residing in Tanjore District falsely stated in his application for adjudication in insolvency and in the affidavit in support of the same before the High Court of Madras that he was residing within the local limits of the original jurisdiction of the High Court, and the High Court made an order on his application adjudicating him an insolvent. It was contended that the order of adjudication was a nullity being one made without jurisdiction.

Held, (1) that the High Court was a Court of competent jurisdiction for the purpose and the order of adjudiction was not rendered a nullity notwithstanding that the debtor falsely and deliberately alleged that he was resident within the High Court's jurisdiction; (2) that if the question which was alleged to create the want of jurisdiction was one which the High Court itself was bound to decide, the matter was not one relating to jurisdiction. It was a fact like any other fact which the Court had got to decide, and if there was any error in the decision, it could only be remedied by an appeal or other procedure known to law; (3) that the mere fact that a false allegation was made in the application and the affidavit in support thereof was no ground for holding that the order was procured by fraud or for treating it as a nullity. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) NAGESWARA AIYAR *v.* GANESA AIYAR. **203 I.C. 659=55 L.W. 684=1942 M.W.N 545=A.I.R. 1942 Mad. 675 (2)=(1942) 2 M.L.J. 198.**

———Jurisdiction—Civil Court—Dismissal of Municipal servant by Municipality—Suit in Civil Court for wrongful dismissal—Maintainability—Civil Court's power to review Municipality's Act. *See* BOMBAY MUNICIPAL BOROUGHS ACT. **44 Bom. L.R. 814.**

———*Jurisdiction—Civil and Revenue Court—Duty of to respect each other's orders—Revenue Court order—Subsequent inconsistent order of Civil Court—If ground for review of Revenue Court's order.*

It is as much the duty of the Civil Court not to ignore the order of the Revenue Court as it is of the Revenue Court not to ignore the order of a Civil Court. There is therefore no reason why a Revenue Court's order should be varied on review or in revision simply in order to bring it into line with a civil Court's order passed after the Revenue Court's order. (*Midd eten.*) BHAGIRATH PRASAD SINGH *v.* KALI MAHTON. **8 B.R. 461.**

———Jurisdiction—Civil Courts and Courts of special jurisdiction—Powers of. *See* 1941 Dig., Col. 713. K.L. GAUBA *v.* PUNJAB COTTON PRESS CO., LTD. **198 I.C. 125=14 R.L. 302.**

———*Jurisdiction—Civil Court — Dispute between Turf club and horse owner.*

If the matter in dispute between the Turf club and the horse owner is within the jurisdiction of the stewards and they give the person against whom action is intended to be taken a fair opportunity of answering the charges made against him, it is not open to the Civil Court to sit on judgment on the orders passed by the stewards. It is however, for the Civil Court to determine whether a certain matter in dispute is within the jurisdiction of the stewards and if so, whether they have acted in accordance with the elementary principles of natural justice and fair play. The jurisdiction of the Civil Court can only be exercised within these narrow limits. (*Abdul Rashid, J.*) ROYAL CALCUITA TURF CLUB, CALCUTTA *v.* KISHEN CHAND. **201 I.C. 619=15 R.L. 53=44 P L R 236=A.I.R. 1942 Lah. 179.**

———Jurisdiction—Civil Court—Interference with body created by statute—Powers. *See* 1941 Dig., Col. 712. MANAGER, COURT OF WARDS *v.* MOOLCHAND. **200 I.C. 715=15 R.N. 18.**

———*Jurisdiction—Civil or Revenue Court—Suit to declare plaintiff 'Muafi Dada Zamindari' grantee.*

A suit to declare the quality and nature of the plaintiff's title namely that he was holding the land as a 'Muafi Dada Zamindari' grantee and not as a 'Muafi Chakrana' grantee is within the jurisdiction of a Civil Court. (*Braund, J.*) LATU *v.* MAHA LAXMI BAI. **I.L.R. (1942) A. 129=199 I.C. 748=14 R.A. 400=1941 A.W.R (Rev.) 1141=1941 O.A (Supp.) 922=1941 A.L.J. 713=A.I.R. 1942 All. 130.**

———*Jurisdiction—Consent of parties—If can confer.*

Parties cannot by acquiescence or consent confer upon a Court a jurisdiction which it has not got. Nor can a party by his pleadings confer upon or take away jurisdiction from any particular tribunal or in other words choose the forum for himself. (*Almond, J.C. and Mir Ahmad, J.*) KAMDAR KHAN *v.* MIAN ZIA UDIN. **201 I.C. 452=15 R. Pesh. 22=(1942) F.L.J. (H.C.) 157=A.I.R. 1942 Pesh. 54.**

———*Jurisdiction—Intervening to contest jurisdiction—If submission to jurisdiction.*

A litigant when appearing in a Court and contesting that Court's jurisdiction to hear and determine an action voluntarily places himself under the authority of the Court. For, if the Court accepts the plea, he will be exonerated, whereas if the Court does not accept his plea, the case is bound to be further heard on the merits. (*Davis.*) ALLA BUX *v.* LIYAQAT ULLAH. **1941 A. M.L.J. 103.**

———Jurisdiction—Lack of and wrong exercise of—Distinction. *See* 1941 Dig., Col. 713 CAWASHAH BOMANJI *v.* PRAFULLA NATH. **197 I.C. 570=14 R. N. 175.**

———*Jurisdiction—Nature of suit—How determined.*

The nature of a suit for the purpose of determining jurisdiction has to be decided on the basis of the averments in the plaint and not on the basis of any defence that may be taken up. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. **202 I.C. 497=15 R.L. 133=44 P.L.R 488=A.I.R. 1942 Lah 217 (F.B.).**

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———*Jurisdiction — Private international law—Decree of foreign Court—Adjudication of judgment-debtor in insolvency by foreign Court—Subsequent discharge by that Court—Executability of decree in Court of state against moveable property of debtor in that State.*

Where a contract is made or is to be performed in a foreign country, so as to be a contract of that country, and there is bankruptcy law of that country, by which, in the circumstances that have occured, a party to the contract is absolved or discharged from liability, he will be discharged from liability in his own country as well. The decree-holder sued the judgment-debtor in the Madras High Court and got two decrees in that Court against him. The judgment-debtor later applied to the Madras High Court and was duly adjudicated insolvent under the Presidency Towns Insolvency Act. The decree holder proved his claim in the Insolvency Court got some dividends and then applied for transfer of the decrees to the Court in Mysore State for execution of the decree by sale of the moveable property of the judgment-debtor which were in the Mysore State. He filed execution petitions in the Mysore Court which dismissed them on the ground that leave of the Insolvency Court had not been obtained under S. 27 of the Presidency Towns Insolvency Act prior to the filing of the execution petitions. In the meanwhile the Insolvency Court also made an order of discharge discharging the insolvent judgment-debtor. It was not alleged or shown that the contracts on which the decrees had been obtained were entered into in Mysore or that the liability under them arose in Mysore.

Held, that according to private international law the judgment-debtor was discharged from all liability by reason of the order of discharge passed by the Madras High Court in its insolvency jurisdiction and the decree-holder was not therefore competent to execute his decrees in the Mysore Court. (*Nageswara Iyer and Venkataranga Iyengar, JJ.*) MAHOMED ABDUL AZIZ SAHIB & CO. *v.* NARAHARILAL B. DESAI. **20 Mys. L.J. 228.**

———*Jurisdiction — Suit—Valuation for—Mahomedan Law—Co-heirs—Suit by one for share of inheritance in estate of deceased—Valuation for purposes of jurisdiction.*

In a suit by a Mahomedan co-heir for recovery of possession his share of a deceased person's estate which he claims to have inherited and which he alleges is withheld from him by the other heirs, the value of the suit for purposes of jurisdiction is not the value of the whole estate but only the value of the plaintiff's share in the inheritance. (*Reilly, C.J. and Subramanya Aiyar, J.*) YASIN KHAN *v.* DOOLAKHAN. **20 Mys.L.J. 239.**

———*Jurisdiction—Suit — Valuation—Principles—Suit by one of several co-sharers to obtain her share of deceased's estate—Suit really one for administration of estate—Estate valued at Rs.* 41,000—*Plaintiff's share below Rs.* 5,000—*Appeal — Forum—High Court or District Court.*

Where the subject-matter of a suit is so related to things which have a real meney value that the relief asked for will affect these, then the value of the suit for the purpose of jurisdiction, in a case where no special method of valuation has been provided by statute, is to be taken as the market value of the property affected. Where, in a suit filed by a Mahomedan co-heir, though the primary object of the suit is for the plaintiff to obtain his or her own share of the deceased's estate, it is admitted that the suit must be regarded as a suit for the administration of that estate, the decree in that suit must necessarily affect the value of the whole estate.

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Where the value of the estate is about Rs. 41,000 or more, though the plaintiff's share therein will come to only less than Rs. 5,000, an appeal from the decree made in such a suit lies only in the High Court and not in the District Court. (*King, J.*) KADIR HUSSAIN ROWTHER *v* JAMILA BI. **55 L.W. 699=1942 M.W. N. 697=(1942) 2 M.L.J. 587.**

———Jurisdiction—Territorial—If can be waived by submission. *See* 1941 Dig., Col. 714. JAGNIRAM PREMSUKH *v.* GANPATI. **193 I C. 873=14 R.N. 251.**

———*Jurisdiction—Test—Application purporting to be under S 47, C.P. Code, not coming within its scope—Order passed on it—If without jurisdiction.*

In order to determine whether a Court had jurisdiction to entertain the application which was made to it, and to make the order it did on it, the test should be, not how the application was described by the petitioner before it, but what it contained. It may be that an application which purported to have been made under S. 47, C.P.Code could not strictly come within the scope of that section, but that need not *ipso facto* deprive the Court of jurisdiction to deal with it, if there was some other section of the Code under which it could be dealt with. So, an order passed on such an application will not be without jurisdiction, if it could be justified by any other provision of the Code. (*Biswas, J.*) HARENDRA KUMAR ROY *v.* IMAMUDDIN SAH. **75 C L.J. 294= A.I.R. 1943 Cal. 56.**

———*Jurisdiction—Trust—Foreign charity—Suit for administration—Jurisdiction of British Indian High Court—Property belonging to foreign charity but situate in British India—Jurisdiction to protect.*

It is a well-established principle that the administration of a charity depends upon the law, and is controlled by the Court, of the country where the charity is conducted. There is no jurisdiction in the Bombay High Court to remove trustees of a charity functioning in a native state, such as the Jaipur State, which is outside its jurisdiction and to appoint new trustees in their place. If, however, it be proved that property within the jurisdiction of the High Court belonging to a foreign charity is being misapplied, the Court can interfere to protect that property, the Court can grant an injunction restraining misappropriation of the property, or appoint a receiver, and then hold the property subject to the orders of the Court having jurisdiction to administer the property. (*Beaumont, C.J. and Somjee, J.*) SHIVNARAYAN SARUPCHAND *v.* BILASRAI JUHARMAL. **I.L.R. (1942) Bom 546=202 I.C. 68=15 R.B. 126=44 Bom L.R. 466=A.I.R. 1942 Bom. 208.**

———*Letters Patent appeal—Point of law not taken before Single Judge.*

A contention based on a point of law which cannot be concluded by any admission which may have been made before the Single Judge can be raised in Letters Patent appeal. (*Young, C.J. and Sale, J.*) RAM RAKHI *v.* PEOPLES BANK OF NOTHERN INDIA, LTD. **199 I.C. 677=14 R.L. 415=A.I.R. 1942 Lah. 42.**

———Mortgage suit—Person made party claiming paramount title and asking to be discharged. *See* 1941 Dig., Col. 1000. NEMASAO *v.* MADHORAO GANESH. **I.L.R. (1942) Nag 309=199 I.C. 814=14 R.N 302 =A.I.R. 1942 Nag 33.**

———*New plea—Full Bench—Plea of* res judicata.

The Bench in Letters Patent appeal referred the case to the Full Bench. The plea that the suit in the Civil Court was barred by *res judicata* by virtue of the decision of the Revenue Court was not raised before the Letters Patent Bench nor before the single Bench nor was it raised in the trial Court or the lower appellate Court.

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Held, that the point was not a question of jurisdiction and should not be allowed to be raised before the Full Bench. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Mahomed Munir, JJ.*) BARU *v.* NIADAR. **202 I.C. 497 = 15 R.L. 133 = 44 P.L.R. 488 = A.I.R. 1942 Lah. 217 (F.B.).**

———*New plea—Plea of limitation not raised in written statement—If can be urged in revision.*

A point of limitation which was not pleaded in the written statement, and which, if pleaded, might have been met by a right amendment of the plaint, cannot properly be allowed to be argued in revision. (*Wadsworth, J.*) SAKANGAPANI *v.* VENKATARATNAM. **204 I.C. 450 = 1942 M.W.N. 721 = 55 L.W. 610 = A.I.R. 1942 Mad. 735 = (1942) 2 M.L.J. 421.**

———*Execution—Notice of—Service by affixing—Express declaration by Court that it was duly served—If essential—Limitation Act (IX of 1908), S. 6—Application by minor defendant to set aside sale and other proceedings in execution—Not governed by S. 6 of the Limitation Act.*

Where the return on the notice of an execution petition was that it was affixed because the guardian of the defendants who were minors was not to be found and was evading service and the Court thereupon declared the defendants *ex parte* it cannot be said that the guardian had not been duly served with notice of the execution petition merely because there was no express declaration by the Court as to due service of the notice. The benefit of S. 6 of the Limitation Act is available to a minor only in respest of a suit or an application for execution of a decree. An application by a minor defendant to set aside the sale and other proceedings in execution taken by the decree-holder is not governed by S. 6 of the Limitation Act. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) GOVINDA KRISHNA AIYAR *v.* SANKARALINGA AIYAR. **55 L.W. 663 = 1942 M.W.N. 660 = A.I.R. 1943 Mad. 55 = (1942) 2 M.L.J. 558.**

———*Parties—Non-joinder—Award by Deputy Registrar under S. 43-A, Mysore Co-operative Societies Act—Suit to declare* ultra vires*—Deputy Registrar—If necessary party—Non joinder of—Effect.*

To a suit for a declaration that the award or decision made by the Deputy Registrar of Co-operative Societies under S. 43-A of the Mysore Co-operative Societies Act is *ultra vires*, the Deputy Registrar is not a necessary party, and his non-joinder does not therefore make the suit defective or incompetent. (*Nagesvara Iyer and Subramania Aiyar, JJ.*) VIDURASWATHA NARAYANASWAMI CO-OPERATIVE SOCIETY *v.* NAGAIAH REDDY. **46 Mys H.C.R. 683 = 20 Mys L.J. 276.**

———Pauper suit—High Court—Application for leave to sue in *forma pauperis* in respect of claim for damages for slander—Summary dismissal on ground that claim could not exceed amount within jurisdiction of Court of lower grade—If justified. *See* 1941 Dig., Col. 1001 VENKATASUBBA ROW *v.* TAYLOR STANLEY PHILIP. **201 I.C. 122 = 15 R.M. 226 = A.I.R. 1942 Mad. 16 = (1941) 2 M.L.J. 505.**

———*Pleadings—Abandonment—Omission to raise available plea—Inference.*

It is a well known cannon of interpretation of judicial decisions that where a point could have been obviously taken before the Court for the decision of a suit, and that point has not been taken, it has to be inferred that the point was not taken because it was not tenable. (*Chagla J.*) MEGHJI HERJI & CO. *v.* MANGILAL GORDHANDAS. **203 I.C. 459 = 44 Bom. L.R. 752 = A.I.R. 1942 Bom. 321.**

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———*Pleadings—Addition of reliefs—Power of Court to order plaintiff to add prayers.*

Although a Court has power to call upon a plaintiff to pay any particular court-fee, it has no jurisdiction to order a plaintiff to add to his plaint certain prayers which he does not want to add. The Court has no power to compel any party to press for any particular relief. (*Burn, J.*) KUTTIA PILLAI, *In re.* **55 L.W. 239 = 1942 M.W.N. 351 = A.I.R. 1942 Mad. 445 (2) = (1942) 1 M.L.J. 499.**

———Pleading—Amendment—Amendment of written statement—Delay—Effect of. *See* 1941 Dig., Col. 1001. SARADINDU MUKHERJEE *v.* JAHAR LALL AGARWALLA. **I.L.R. (1942) 1 Cal. 326 = 201 I.C. 353 = 15 R.C. 174 = A.I.R. 1942 Cal. 153.**

———Pleadings—Cause of action—Averment of—Suit by Share broker for indemnity—Plaint—Contents of. *See* BOMBAY NATIVE SHARE AND STOCK BROKERS' ASSOCIATION RULES, RR. 46 AND 167. **44 Bom. L.R. 475.**

———*Pladings—Evidence on points not raised therein—If can be allowed.*

The procedure in allowing the parties to adduce evidence on points which arose on the evidence led by the parties but were not raised in the pleadings or issues is irregular and should not be allowed without amending the pleadings and raising the necessary issues. (*Sir Madhavan Nair.*) HEM CHAND *v.* PEARY LAL. **203 I.C. 1 = 15 R.P.C 52 = 47 C.W.N. 46 (2) = 9 B.R. 70 = 1942 A.L.J. 718 = 1943 A.L.W. 7 = 1943 O.W.N. 1 = 56 L.W. 8 = 45 P.L.R. 36 = A.I.R. 1942 P.C. 64 = (1943) I M.L.J. 11 (P.C.).**

———*Pleadings—Inconsistent pleas—Person having easement rights—Assertion of ownership or right in gross—If fatal to right of easement already acquired.*

If a person begins to assert that he is the owner of a plot of land over which his right of easement has not matured, he may not succeed in establishing ownership, but would, none the less, lose on account of his claim, the right of easement for which he was prescribing. But there is warrant for holding that an assertion of ownership, after the period of user has matured into an easement would be fatal to the right already acquired. A mere claim to hold the property as an owner cannot result in a plaintiff being deprived of his existing rights. A claim of ownership of property over which an easement right had already matured in favour of the plaintiff (claimant) would be insufficient to destroy the easement. An allegation that the right was being enjoyed as a public right or a right in gross after the right had been acquired cannot equally do so. (*Abdul Rahman, J.*) SUBBA NAYAKKAR *v.* AKKAMMAL. **55 L.W. 142 = 1942 M.W.N. 209 = A.I.R. 1942 Mad. 392 = (1942) 1 M.L.J. 373**

———*Pleadings—Plea of estoppel—Detailing of ingredients of statutory provision—Necessity.*

Where a plea of estoppel is raised it is not necessary to detail in the pleadings all the ingredients of the relative statutory provisions. It is enough if the facts pleaded satisfy the statutory provisions. (*Gruer, J.*) SHRI RAMACHANDRASWAMI *v.* THOONABAI. **1942 N.L.J. 405.**

———*Pleadings—Suit based on acquisition of title by adverse possession—Relief on the basis of customary right or easement.*

Where a suit on behalf of the villagers in respect of certain plots therein is based on their having acquired a title thereto by adverse possession but it is found that they had not succeeded in establishing this case that is enough for the decision of the suit. It is not open to Court to grant relief on the basis of a custom-

ary right or easement as it is not only going beyond the plaintiff's pleadings but is also strictly speaking inconsistent with them. (*Allsop, Ganga Nath and Verma, JJ.*) BHAGWANA *v.* GULAB KUER. I.L.R. (1942) A. 667=201 I.C. 707=15 R.A. 71=1942 A.L.J. 375 1942 A.L.W. 366=1942 A.W.R. (H C.) 175=A.I.R. 1942 All. 221 (F B.).

——*Precedents—Board's ruling and High Court ruling in conflict—Which to be followed.*

The Commissioner cannot follow a High Court ruling when the Board's rulings are in conflict with it. (*Shirreff, S.M. and Sathe, J M*) MOHAN SINGH *v.* SAMRATH SINGH. 1942 O A. (Supp.) 445=1942 A.W.R. (Rev.) 419=1942 O.W.N. (B.&.) 654.

——*Precedents—Decisions of English Courts—Value and binding nature.*

Per *Verma, J.*—The decisions of English Courts are not binding on the Courts in India. The views expressed in the judgments of English Courts are referred to and adopted by the Courts in India only when it appears that those views are fundamentally sound and are based on immutable principles. (*Allsop and Verma, JJ*) BASDEVANAND GIR *v.* SHANTANAND 202 I.C. 458=15 R.A. 165=1942 A.W.R. (H C.) 205=1942 A.L.W. 463=1942 A.L.J. 561=A.I.R. 1942 A. 302.

——Precedents—Decision of Full Bench—If can be overruled by later Full Bench consisting of more Judges *See* 1941 Dig., Col. 1003. NINGAPPA RAMAPPA *v.* EMPEROR. I.L.R. (1942) Bom. 26=197 I.C. 416=14 R.B 228=43 Cr.L.J. 167.

——Precedents—Subordinate Courts—Duty of—If bound by decisions of High Court of another province. *See* 1941 Dig., Col. 1003. EMPEROR *v.* DHOLARAM HOLARAM. 199 I.C. 101=14 R.S. 167=43 Cr.L.J. 468.

——*Preliminary objection—Argument on—Right of party raising objection.*

It is settled law that a party who puts in a preliminary objection is entitled to be heard. (*Swanzy.*) DWARKA PANDEY *v.* SHAH HAMIDUDDIN AHMAD. 9 B.R. 25.

——*Privy Council — Appeal—Question of fact—Partnership accounts—Question whether certain items should be allowed on one side or the other.*

Questions whether in taking the account of a partnership certain items should or should not be allowed on one side or the other are purely questions of fact. It cannot be said that they involve any question of priuciple whatsoever. Such being the case, they most emphatically are not questions that ought to be made the subject of an appeal to His Majesty in Council, and the decision of the Court below on the various items of an account should be treated as conclusive unless the appellant can prove that the decision is beyond all question erroneous. (*Lord Romer.*) HAKIM RAI *v.* GANGA RAM. 202 I C. 754=15 R.P.C. 48=9 B R. 61=1942 A.L.J. 710=47 C.W.N. 113=1942 O.W.N. 814=1943 A.L.W. 20=A.I.R. 1942 P.C. 61=(1943) 1 M.L J. 16 (P.C.).

——Privy Council—Concurrent findings—Interference. *See* 1941 Dig., Col. 1004. NATHU MAL *v.* GOKAL CHAND I.L.R. (1941) Kar. (P.C.) 123=1942 A W.R. (P.C.) 12=1942 O.A. 220 (P.C.).

——Privy Council—Criminal appeal — Certificate under R. 8 of Judicial Committee Rules—Responsibility of Counsel. *See* 1941 Dig., Col. 1004. MAHOMED NAWAZ *v.* EMPEROR. I L R. (1941) Kar. (P.C.) 172=1941 A.L J. 754=55 L.W. 1=8 B.R. 147=1942 A.W.R. (P.C.) 1=1942 M.W.N. 33=1942 O. W.N. 41=1942 O.A. 32=1942 P.W N. 11=44 Bom.L.R. 8=1942 A.L.W. 29=I.L.R. (1942) Lah. 36=44 P.L.R. 45=43 Cr.L.J. 1=23 Pat.L.T. 315=75 C.L.J. 97=(1942) 1 M.L J. 5 (P.C.).

——Privy Council—Criminal appeal—Limits of jurisdiction. *See* 1941 Dig., Col. 1005. MAHOMED NAWAZ *v.* EMPEROR. I.L R (1941) Kar. (P.C.) 172=1941 A.L.J. 754=55 L.W 1=8 B R. 147=1942 A.W.R. (P.C.) 1=1942 M.W.N 33=1942 O. W.N. 41=1942 O.A. 32=1942 P.W.N. 11=44 Bom. L.R 8=1942 A L W. 29 =44 P.L.R. 45=43 Cr.L.J. 1=I.L.R. (1942) Lah. 36=23 Pat.L.T. 315=75 C. L.J. 97=(1942) 1 M.L.J. 5 (P.C.).

——*Privy Council—Finding of fact—Interference.*

Their Lordships of the Privy Council will be very slow to disagree with the High Court even if a perusal of the transcript of the evidence should raise a doubt in their minds as to its true effect, when the Judges of the High Court had the opportunity which their Lordships have not had of seeing the witnesses in the box and observing their demeanour (*Lord Romer.*) GADADHAR DHIR SAMANTA *v.* LABANYABATI DEI. 202 I.C. 373=15 R.P.C. 31=1942 A.L.J. 650=1942 A. L.W. 671=1942 O.W.N. 715=9 B.R. 1=47 C.W.N. 68=56 L.W. 3=1943 P.W.N. 18 (P.C.).

——Privy Council—Leave to appeal—Grant of—When not warranted. *See* 1941 Dig., Col. 1005. ERNEST HUGH CANNING *v.* SOOBRAN PARTAP. 8 B. R. 187=14 R.P.C. 80=1942 Comp. C. 5.

——Privy Council—New point of law. *See* 1941 Dig., Col. 1005. COMMISSIONER OF INCOME-TAX, PUNJAB *v.* DEWAN KRISHNA KISHORE. I.L.R. (1942) Lah. 1=44 P.L.R. 225=I L.R. (1941) Kar. (P.C.) 155=1942 A L J. 159=1942 M.W.N 4=74 C.L J. 508=44 Bom.L.R. 196=(1941) 2 M.L J. 972 (P.C.).

——Procedure—Appeal to High Court—Change in case-law as a result of decision of Privy Council—Change in complexion of case causing embarrassment to appellant and giving rise to new questions not raised in pleadings or issues—Disposal of appeal without giving appellant opportunity to make out case open on new points. *See* 1941 Dig., Col. 1006. APPA TRIMBAK *v.* WAMAN GOVIND. 69 I.A. 64=I.L R. (1942) Bom. 75=I.L.R (1941) Kar. (P.C.) 134=74 C.L.J. 471=(1941) 2 M.L.J. 733 (P.C.).

——*Procedure—Restoration of application dismissed—Powers of Court—Interlocutory application in insolvency petition—Dismissal of both—Restoration of interlocutory application alone—Legality.*

If a suit or other main petition comes to an end no interlocutory application which was made in the main proceedings and dismissed can be restored before the main proceedings are restored. Where an insolvency petition and an interlocutory application made in that have both been dismissed, the Court has no power to restore the interlocutory application when the main insolvency petition is no longer pending and has not been restored. (*Abdul Ghani and Singaravelu Mudaliar, JJ.*) SRINIVASA PRABHU *v.* RANGANATHA PUNJA. 20 Mys.L J. 301.

——*Procedure—Suit by Crown to recover property by right of escheat—Claim not made out—Title of defendant also negatived—Property found to belong to religious trust founded by owner—Proper order to be made.*

Where in a suit by the Crown to recover properties based on title by escheat the Crown's claim by escheat is negatived as also the title of the defendant theretot and the property is found to belong to a math or trust brought into existence by the last owner, the appropriate order for the Court to pass is to appoint a receiver to

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remain in possession of the property and to run the institution on the lines on which it had been run, until a scheme is framed for its administration by the proper authority having jurisdiction to frame a scheme. (*Venkataramana Rao and Abdur Rahman, JJ.*) KRISHNASWAMI NAIDU *v.* SECRETARY OF STATE 55 L.W. 578 = A.I.R. 1943 Mad. 15 = (1942) 2 M.L.J. 431.

——Relief—Duty of Court—Buddhist Law (Burmese)—Suit by widow for share in husband's estate—Children made defendants to suit—Issue raised as to respective shares of widow and children—Ascertainment of shares of children—Duty of Court—Suit if should be framed as administration suit. *See* 1941 Dig., Col. 1007. MAUNG SIN *v.* MAUNG BYAUNG. 46 C.W.N. 205 = (1941) 2 M.L.J. 233 (P.C.).

——*Relief—Ejectment suit—Allegation of relationship of landlord and tenant—Such relationship not proved—Plaintiff's right to recover possession on basis of title.*

A person who has sued in ejectment alleging that the relationship of landlord and tenant has existed between himself and the defendant but has failed to prove that relationship, is nevertheless entitled to recover possession on the basis of his title unless the defendant can show a better one. The fact that no distinct issue as to the plaintiff's title has been framed is immaterial when that issue has in fact been tried and the defendant has not been taken by surprise. (*Agarwala, J.*) RAMDAHIN LOHAR *v.* RAM DHANI MAHTO. 199 I.C. 91 = 8 B.R. 495 = 14 R.P. 528 = A.I.R. 1942 Pat. 379.

——Relief—Facts found different from those pleaded in plaint—Plea of cash consideration for bond—Relief on admission of execution though consideration was not in cash. *See* 1941 Dig., Col. 1008. BHIKUI AL *v.* GANAPATI. I.L.R. (1942) Nag. 561 = 198 I.C. 764 = 14 R.N. 244 = A.I.R. 1942 Nag. 4.

——Relief—Grant of lesser relief—Suit for declaration of title—Plaintiff in possession under written instrument—Written instrument found inadmissible—Declaration that plaintiff was in lawful possession—If can be granted. *See* 1941 Dig., Col. 1008. SHANKRI *v.* MILKHA SINGH. I.L.R. (1942) Lah. 79 = 197 I C. 282 = 14 R.L. 221.

——Relief—Rent suit—Suit based on contract—Contract not proved—Compensation for use and occupation—If can be awarded. *See* 1941 Dig., Col. 1008 KIRPA SANKAR WARRAH *v.* JANKI PRASAD LALLU. A.I.R. 1942 Pat. 86.

——*Relief—Suit on footing of partnership—Relief on basis of holding out as partner—Power of Court to grant.*

The fact that a suit is brought on the footing of a partnership does not prevent the Court from giving relief on the basis of "holding out" by the defendant as a partner; when the evidence adduced in proof of the partnership proves the holding out, the defendant is not prejudiced by the fact that the suit was not brought on the footing of a holding out. (*Horwill, J.*) PERIA KARUPPAN *v.* SUBBARAMA AYYAR. 55 L.W. 701 = 1942 M.W.N. 791 (2) = A.I.R. 1943 Mad. 190 = (1942) 2 M.L.J. 563.

——*Review—Rent reduction case—Order by Collector* ex parte—*Power of successor to review.*

Where the Collector's order in a rent reduction case is passed *ex parte* and not on the merits, the successor of the Collector who has passed the order is justified in reconsidering the matter. (*Swamy.*) DWARKA PANDEY *v.* SHAH HAMIDUDDIN AHMAD. 9 B.R. 25.

——*Revision—Order without jurisdiction—Interference—Rule.*

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In a matter of revision, the revising Court would not interfere with an order even when it is made without jurisdiction, when such interference would cause grave injustice. (*Swamy.*) DWARKA PANDEY *v.* SHAH HAMIDUDDIN AHMAD. 9 B.R. 25.

——Right of suit—Overcharges in violation of obligation imposed on public utility company—Payments—If voluntary—Right to recover as money had and received. *See* 1941 Dig., Col. 1009. PALGHAT ELECTRIC CORPORATION, LTD. *v.* VEERARAGHAVA IYER. 200 I.C. 346 = 15 R.N. 83 = (1941) 1 M.L.J. 411.

——*Solicitor's lien—If can intercept set-off—Claim to set off in respect of different actions—Permissibility—Discretion of Court.*

The Court has complete discretion to allow a set-off whether in the same action or different actions. Ordinarily as between the parties the Court should allow the set-off irrespective of the fact whether the set-off is claimed in the same or different proceedings; and a solicitor should not be allowed to intercept the set-off by his lien for costs due from one of the parties except under exceptional circumstances. Primarily the solicitor must look to his own client for his costs and there is no reason in principle or equity why a solicitor, because he has not taken the precaution of taking proper advances from his client, should compel a party who has to recover from the other party more than he has to pay to him to pay the solicitor's costs. There may be circumstances which would compel the Court to go to the rescue of the solicitor, *e.g.*, where it may not be fair and just under certain circumstances to allow the set-off or where there might be a case of the parties colluding together, and practising a fraud or imposition upon an innocent solicitor. (*Chagla, J.*) RUSTAMJI *v.* GINWALA, *In re.* 200 I.C. 85 = 14 R.B. 391 = 44 Bom.L.R. 178 = A.I.R. 1942 Bom. 102

——*Subsequent events—Decree on basis of—Duty of Court—Specific Relief Act, S. 42.*

Where a suit for a declaration is not at the time of its institution hit by the provisions of S. 42 of the Specific Relief Act but the relief claimed becomes, by reason of subsequent change of circumstances inappropriate, it is open to a Court of Justice to take notice of such events as have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. (*Akram and Pal, JJ.*) ANNAPURNA DASI *v.* SARAT CHANDRA. 46 C.W.N. 355 = A.I.R. 1942 Cal. 394

——Subsequent events—Duty of Court. *See* 1941 Dig., Col. 1009. BISHWANATH SARAN SINGH *v.* MUJTABA HUSAIN. 16 Luck. 742.

——Subsequent events—Relief on basis of—Plaintiff entitled to injunction on date of suit—Subsequent events investing defendant with right—Refusal of injunction—Discretion of Court. *See* MADRAS CO-OPERATIVE SOCIETIES ACT, S. 57 AND R. 22 (10) (*iii*). 55 L.W. 702.

——Trial—Forbidding cross-examination—Propriety. *See* 1941 Dig., Col. 1009. MA AYE MYA *v.* CHEW CHENG GUAT. 198 I.C. 777 = 14 R.R. 225.

——*Trial of suits—Expedition—Duty of Court.*

While it is desirable that every effort should be made to expedite the trial of cases and no concession should be made to a party who does not exercise due diligence, it has to be remembered that witnesses are not always under the influence of the party by whom they are called and it may be necessary to secure the help of the Court in securing their attendance, and it is equally undesirable that the cases should be expedited at the cost of substantial justice. (*Tek Chand and Beckett, JJ.*) MAHO-

PRECEDENTS.

MED BAKHSH *v.* SHAHU. 201 I.C. 240=15 R.L. 36 =44 P.L.R. 186=A.I.R. 1942 Lah. 162 (2).

PRECEDENTS. *See* PRACTICE—PRECEDENTS.

PRE-EMPTION. *See also* AGRA PRE-EMPTION ACT.

———*Custom—Hindus in Bihar.*

Judicial decisions have recognised that the Mahomedan Law of Pre-emption applies to Hindus in Bihar. The custom of pre-emption has been judicially recognised as existing among the Hindus in Darbhanga. (*Chatterji and Shearer, JJ.*) DULHIN RAJKISHORE KUER *v.* MAHOMED QAIYUM. 198 I.C. 890=8 B.R. 475=14 R.P. 516=A.I.R. 1942 Pat. 366.

———*Lis pendens*—Vendee improving his status during pendency of suit—Effect of. *See* 1941 Dig., Col. 1010. MADHO SINGH *v.* JAMES K. K. SKINNER. I.L.R. (1942) Lah. 155=197 I.C. 227=14 R.L. 207.

———Object of the law of—No *bona fide* object to exclude stranger—Maintainability of suit. *See* 1941 Dig., Col. 1010. KESHRI KUMAR SINGH *v.* RAM SWAROOP SINGH. 17 Luck. 158=A.I.R. 1942 Oudh 19.

———Permissibility of pre-emption of part of property sold—Conditions. *See* 1941 Dig., Col. 1010. SHEO DAT TEWARI *v.* BHAGWAT DAS. 17 Luck. 412=197 I.C. 715=14 R.O. 344=A.I.R. 1942 Oudh 113.

———Pre-emptor claiming as co-sharer on strength of lease—Absence of plea of fraud—Pre-emptor, if can show lease to be sale. *See* 1941 Dig., Col. 1010. SITA RAM SINGH *v.* JAGDEO MISIR. 17 Luck. 281=A.I.R. 1942 Oudh 55.

———*Right of—Material date for consideration—Date of sale or of suit.*

A right to pre-empt arises as soon as a sale takes place and the vendee should not be allowed by his unilateral act to defeat the right which the pre-emptor has already acquired. The pre-emptor is given a certain period of limitation for instituting his suit and his right should not be made to depend on whether he brings the suit quickly or near the expiry of limitation or upon the time required for the disposal of the suit. Therefore, the date of the sale should be the date on which the rights of the parties are to be considered and not the date of the suit. (*Almond, J.C. and Mir Ahmad, J.*) AMIRUL MULK *v.* MIR SYED. 201 I.C. 230=15 R. Pesh. 17=A.I.R. 1942 Pesh. 45.

———*Right of—Mortgage and sale of same property—Question if mortgage or sale was for benefit of person other than ostensible mortgagee or vendee—Onus of proof.*

It is a question of fact whether in a particular case the mortgage or sale of the same property was for the benefit of a person other than the ostensible mortgagee or vendee. The onus of proving that the mortgage was for the benefit of the vendees is on the pre-emptor when *prima facie* it is established that the mortgage was in favour of the ostensible mortgagee and the sale was in favour of the ostensible vendees. (*Mir Ahmad and Soofi.*) ABDUL AKBAR KHAN *v.* SAAD MINNULLAH. A.I.R. 1942 Pesh. 89.

———*Right of—Mortgage with possession and sale of same property—Proof that real mortgagees are vendees—Onus.*

Every case of pre-emption has its own merits and generally speaking in the case of a mortgage with possession and sale of the same property there is nothing to debar a pre-emptor from showing that the real mortgagees were the vendees themselves and that the mortgage had therefore merged into the sale. The onus, however, lies heavily on him. If the real mortgagees were the vendees and the names of the apparent mortgagees had been used benami to defeat pre-emption, the principle of merger will come into play and the mortgage will be taken to have been extinguished with the result that on pre emption the pre-emptor would be entitled to get immediate possession of the land. If the vendees were not the mortgagees, the pre emptor can get possession only after the expiry of the period of mortgage. (*Almond, J.C. and Mir Ahmad, J.*) ASLAM KHAN *v.* KHALO KHAN. 203 I.C. 415=15 R. Pesh. 61=A.I.R. 1942 Pesh. 77.

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———Right of—Vendee having equal right of pre-emption joining stranger with him in purchase—Such vendee purchasing stranger's share during pendency of pre-emption suit but after limitation—Effect of. *See* 1941 Dig., Col. 1011. ALI MAHOMED *v.* MAHOMED DIN. I.L.R. (1942) Lah. 190=197 I.C. 263=14 R.L. 218 (F.B.).

———*Right of—Vendee improving his position before decree—If can defeat pre-emptor's claim.*

A vendee can improve his position at any time up to the decree in the pre-emption suit and thereby defeat the claim of the pre-emptor. (*Almond, J.C.*) MAHOMED AZIM *v.* FIDA MAHOMED KHAN. 198 I.C. 12=14 R. Pesh. 68=A.I.R. 1942 Pesh. 5.

———Right to claim pre-emption of part of property on payment of whole price—If can be claimed in appeal for the first time. *See* 1941 Dig., Col. 1011. GAURI SHANKER *v.* BASHIR AHMAD. 17 Luck. 435=198 I.C. 241=14 R.O. 388=A.I.R. 1942 Oudh 117.

———*Right to—Fictitious sale—Defendants if estopped from raising such a plea in bar of suit.*

Where there is no passing of title to the vendee under a sale-deed which is found to be fictitious and not real and executed to defraud creditors, there can be no pre-emption. The defendants to a suit for pre-emption in respect of such a sale though parties to the fraud are not estopped from raising this plea of a fictitious sale, if the fraud has not been carried out (*i.e.*) where no creditor has been in fact affected by the sale. (*Ghulam Hasan and Agarwal, JJ.*) BADLU *v.* HARDEO SINGH. 17 Luck. 555=198 I.C. 160=14 R.O. 378=1941 O.W.N. 1377=1942 A.W.R. (C.C.) 15=1941 O.A. 1070=A.I.R. 1942 Oudh 206.

———Right to, with reference to part of property sold—When can be allowed. *See* 1941 Dig., Col. 1012. ALI NAQI *v.* ZAHUR HUSAIN. 17 Luck. 191.

———*Suit for—Existence of custom in particular locality disputed—Duty of Court to frame issue.*

When in a pre emption suit the existence of the custom in a particular locality is definitely in dispute, the Court cannot refuse to frame issue on that point merely on the ground that the existence of pre-emption in that locality was common knowledge. (*Almond, J. C. and Mir Ahmad, J.*) ABDUL HAKIM KHAN *v.* MAHOMED ALI JAN. 202 I.C. 668=15 R. Pesh. 50=A.I.R. 1942 Pesh. 73.

———*Suit for—Intention of pre-emptor—If material.*

The intention or motive of the pre-emptor has nothing to do with a suit for pre-emption. (*Almond, J.C. and Mir Ahmad, J.*) GUL MAHOMED *v.* IQBAL JAN. 204 I.C. 202=A.I.R. 1942 Pesh. 94.

PRE-EMPTION SUIT—*Parties—Vendor, if and when a necessary party.*

No general rule can be formulated as to whether a vendor is a necessary party to all suits for pre-emption. Every case must be decided on its own merits. The vendor is not as a rule or in all cases a necessary party

in such suits. In cases where the points in dispute cannot be decided without his being impleaded, he may be a necessary party. (*Thomas, C.J. and Ghulam Hasan, J.*) BRIJ NARAIN v. B. H. K. DHAON. 200 I.C 504=15 R.O. 10=1942 O W.N 237=1942 O A. 186=1942 A.W R (C.C.) 174=A.I.R. 1942 Oudh 366.

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 16—Scope and effect—Decree of Presidency Small Cause Court—If becomes a decree of High Court for purposes of limitation for execution. *See* 1941 Dig., Col. 1013. RANGANADHAM *v.* PONNACHARAMMA. 197 I C. 627=14 R P. 322=8 B R. 256 =23 Pat.L.T. 87=A.I.R. 1942 Pat. 128.

——S. 19—*Suit for rent—Question of title—Jurisdiction of Small Cause Court.*

The Small Cause Court has jurisdiction to try a suit for rent instituted by a co-sharer landlord impleading the other co sharers as defendants a'though a substantial question of title to immovable property is involved in the suit, as such question is merely an incidental one. (*Sen, J.*) ASHUTOSH DEV *v.* FOOLCHAND KESHABDEO. 203 I.C. 368=15 R.C. 421=46 C.W N. 838= A.I.R. 1942 Cal. 530.

——S. 38—*Applicability—"Suit"—Proceedings under O. 21, R. 50 (2) and (3)—Order in—Application to full Court—Jurisdiction to entertain.*

Proceedings under O. 21, R. 50 (2) and (3) are proceedings in a "suit", falling within the scope of S. 38 of the Presidency Small Cause Courts Act, and the Full Bench of the Small Cause Court has therefore jurisdiction to entertain a new trial application against an order on an application under O. 21, R. 50 (2) for leave to execute a decree against a person alleged to be a partner in a firm against whom a decree has been passed. "Suit" in S 38 of the Presidency Small Cause Courts Act includes an application under O. 21 R. 50 (2), C. P Code. (*Divatia, J.*) GORDHANDAS KESHAVLAL *v.* RAMCHAND BANARSIDAS. 44 Bom L.R. 120.

——S. 38—*Applicability—"Suit"—Proceedings under O. 21 R. 50 (2), Presidency Small Cause Court—Order—Application to full Court—Maintainability.*

Proceedings under O. 21, R. 50 (2) and (3) of the Civil Procedure Code are proceedings in a "suit" within the meaning of S 38 of the Presidency Small Cause Courts Act. S. 38 applies to such proceedings and the full Court has therefore jurisdiction to entertain an application for a new trial from an order passed in proceedings under O. 21, R. 50 (2) and (3), C. P. Code. (*Beaumont, C. J.*) RATILAL MANILAL *v.* SAKARCHAND SHAH & CO. 44 Bom L R. 124.

——S. 38—Applicability—"Uncontested"—Decree in uncontested suit—Amendment under S. 19, Madras Agricultural Relief Act—New trial application—Competency. *See* MADRAS AGRICULTURISTS' RELIEF ACT S. 19. 1942 M W.N. 110.

——S. 38—Judgment—Validity of—Case heard by two Judges and judgment prepared and signed by them —Judgment also signed in error by third Judge who has not heard case—If invalidates judgment *See* 1941 Dig., Col. 1013. KUPPIAH CHETTY *v.* SARASWATHI AMMAL. 200 I.C. 615=15 R M. 101=(1941) 2 M.L. J. 571.

——S. 97—Applicability—Filing false affidavit in a judicial proceeding—If 'act purporting to be done under the Act'—Prosecution for, if to be commenced within three months of offence. *See* CR. P. CODE, S. 195 (B). (1942) 1 M L J 105.

(PRESIDENCY TOWNS INSOLVENCY ACT III OF 1909)—*Decision of Official Assignee not to litigate further—Motion asking High Court to overrule decision—Principles on which it should be dealt with.*

In a motion on the insolvency side of the High Court asking the Court to overrule the decision of the Official Assignee not to litigate further and to direct him to lend his name to the applicant for the purpose of carrying on the appeal to His Majesty in Council, it is not sufficient for the applicant to point to a possible point which could be raised in argument. He must satisfy the Court that the Official Assignee, in declining to give his name for the purpose of starting or continuing a litigation, notwithstanding that a full and proper indemnity has been offered to him, is not acting as a reasonable man would act if he were owner of and not merely a trustee of the estate. (*Lord Thankerton.*) NAVROJI ARDESHIR COOPER *v.* OFFICIAL ASSIGNEE OF BOMBAY. 1942 A.L.J. 356=1942 A.W.R. (P.C.) 16=55 L W. 445=1942 O A. 325=8 B.R 761=15 R. P C 7=200 I.C. 793=44 Bom. L.R. 785=46 C. W.N. 925=A.I.R. 1942 P.C. 39=(1942) 2 M.L.J. 343 (P.C.).

——*Payment made under threat of legal proceedings—Debtor hopelessly insolvent—Payment—It ceases to be fraudulent preference.*

Threat of legal proceedings in the case of a debtor who is hopelessly insolvent amounts to no threat at all; and a payment under such threats does not cease to be a fraudulent preference. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. I.L R. (1942) Kar. 375=A I.R. 1943 Sind 1.

——S. 7, Proviso—*Applicability and scope—Questions of title between Official Assignee and stranger—Jurisdiction of Court to decide—Discretion—Principles.*

The effect of the proviso added to S. 7 of the Presidency Towns Insolvency Act by the amendment of 1927 is that when a person who is examined under S. 36 denies the claim of the Official Assignee with regard to any property in his possession, the Official Assignee can proceed against him only by way of suit, unless that person submits to the jurisdiction of the Insolvency Court The proviso, however will not apply when there has been no such examination. In such a case the Insolvency Court has a discretion. The Insolvency Court will, however, refuse to exercise jurisdiction as against a stranger to the insolvency unless he submits to its jurisdiction and will not decide complicated questions of title between the Official Assignee and a stranger. Such questions must be left to be decided in a suit in the ordinary tribunal if the parties so desire (*Chagla, J.*) BALUBHAI KALLIAN CHAND *In re.* 200 I.C. 584= 15 R.B. 10=44 Bom L.R. 171=A.I.R. 1942 Bom 118.

——(as amended in 1927), S. 7, Proviso—Construction and scope—"Any matter arising under S. 36"—Meaning and effect of—Jurisdiction of Insolvency Court—When ousted—Question of title—Jurisdiction to decide. *See* 1941 Dig., Col. 1014. OFFICIAL ASSIGNEE *v.* EBRAHIM VALI. 199 I.C. 641=14 R.S. 190=A.I. R. 1942 Sind 21.

——S. 9 (e—Act of insolvency—Invalid attachment —Effect—Attachment of property not liable to be attached—If sufficient to support petition by creditor. *See* 1941 Dig., Col. 1015. LOUIS THOMAS PINTO *v.* GHULAMALI M. ISMAILJI. 197 I.C. 347=14 R.S. 107.

——S 9 (e)—*Applicability—Attachment before judgment—Subsequent decree and application for sale of attached property—Application for adjudication of debtor more than 21 days after application for sale—Maintainability.*

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Where property has been attached before judgment and the plaintiff obtains a decree for money su sequently, if he applies for an order of the Court directing the sale of the property attached, the attachment automatically becomes from that moment an attachment in execution of the decree, and would sustain an application for adjudication of the judgment debtor as an insolvent under S. 9 (*e*) of the Presidency Towns Insolvency Act, where such application is presented after 21 days of the application for sale. (*Leach, C. J. and Bell, J.*) CHIDAMBARA MUDALIAR *v.* RANGANATHAM 202 I. C. 429=15 R.M 497=1942 M.W.N 265=55 L W. 205=A.I.R. 1942 Mad. 512=(1942) 1 M.L.J. 428.

——S 11—*Residence or carrying on business—Person carrying on retail business outside, coming to Calcutta for purchasing stock and paying for it.*

A person who carries on a retail business in piece-goods outside Calcutta cannot be said to be residing or carrying on business in Calcutta within the meaning of S. 11 of the Presidency Towns Insolvency Act, merely because he comes to Calcutta once or twice a month for the purpose of purchasing stock through his broker and for the purpose of paying for the stock so purchased, and resides there for four or five days on each occasion. (*Panckridge, J.*) BENODE BEHARY SAHA, *In re.* 46 C.W.N. 664.

——Ss. 12 and 13—Practice—Act of insolvency alleged in petition and facts set out in detail in affidavit—If sufficient compliance. *See* 1941 Dig., Col. 1015. P. MADHAVLAL DESAI *v.* JESHING BHAI BALA BHAI. 200 I.C. 780=15 R.M. 140=A.I.R. 1942 Mad 86=(1941) 2 M.L J. 598.

——S. 23 (1)—Annulment of adjudication—Effect of—Order directing assets to remain in hands of Official Assignee subject to further order—Construction. *See* 1941 Dig., Col. 1016. MIRJA MAHOMED MASRUR ALI KHAN, *In re.* 200 I.C. 66=14 R.C 660=A.I.R. 1942 Cal 150.

——S. 30—*Scope—Scheme sanctioned by Court—Subsequent arrangement giving undue advantage to creditor—Enforceability.*

A scheme sanctioned under S. 30 of the Presidency Towns Insolvency Act is the only scheme which the Insolvency Court knows, and it is not possible for the Court to give effect to a modification of that scheme which has not been sanctioned by the Insolvency Court. An agreement which has the effect of giving undue preference to one of several creditors whose debts are included in the scheme of composition, and which is arrived at without the knowledge and behind the back of other creditors, cannot be enforced. A scheme of composition, even apart from S. 30, is not a *nudum pactum* but an agreement which is supported by good consideration, *viz.*, the common sacrifice of the creditors who join the scheme. The Court will refuse to enforce agreements or transactions which are entered into in disregard of "commercial morality" even though the other creditors may not have been prejudiced in any way. No creditor should be allowed to score off a secret advantage for himself or to commit any act which may amount to a breach of faith with the other creditors. Such an arrangement which is held unenforceable in the Insolvency Court cannot also be enforced in the ordinary Courts. (*Fazl Ali and Meredith, JJ.*) BENARES BANK, LTD. *v.* GEORGE MACDONALD FALKNER. 21 Pat. 397=204 I.C. 48=15 R.P. 191=9 B.R, 111=A.I.R. 1942 Pat. 493.

——S. 31—"Duly made"—Meaning of—Creditor denied participation in dividend through fraud of insolvent—Right to apply for order on other creditors to refund amount to make up dividend payable to excluded creditor. *See* 1941 Dig., Col. 1016 PANCHAPAKESA IYER *In re.* 201 I.C. 30=15 R.M. 183=A.I.R. 1942 Mad. 103 (2)=(1941) 2 M L.J. 847.

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——Ss 47 and 55—*Assignment of life insurance policy by insolvent declared void—Effect of—Money due by insolvent on marine policies to same insurance company—Company's right to set off.*

If an assignment of a policy of insurance by an insolvent is declared void as against the Official Assignee under S. 55 of the Presidency Towns Insolvency Act, the position is the same as if there never had been any assignment and the life policy reverts to and is the property of the insolvent. As such the Official Assignee does not obtain the policy by a separate and distinct title but as property of the insolvent which vests in him under S. 17 of the Act. The insurance company is therefore entitled to set off under S. 47 of the Act the monies due to it from the insolvent upon the marine policies effected by him against the amount of the surrender value of the life policy which it is liable to pay to the Official Assignee. (*Gentle, J.*) THAKURBHAI MAGANLAL DESAI, *In re.* I.L.R. (1942) 2 Cal. 222=46 C.W.N. 510.

——Ss 52 and 60—Insolvent receiving salary less than Rs. 100 as public servant—Order for payment of portion of salary—Powers of Court—Discretion. *See* 1941 Dig., Col. 1017. OFFICIAL ASSIGNEE OF MADRAS *v.* E. V. D'SILVA I.L.R (1942) Mad. 199=200 I.C. 582=15 R.M. 89=(1941) 2 M.L J. 591.

——S. 55—*Applicability—Joint family property—Settlement deed executed by karta prior to adjudication.*

S. 55 of the Presidency Towns Insovency Act does not apply to property over which an insolvent in his capacity as *karta* of a joint family or trustee has a disposing power, at any rate with regard to the shares of other persons interested in it. Where within 2 years of his adjudication as an insolvent a *karta* of a joint family had executed a deed of settlement conveying the joint family properties to a certain person upon trust for the benefit of the members of his family.

Held, that all, that the Official Assignee was entitled to was a declaration that the deed was void in so far as it purported to affect the share of the insolvent in the property transferred by the deed and that he was not entitled to an immediate order for possession but that he must, if he saw fit, assert his right against the trustee and the other beneficiaries under the deed in other proceedings. (*Panckridge, J.*) TILAK CHAND KOYAL, *In re.* 200 I.C. 560=15 R.C. 69=46 C.W.N. 256=A.I.R. 1942 Cal. 342 (2).

——S. 56—*Burden of proof—Fraudulent preference—Onus—Materiality.*

It is well-settled that the onus of proving that there has been a fraudulent preference lies on the Official Assignee even if the debtor was insolvent at the time of the payment and knew himself to be so. But the question of onus can only arise if the Court finds the evidence, *pro* and *con*, so evenly balanced that it can come to no definite conclusion. Then only the onus will determine the matter. If the Court after hearing and weighing the evidence comes to a definite conclusion, then the question of onus does not arise. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. I.L.R. (1942) Kar. 375=A.I.R. 1943 Sind 1.

——S. 56—*Essentials of fraudulent preference.*

The essentials of a fraudulent preference under S. 56, Presidency Towns Insolvency Act, are that (1) the debtor must at the date of the transfer or payment be unable to pay himself on demand his debts as they become due; (2) the transfer or payment must be in favour of a

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creditor; (3) the transfer or payment must in fact prefer a creditor over others; (4) the transfer or payment must have been made with a view to giving such creditor a preference over other creditors; and (5) the debtor must have been adjudged insolvent on a petition presented within three months after the date of the transfer or payment. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. **I L.R. (1942) Kar. 375 = A I.R. 1943 Sind 1.**

——S. 56—*Payment to avoid exposure—If preference—Payment to make good breaches of trust.*

A payment made by a debtor in order to avoid exposure is not a fraudulent preference; and a payment by a trustee in order to make good breaches of trust committed by him, though there was no pressure upon him by the *cestui que trust*, does not amount to a fraudulent preference. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. **I L.R. (1942) Kar. 375 = A.I.R. 1943 Sind 1.**

——S 56—*Payment made by debtor from sense of duty—Preference.*

A payment impeached as a fraudulent preference is none the less one because the debtor in doing what he did acted from a sense of duty, and acted from a sense of what he thought was right. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. **I.L.R. (1942) Kar. 375 = A.I.R. 1943 Sind 1.**

——S. 56—*Preference—Dominant motive of debtor in making payment or transfer—Payment to repair past wrong or to avoid evil consequences to debtor.*

In determining whether a transfer or payment by a debtor to a creditor amounts to fraudulent preference, the Court has to consider whether the payment or transfer was made with a view of giving that creditor preference over the others. The true test is to find whether the debtor had a view of giving a preference to that debtor and whether that was the operative effect in view. The question is one of fact and every case has to be decided on its own facts. A mere making of a preferential payment cannot be a fraudulent preference. The dominant motive or real intention of the debtor in making it must be shown to be to prefer that creditor. If the transfer or payment is made with a view to repairing a past wrong or to evil consequences to the debtor himself, it will not be a fraudulent preference. (*Lobo, J.*) OFFICIAL ASSIGNEE, KARACHI *v.* ALIJAH HUSSEINBHOY. **I.L.R (1942) Kar. 375 = A.I.R. 1943 Sind 1.**

——S. 60—Scope—Order under—Nature—If liable to be revoked by having resort to S. 60 (1) (*i*), C. P. Code and proviso. *See* 1941 Dig., Col. 1018. P. D. CURTIS, *In re*. **201 I.C. 112 = 15 R.M. 213 = A.I.R. 1942 Mad 27 = (1941) 2 M L J 845.**

——S. 68 (b)—*Scope—Settlement by Official Assignee—Failure to obtain leave of Court—Effect of—Settlement or compromise—If rendered null and void.*

Cl. (*b*) of S. 68 of the Presidency Towns Insolvency Act does not make any distinction between compromises of claims in suits already instituted and those in respect of claims not brought before the Court. The omission on the part of the Official Assignee to obtain leave of Court to enter into a compromise or settlement does not vitiate it or render the same null and void as between him and third parties. Absence of leave does not render the act of the Official Assignee invalid or inoperative; only the Official Assignee will lose the benefit of a protection he would have got for himself had he obtained leave. The obtaining of the leave is a matter between the Official Assignee and the Court whose officer he is, and the only result of his neglect to obtain leave would be that he will not be allowed his costs, charges and expenses out

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of the estate; it might also subject him to the disciplinary jurisdiction of the Court. (*Krishnaswami Ayyangar, J.*) T. A. BALA KRISHNA ODAYAR, *In re*. **I.L.R. (1942) Mad. 189 = 203 I C. 266 = 15 R.M. 631 = A I.R 1942 Mad 586.**

PRESS (EMERGENCY POWERS) ACT (XXIII OF 1931), Ss. 2 and 18—*Handbill announcing information already in possession of public.*

A handbill or poster announcing that nearly 1000 political prisoners are detained in India without trial can hardly be described as a newspaper or news-sheet, when this information has been in possession of the public for some time. Consequently an unauthorised issue of such a poster is not an offence under S. 18 of the Press (Emergency Powers) Act. (*Young, C.J.*) BHARUCHA *v.* EMPEROR. **I.L.R. (1942) Lah. 553 = 201 I.C. 631 = 15 R.L. 79 = 43 Cr.L.J. 756 = 44 P.L.R. 26 = A.I.R. 1942 Lah. 203.**

——S 2 (5)—"*Public news*"—*Meaning of.*

The expression "public news" in S. 2 (5) means something such as "current happenings or alleged current happenings of interest or likely to be of interest to the public or to a portion of the public" Anything new or unknown when communicated to another, is news, and news which is intended for, or is communicated to the general public, no matter what its nature is public news. An item of news irrespective of its nature when reported in a paper published for the general public, would be a public news, but if published only in a periodical intended for a small circle of readers interested in a particular subject would not be a public news. All news appearing in a periodical which is published for the general public is public news, and the paper is a "newspaper" within the meaning of the Act. If the proprietors of a paper choose to make week by week "news" of the activities or alleged activities of persons of sufficient importance to interest members of the public for whom the paper is published, and to whom it is sold or given away, they cannot fairly complain that it is not a newspaper, and that it does not contain public news. They must be taken to have themselves made what would otherwise be a matter of private interest, if of interest at all, 'public news." (*Davis' C.J., Weston and Tyabji, JJ.*) "NEW SIND." *In re*. **I.L.R. (1942) Kar. 127 = 202 I.C. 405 = 15 R.S. 40 = 43 Cr.L.J. 838 = A.I R 1942 Sind 65 (S.B.).**

——Ss 3 and 7—*Scope—Press having same person as printer and publisher and press having different persons—Distinction.*

Ss. 3 and 7 clearly contemplate action against both the keeper of the press and the publisher of the paper, and no distinction is drawn between the case where the printer and publisher are two different persons or one and the same. Consequently, where the printer and publisher is the same person the maximum security of Rs. 6,000 can be demanded from him under Ss. 3 (3) and 7 (3). (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND." *In re*. **I.L.R. (1942) Kar. 127 = 202 I.C. 405 = 15 R.S. 40 = 43 Cr.L.J. 838 = A.I.R. 1942 Sind 65 (S.B.).**

——Ss. 3 (3) and 7 (3)—*Construction—Strict construction.*

Per *Davis, C.J.*—The Act is a penal statute and must be construed strictly. (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND" *In re*. **I.L.R. (1942) Kar. 127 = 202 I.C. 405 = 15 R.S. 40 = 43 Cr.L.J. 838 = A I R. 1942 Sind 65 (S B.)**

——S 4 (1) (e)—*Construction—"Tend directly or indirectly"—Meaning of.*

The words "tend directly or indirectly" in S. 4 (1) (*e*) mean something more than "have as a possible result." There must be something more than a mere possibility

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The effect which words will produce upon he person to whom they refer may vary widely according to the nature and temperament of that person Not every newspaper attack, efamatory though it may be, is made with the intention of obtaining payment of money by the victim, nor every such attack can be said to have the "tendency" to induce payment of money S. 4 (1) (*e*) relates to private individuals and can be applied to protect private persons. The words in S. 4 (1) (*e*) are wide enough to cover what is commonly known as blackmail, and the fact that the person put in fear or annoyance may have another remedy by way of civil or criminal action, by a suit for defamation or a prosecution for extortion, does not exclude the application of S. 4 (1) (*e*) in appropriate cases (*Davis, C. J., West and Tyabji, JJ.*) "NEW SIND." *In re.* **I.L.R (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I.R 1942 Sind 65 (S B.).**

——**S. 4 (1) (e)**—*Ingredients of offence.*

To constitute an offence under S. 4 (1) (*e*) it is sufficient if one of the purposes of an article published in a newspaper falls within its purview. It is sufficient if the words have the tendency referred to in S. 4 (1) (*e*) and if they are of the nature described in that section. (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND." *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A I R 1942 Sind 65 (S.B.)**

——**S 18**—*Power of arrest—Exercise of discretion.*

Though an offence under S. 18 of the Act is cognizable and therefore the authorities are entitled to arrest, it is elementary that such powers ought to be exercised with discretion and arrests ought not to be made without necessity. (*Young, C.J.*) P. B. BHARUCHA *v.* EMPEROR. **I.L.R. (1942) Lah. 553=201 I.C. 631=15 R L. 79=43 Cr.L J. 756=44 P.L.R 26=A.I R 1942 Lah. 203.**

——**S. 18 (1)**—"*Makes*"—*Printer of news-sheet—If maker of same—Liability of.*

The printer of a news-sheet cannot be said to make a news-sheet within the meaning of S 18 (1) of the Press (Emergency Powers) Act. The printer cannot be described as the maker and hence he is not liable under S. 18 (1). (*Beaumont, C I and Wassoodew J.*) EMPEROR *v.* ISMAIL KARIMBHAI. **203 I.C. 456=44 Cr.L.J. 4=44 Bom L R. 799=A.I.R. 1942 Bom. 328 (1).**

——**S 23**—"*Order*" — *Meaning—Application to set aside order of forfeiture—Limitation—Starting—Date of order or date of notification of order.*

The word "order" in S. 23 of the Indian Press (Emergency Powers) Act of 1931 contemplates the notified order. It must be read as being the notified order because there can be no forfeiture until the declaration referred to in S. 19 has been notified. The period of limitation for an application under S. 23 for setting aside the declaration of forfeiture made under S. 19 therefore begins to run from the date of the notification of the order in the Official Gazette and not from the date on which the order is passed. (*Lach, C.J., Mockett and Krishnaswami Ayyangir, JJ.*) KRISHNAMURTHI AYYAR. *In re* **I L R (1942) Mad 9=203 I.C. 498=55 L.W. 844 (2)=44 Cr L J. 88=A.I.R. 1942 Mad. 690=(1942) 2 M.L.J. 509 (S B.).**

——**S. 23**—*Scope of inquiry—Action under Act—Basis of—Question to be considered.*

Under the Act what the High Court, and indeed the Provincial Government, is primarily concerned with is whether the words complained of have or have not the prohibited tendency and are of the prohibited nature. The Act does not require that it shall be proved that this is so. The words "whenever it appears to the Provincial Government" in Ss. 3 (3), 4 (1) and 7 (3) of the Act, have or are intended to have the same use and purpose. The essential condition of action under the Act is that the words complained of must have the prohibited tendency and be of the prohibited nature. It is the printing or publishing of the prohibited words which is the offence and the words must speak for themselves. In interpreting the meaning or the tendency of the words, the Judges should use their knowledge and experience of the habits and customs and thoughts of those upon whose acts they are called to sit in judgment. Indeed, S. 114, Evidence Act, permits a Judge to use his knowledge of human conduct and affairs having regard to time, place and circumstances in which the words were used. The general context in which the words are used can also be looked into. (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND," *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I R. 1942 Sind 65 (S B.)**

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——**S. 23**—*Scope of inquiry—Expediency of action taken—Delay—Relevancy.*

In dealing with notices issued by Government under Ss. 3 (3) and 7 (3) in respect of an offence alleged to fall within S. 4 (1) (*e*), the High Court is not much concerned with the promptness or lack of promptness with which Government took action. It is principally concerned with the nature of the words used in the newspaper. Nor is the question of the expediency of the action of Government a matter for the Court to consider. (*Davis C.J., Weston and Tyabji, JJ.*) "NEW SIND." *In re* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A I.R. 1942 Sind 65 (S B.**

——**Ss. 23 (1) and 27, Rules under**—*Scope—If exhaustive.*

Per *Davis, C.J.*—The rules framed under S. 27 by the Chief Court relating or pertaining to orders of forfeiture are not exhaustive and apply *mutatis mutandis* to orders for deposit of security falling within the first part of S. 23 (1). (*Davis, C.J.; Weston and Tyabji, JJ.*) "NEW SIND." *In re.* **I.L.R (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I.R. 1942 Sind 65 (S.B.).**

——**S. 25**—*Scope—If exhaustive—Powers of interference*

S 25 is not exhaustive. Where the security demanded by the Government under S. 3 (3) or S. 7 (3) is in excess of what is permitted by law, the High Court can interfere under S 25 But S 25 does not empower the High Court to reduce the security when the same is within the statutory limits. The fact that the maximum security of Rs. 3,000 has been demanded from the same person in his capacity as printer and publisher, is a matter for Government and not for the High Court. (*Davis, C J., West n and Tyabji, JJ.*) "NEW SIND." *In re.* **I.L.R (1942) Kar. 127=202 I.C. 405=15 R. S. 40=43 Cr.L.J. 838=A.I.R. 1942 Sind 65 (S B.).**

——**S. 26**—*Construction and scope—If exhaustive.*

S. 26 is merely an enabling section and is not exhaustive. It merely permits the words to be considered in their general context. (*Davis, C.J., Weston and Tyabji, JJ.*) "NEW SIND." *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838 =A I R. 1942 Sind 65 (S B.).**

——**Ss 26 and 27**—*Procedure—Evidence.*

Per *Davis, C.J.*—The method whereby a fact is or is not proved is a matter of procedural law. S. 27 itself indicates the manner in which, apart from S. 26 the tendency of the words complained of may be proved. It does not contemplate the examination or cross-examination of witnesses. The procedure contemplated is the procedure of revision applications or refer

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ences to the High Court. But even in revision applications the Court may look at statements of fact testified to in affidavits as is clear from Chap. 15, R. 9, Rules of the Chief Court. (*Davis, C J , Weston and Tyabji. JJ.*) "NEW SIND," *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A.I.R. 1942 Sind 65 (S.B.).**

——**Ss. 26 and 27**—*Scope and effect of—Evidence aliunde—Admissibility.*

Per *Weston and Tyabji, JJ.*—S. 26 is nothing more than an enabling section permitting the words to be considered in their general context. It does not mean that the Court may consider no other evidence whatever. There is nothing in S. 26 or in any other section of the Act to suggest that, when forming its opinion under S. 3 or under S. 7, the Local Government is subject to any limitations as to the evidence it may consider. When hearing an application made under S. 23 (1), it is open to the High Court to consider evidence other than the words themselves or their context immediate or general, such as letters from aggrieved persons revealing the prohibited purpose of the articles published in a newspaper within S. 4 (1) (*e*) relied on by the Provincial Government in support of the issue of notices by it under Ss. 3 (3) and 7 (3) of the Act.

Per *Davis, C. J.*—There is nothing in the Act which precludes the Provincial Government from satisfying itself before taking action either under S. 3 or S. 7 of the Act, that the words complained of have in fact succeeded in their purpose, and that they have not merely the tendency to cause the harm which the Act seeks to avoid but they have caused that harm. This, however, is more a matter for the prudence and good conscience of Government than of law. The answer to the question whether the Provincial Government can lawfully support the notices issued by it under Ss. 3 (3 and 7 (3) of the Act by the evidence of the aggrieved persons must be found in the Statute itself and not in the rules framed under S. 27. The Statute does not contemplate that the Provincial Government shall support their notice, at least in the first instance by letters from aggrieved persons, stating that they have or have not paid money, as the result of the words complained of. The purpose or the intention of the printer or publisher is not to be proved from letters addressed to the Provincial Government by aggrieved persons which reveal the prohibited purpose within the meaning of S. 4 (1) (*e*). Neither Ss. 3 (3) and 7 (3) nor the rules framed under S. 27 empower the Provincial Government to do anything but serve a notice in which the offending words are stated or described and the deposit is ordered. The sections do not contemplate schedules to the notices in which documents other than those which contain the offending words are appended. They do not contemplate that letters from the persons aggrieved addressed to an Honourable Minister be appended to the notices. There is nothing in the rules under S 27 to indicate that the Special Bench has in the first instance to consider anything but the words complained of as contained in the newspaper, book or other document and set out in the notice issued by the Provincial Government upon the printer or publisher. (*Davis, C. J., Weston and Tyabiji, JJ.*) "NEW SIND" *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838 =A.I.R. 1942 Sind 65 (S B.).**

——**S 27 and R. 5**—*Application to set aside forfeiture order—Affidavit to support grounds—Sufficiency.*

Per *Davis, C. J.*—Under R. 5 the applicant is entitled to support by statement of facts in affidavits the grounds on which he relies for the order of forfeiture to be set aside. (*Davis C.J., Weston and Tyabji, JJ.*)

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——**S. 27**—*Rules under—Applicability.*

Per *Davis, C. J.*—The rules framed by the Sind Chief Court under S. 27 and which are to be found in Chap. 16 of the Sind Chief Court Rules do not of necessity relate to the notices issued by the Provincial Government. They relate to the applications made under S. 23 of the Act by the printers or publishers. (*Davis, C J., Weston and Tyabji, JJ*) "NEW SIND", *In re.* **I.L.R. (1942) Kar. 127=202 I.C. 405=15 R.S. 40=43 Cr.L.J. 838=A I.R. 1942 Sind 65 (S B.).**

——**Ss. 30 and 23**—Scope and extent of the jurisdiction of High Court—Proceedings under S. 7 (1)—If can be questioned. *See* 1941 Dig., Col. 1019. V. G. DESHPANDE *v.* EMPEROR. **I.L.R (1942) Nag. 107.**

PRESS AND REGISTRATION OF BOOKS ACT (XXV OF 1867), S 3—*'Paper'—If includes poster.*

The word 'paper' in S. 3 of the Press and Registration of Books Act is practically synonymous with 'newspaper' as defined in the Act. A poster issued shortly after a communal disturbance making a fervent appeal to the people to live in peace and harmony and printed on a single foolscap sheet, cannot be considered to be anything analogous to a book or newspaper or a pamphlet (*Tek Chand and Sale, JJ.*) MANOHAR LAL *v.* EMPEROR. **202 I C. 735=15 R.L. 171=44 P L.R. 524=43 Cr.L.J. 897=A.I.R. 1943 Lah 1.**

PRINCIPAL AND AGENT. *See also* CONTRACT ACT, SS. 182 TO 213.

——*Accounts—Suit for—Decree in favour of agent—If can be passed.*

If in a suit for rendition of accounts by the principal against the agent it is found that it is the plaintiff who owes a certain sum to the defendant it is competent to the Court to pass a decree for it in favour of the defendant against the plaintiff. (*Tek Chand and Blacker, JJ.*) KAHN SINGH SOMA SINGH *v.* BALDEV SINGH. **199 I.C. 695=14 R.L. 420=44 P.L.R. 41=A.I.R. 1942 Lah. 81.**

——Contract of agency—Right to commission—Insurance company—Agent effecting policy—Right to commission *See* CONTRACT—AGENCY CONTRACT. **23 Pat. L.T. 318.**

——Contract of personal liability to perform by agent—Contract on behalf of Government—Liability of agent in the first instance if affected. *See* 1941 Dig., Col 1019 INTERNATIONAL RAILWAY CO. *v.* NIAGARA PARKS COMMISSION. **8 B R. 197=14 R.P.C. 88.**

——Del credere *agent—Status and rights of—Contract made directly in name of principal—Right of agent to sue personally.*

A *del credere* agent who has throughout a transaction disclosed his principal, but whose principal looks solely to him for payment, is not entitled to sue the vendee in his own name. The contract is between principals and the agent has no right to sue in his own name. A *del credere* agent is a mercantile agent who, in consideration of extra remuneration, called a *del credere* commission, guarantees to his principal that third persons with whom he enters into contracts on behalf of his principal shall duly pay any sums becoming due under those contracts. But when the other party to the contract entered into directly with the principal is not a party to the guarantee given by the agent and is not bound by it, the agent cannot personally sue the other party on the contract. (*Abdul Ghani and Subramaniya Aiyar, JJ.*) VENKIAH AND BROTHERS *v.* GUPTA. **20 Mys.L.J. 104.**

PRINCIPAL AND AGENT.

———Liability of agent—Agent let into possession to realise rents from tenants—If can challenge title of principal to receive moneys realised by him. *See* 1941 Dig., Col. 1020. DEVA PRASANNA MUKHERJEE *v.* LAKHI NARAYAN MONDAL. **A.I.R. 1942 Pat. 108.**

———Pucca adatia—*Position of.*

A *pucca adatia* is an agent of his constituent only for the purpose of ascertaining the price at which the order is to be completed. After the price has been ascertained, he ceases to be an agent and assumes towards his constituent the character of a principal. (*Davis, C.J and Weston, J.*) RAMGOPAL PARSRAM *v.* UGGERSAIN PURSHOTAMDAS. **I.L.R. (1942) Kar. 38=15 R.S. 12=201 I.C. 513=A.I.R. 1942 Sind 115.**

PRINCIPAL AND SURETY.

See (1) SURETY.

(2) CONTRACT ACT SS. 124 147

PRIVY COUNCIL. *See* PRACTICE—PRIVY COUNCIL

PROVIDENT FUNDS ACT (XIX OF 1925), S. 2 (d)—"Government Provident Fund"—Rules of private body approved by Government—Sufficiency. *See* 1941 Dig., Col. 1021. AHMAD HUSSAIN KHAN *v.* BELI RAM. **198 I.C. 643=14 R.L. 348.**

———**S. 4 (1)**—*Bequeathing of amount to nominee—Disbursement—Duty of Accountant-General.*

In the case of a will by a subscriber bequeathing the amount of his provident fund to a nominee, it is the duty of the Accountant-General under S. 4 (1) to ascertain whether there was valid nomination or not and if there was, to pay the amount of the provident fund to the nominee direct and not to the executor named in the will. (*Roberts, C. J and Dunkley, J.*) ELIEN FLORENCE RODRIGUEZ *v.* EDITH MARY HANNAY. **A.I.R. 1942 Rang. 64 (2).**

PROVINCIAL INSOLVENCY ACT (V OF 1920)—*'Petition'—'Application—Meaning.*

Per *Iqbal Ahmed, C.J.*—In ordinary parlance the words 'petition' and application, no doubt, connote the same meaning, but when one finds that in the statute (Provincial Insolvency Act) the Legislature has, in different sections, used the one or the other word, the conclusion is irresistible that the Legislature intended to use the one word in a sense different from the other. (*Iqbal Ahmad, C.J., Dar and Plowden, JJ.*) RAJA PANDE *v.* SHEOPUJAN PANDE. **204 I.C. 1=1942 A.L.J 592=1942 A.W.R (H.C.) 368=1942 A.L.W. 635=A.I.R. 1942 All. 429 (F.B.).**

———Receiver—Sale by—Subsequent invitation to creditors for higher offers—Propriety of. *See* 1941 Dig., Col. 690. RAMASWAMI REDDIAR *v.* OFFICIAL RECEIVER, SOUTH ARCOT. **200 I.C. 477=15 R.M. 55=(1941) 2 M.L.J. 382.**

———**Ss. 4, 25 (2) and 75 (1), Proviso (2)**—Decision as to right to present petition—Second appeal. *See* 1941 Dig., Col. 1021. DULLU *v.* MISRI LAL. **A.I.R. 1942 Oudh 80.**

———**S. 4**—*Jurisdiction of Insolvency Court—Order by executing Court under O. 21 R. 93, C.P. Code, in favour of auction-purchaser—Official Receiver remaining ex parte—Subsequent application for review dismissed—Failure to appeal or apply in revision—Application to Insolvency Court for declaring invalid—Competency.*

It is contrary to all judicial principle that when an Official Receiver has allowed an order to be passed against him *ex parte* in proceedings under O. 21, R. 93, C.P. Code, by an executing Court, and has applied unsuccessfully to have that order set aside or reviewed, and fails to avail himself of his remedy by way of appeal or revision, he should be permitted to make use of S. 4 of the Provincial Insolvency Act to reagitate a question which has been finally decided against him. The language of S. 4 of the Provincial Insolvency Act, though wide and comprehensive is not comprehensive enough to cover the case of a dispute between the Official Receiver, as representing the insolvent judgment-debtor's estate, and a person who has no connection whatever with the insolvency, such as an auction-purchaser in execution, when the subject-matter of that dispute is an order passed by an ordinary Court under O. 21, R. 93, C.P. Code, where the jurisdiction of the Court cannot be questioned. In such a case the Insolvency Court has no jurisdiction to interfere at the instance of the Official Receiver under S. 4 of the Provincial Insolvency Act with the order passed by the executing Court under O. 21, R. 93, C.P. Code. (*King and Happell, JJ.*) MALLIKARJUNA RAO *v.* OFFICIAL RECEIVER, KISTNA. **I.L.R. (1942) Mad. 691=201 I.C. 693=15 R.M. 376=1942 M.W.N. 146=55 L.W. 117=A.I.R. 1942 Mad. 423=(1942) 1 M.L.J. 238.**

———**Ss. 4, 9 and 25**—Powers of Court—Petition by creditor—Dismissal on ground that questions are complicated and difficult and must be decided in regular suit—Legality. *See* 1941 Dig., Col. 1021. GANGI REDDI *v.* NARASIMHA REDDI. **I.L.R. (1942) Mad. 147=199 I.C. 796=15 R.M. 14=(1941) 2 M.L.J. 362.**

———**S. 4**—*Proceeding under—Who can conduct—Receiver declining to move—Procedure to be followed.*

A proceeding under S. 4 of the Provincial Insolvency Act can be conducted by the receiver alone, and not by a creditor. If the receiver declines to start proceedings under that section, the procedure to be followed is for the creditor to apply to the Court to direct the receiver to institute such proceedings, and the Court can pass a conditional order making it a condition precedent that the creditor so applying should put the receiver in funds and properly indemnify him against the costs of the action. (*Mukherjea and Blank JJ.*) SANKARI DEBI *v.* CO-OPERATIVE URBAN BANK OF SEKAJGANJ. **75 C.L.J. 263=A.I.R. 1942 Cal. 184.**

———**S. 4**—Remedy under—Right of creditor—Transaction alleged to be fictitious. *See* 1941 Dig., Col. 1022. GARIBIA BIBI *v.* MATHURA PROSAD. **199 I.C. 412.=14 R.C. 537.**

———**Ss. 4 and 53**—Remedy under—Transfer by insolvent and transfer by transferee. *See* 1941 Dig., Col. 1022. GARIBIA BIBI *v.* MATHURA PROSAD. **199 I.C. 412=14 R.C. 537.**

———**Ss. 4 and 28 (2)**—*Scope—Insolvency of Hindu father—Subsequent suit against insolvent and sons in respect of family debt—Decree against father personally and against family property in sons' hands—Sons not objecting on ground of want of leave of Insolvency Court—Right of third party to challenge decree.*

Where subsequent to the adjudication of a Hindu father as an insolvent, one of his creditors files a suit against the father and his sons in respect of a debt incurred by the father for family purposes without obtaining the leave of the Insolvency Court and obtains a decree against the insolvent personally and against the joint family property in the hands of the sons, it cannot be held that the decree in so far as it is against the sons is a nullity because leave of the Insolvency Court is not necessary under S. 28 (2) of the Provincial Insolvency Act to file suit against the undivided sons of the insolvent. It might be open to the sons to say that the suit would not be competent because leave of the Insolvency Court had not been obtained against the father and if the suit could not proceed against the father it could not proceed against them as well. Where no such objection was taken by the sons on that ground and they have

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submitted to a decree being passed, it is not open to the Official Receiver or to any third party to take any objection in regard thereto or to have it declared that the decree is a nullity. The decree having been obtained against the sons without protest and having become final, it is not open to third parties including the Official Receiver to challenge the validity of the decree in proceedings under S. 4 of the Act. (*Venkataramana Rao and Horwill, JJ.*) NAGAPORTHAROW *v.* SUBBAROW. **202 I C. 17 = 15 R M. 423 = 1942 M W.N. 69 = 55 L W. 101 = A.I.R. 1942 Mad. 360 = (1942) 1 M.L J 177.**

——**Ss 4 (2) and 5 (1)**—*Applicability*—"*Final*"—*Application for declaration if title to property claimed by Official Receiver as part of insolvent's estate and to restrain sale by Receiver—Dismissal for default—Separate suit on title—If barred.*

Where an application under Ss. 4 and 5 of the Provincial Insolvency Act asking for a declaration that a particular property sought to be sold by the Official Receiver as that of the insolvent really belongs to the applicant and for an injunction restraining the Official Receiver from including it in the estate of the insolvent and selling it is dismissed not on the merits, but for default of appearance, and an application for restoration is also dismissed, a separate suit by the applicant setting up his title is not barred under Ss. 4 and 5 of the Act. The dismissal of the application for default and not on the merits is not "decision" which is final within the meaning of S. 4 (2) of the Act. Further, S. 5 (1) of the Act applies only to proceedings under the Act and does not bar a separate suit. Nor would the suit be barred by the equitable principle of election which is only a special application of the general principle of *res judicata*, when the point at issue had not been considered in the earlier proceeding. (*Horwill, J.*) PAPAMMA *v.* OFFICIAL RECEIVER, CUDDAPPA **1943 M.W N. 31 = (1942) 2 M L J. 778.**

——**S. 5**—*Jurisdiction of Insolvency Court to review and vacate its own orders.*

An Insolvency Court possesses the same powers as other Civil Courts have, to correct its own error, committed inadvertently or by oversight. Where an *ex parte* order is made by the Court, vitally affecting the insolvent without notice to him, the Court on the application of the insolvent is entitled to go into the matter afresh and vacate the order if it thinks proper, especially when the original order is one that should never have been made. (*Harries, C.J. and Manohar Lal, J.*) ABDUL RAHMAN *v.* VILAYAT HUSSAIN **.23 P.L T. 697.**

——**S. 6 (c)**—*Fraudulent preference — Onus of proof.*

The onus of proving that an alienation constitutes fraudulent preference under S. 6 (*c*) of the Provincial Insolvency Act is on the party who impugns it, and the test is to see what was the dominant motive of the debtor in satisfying the particular creditor. (*Sale, J.*) DEWAN CHAND *v.* DAULAT RAM. **201 I C 200 = 15 R L. 34 = 44 P L R 96 = A.I.R. 1942 Lah. 121.**

——**S. 6 (e)**—*Execution sale—Order of adjudication—Subsequent setting aside of sale—If ground for cancelling adjudication in revision.*

The words "property has been sold in execution of a decree" in S. 6 (*e*) of the Provincial Insolvency Act seem to refer not to an indefeasible sale, but to a sale which has been actually held but which may be set aside as a result of subsequent proceedings. Where there has in fact been a sale in execution, a subsequent deposit whereby the sale is set aside or a subsequent objection founded on some material irregularity resulting in the

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setting aside of the sale, will not alter the fact that the property was sold in execution of a decree. The setting aside of the sale in the circumstances cannot, therefore, be a sufficient reason for cancelling in revision an order of adjudication based on such a sale in execution, whether it might or might not be a sufficient reason for an application for the annulment of the insolvency.

Quaere: whether an insolvency petition can be maintained on the strength of a sale which is set aside before the insolvency petition, is presented. (*Wadsworth and Patanjali Sastri, JJ.*) VENKATAKRISHNAYYA *v.* MALA KONDAYYA. **199 I.C. 793 = 15 R.M. 10 = 55 L W. 28 = 1942 M.W.N. 117 = A I R. 1942 Mad. 306 (1942) 1 M.L.J. 38.**

——**S. 9 (1) (b)**—Deferred dower—If a debt under the section—Nature of wife's interest. *See* 1941 Dig., Col. 1023. BIBI JANBI *v.* ABBAS ALI. **I L.R. (1942) Nag. 518.**

——**S. 9 (1) (c)**—*Period of three months—If a 'period of limitation'.*

Per *Iqbal Ahmad, C.J.*—A 'period of limitation' is synonymous with a 'time limit' for proceedings in a Court of law. The period of 'three months in sub-cl. (*c*) of S. 9 (1) of the Provincial Insolvency Act does impose a limit of time about the presentation of an insolvency petition and is therefore a 'period of limitation'.

Per *Dar, J*—The petition of insolvency is substantially in the nature of a plaint and the act of insolvency in substance partakes the nature of a cause of action and the condition that the petition should be presented within three months of the act of insolvency substantially provides a 'period of limitation' for the petition (*Iqbal Ahmad, C.J. Dar and Plowden, JJ.*) RAJA PANDE *v.* SHEOPU JAN PANDE. **204 I.C 1 = 1942 A L.J. 592 = 1942 A W R (H C.) 368 = 1942 A.L.W. 635 = A I.R 1942 A. 429 (F.B).**

——**S. 9 (1) (c) and General Clauses Act (1897), S. 10**—*Period of three months—Expiry during holidays—Filing of petition after reopening—If in time—Applicability of S. 10, General Clauses Act.*

Where the period of three months mentioned in S. 9 (1) (*c*) of the Provincial Insolvency Act expired during the holidays and the creditor presented his petition on the reopening day it was held that S. 10 of the General Clauses Act applied to petitions under the Provincial Insolvency Act and that the petition was in time. (*Iqbal Ahmad C J. Dar and Plowden, JJ.*) RAJA PANDE *v.* SHEOPU JAN PANDE. **204 I C 1 = 1942 A. L J 592 = 1942 A W.R. (H.C) 368 = 1942 A.L.W. 635 = A I R. 1942 A 429 (F.B).**

——**S. 16**—Scope and object of—Creditor subtituted in place of original petitioning creditor—Right to take advantage of debt of original petition—Original petitioner not qualified to file petition—Effect. *See* 1941 Dig., Col. 1023. VENKATARATNAM CHETTI *v.* VENKATAYYA. **I L.R. (1942) Mad. 316 = 201 I C 109 = 15 R M. 217 = A.I.R. 1942 Mad. 172 = (1941) 2 M.L. J. 778**

——**Ss. 17 and 38**— Adjudication after death of debtor—Legal representative if can enter into composition. *See* 1941 Dig. Col. 1023. KISANLAL *v.* GULAM DASTGIR. **I.L.R. (1942) Nag 710.**

——**S. 17**—*Scope and effect of—Order of adjudication—Appeal—Death of insolvent—Effect—Abatement—C. P. Code, O. 22, R. 4*—Actio personalis moritur cum persona.

S. 17 of the Provincial Insolvency Act makes it perfectly clear that proceedings in insolvency are not matters purely personal to the insolvent. The right to contest by appeal an order of adjudication is not a

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purely personal right of the insolvent, and an appeal does not therefore abate on the death of the insolvent under O 22, R. 4, C. P. Code. The maxim *actio personalis moritur cum persona* has no application to insolvency proceedings. (*Broomfield and Wassoodew JJ.*) KANTILAL BAPUBHAI *v.* RAJNIKANT BABU BHAI. I L R (1942) Bom 175=201 I C 188=15 R B. 63=44 Bom.L R 132=A I R. 1942 Bom 159.

——S. 24—*Debtor, if can be examined only after the examination of all witnesses of creditor.*

S. 24, Provincial Insolvency Act, does not lay down the manner in which the right to present a petition should be proved. The examination of a co-debtor may be quite enough for this purpose. S. 24 (2) does in no way connote that the examination of a debtor is to take place only subsequent to that of the examination of the creditor's witnesses. The section has no reference to creditor's witnesses at all when once proof of the right to present a petition is given though it may be by the evidence of co-debtor; the Court is entitled to examine the debtor at any time thereafter. (*Grille, C J. and Puranik, J*) MAHADEO *v.* BALMUKUND. 1942 N. L.J. 409.

——Ss. 27 (2) and 43—Scope and construction of—Insolvent applying for discharge—Default—Court if bound to annul adjudication—If can enlarge time fixed for discharge at the instance of creditor or *suo motu*. *See* 1941 Dig., Col. 1024. MUNIRUDDAULAH DILAWAR HUSAIN *v.* ABDUR RAHMAN 17 Luck. 271=199 I.C. 390=14 R O 483=A.I.R. 1942 Oudh 97.

——S. 28—*Hindu joint family—Adjudication of—Liability of minors—Extent.*

There is no doubt that the minor coparceners of a joint Hindu family cannot be adjudicated insolvents. The question, however, of the liability of the share of the minors in the joint family property in an insolvency affecting the adult members is a separate matter. The minors would not of course have any personal liability nor would their property, other than their share in the joint family property, be liable. The liability of their share in the joint family property would depend on whether the debt in question was borrowed for the joint family business. If it was in fact so borrowed, the share of the minor members can be taken possession of by the receiver in insolvency. (*Sale J.*) DEWAN CHAND *v.* DAULAT RAM 201 I C 200=15 R.L. 34 =44 P L R 96=A I.R. 1942 Lah 121.

——Ss. 28 and 37—*Scope—Decree against Hindu father—Insolvency of father—Sale of assets of father and sons by Official Receiver—Annulment of adjudication—Attachment of sons' shares in execution of decree—Subsequent order re-vesting assets in Official Receiver—Effect—Rights of attaching creditor and of receiver.*

It is well-established that the attachment of the sons' shares in a Hindu joint family property prevents the father from exercising over those shares his power to sell the property and utilise the proceeds for the discharge of his own just debts. Similarly when the shares of the sons have been attached by a creditor before the father's assets vest in the Official Receiver on the father's insolvency, the vesting in Official Receiver of the power of the father to dispose of his sons' shares for the payment of his own debts cannot enable that power to be exercised over the properties so attached. The plaintiff obtained a decree against a Hindu father on 16-12-1930. The father was adjudicated insolvent on 1932 and Official Receiver in the administration of the estate sold certain assets of the insolvent and his three sons. The plaintiff proved for his debt before 25—3—1935. Before the distribution of a dividend sanctioned by the Insolvency Court, the adjudication was annulled on

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31—3—1936 for failure of the insolvent to apply for his discharge. On 24—9—1936, one of the creditors filed an application for a re-vesting order in respect of the assets, and pending this, the plaintiff on 6—10—1936, applied to execute his decree for attachment of the sale proceeds in the hands of the Official Receiver. An interim attachment was effected, but the Official Receiver who was served with the order on 20—10 1936 preferred a claim against the attachment a month later, by which time an order re-vesting the assets in the Official Receiver had been made and the claim was allowed. The plaintiff then filed a suit to vacate the order allowing the claim.

Held, (1) that at the time of the re vesting order, the sons' shares being under an attachment by the plaintiff, the re-vesting order would give to the Official Receiver no power to sell those shares or to use the proceeds of those shares for the satisfaction of the other debts of the father (insolvent) to the extent of the attachment; (2) that so far as the insolvent father's share in the property was concerned, the re-vesting order made the amount of such sale proceeds available to the Official Receiver, and the attachment would not create a charge, nor would it make the money which belonged to the insolvent any the less his property; (3) that the claim of the plaintiff to execute the decree obtained against the insolvent as against the shares of the sons was not barred by limitation, as the decree was kept alive by S.78 of the Provincial Insolvency Act, not only as against the father but also as against the sons, as the decree could not be executed under the father's power of sale (which was vested in the Official Receiver) without the leave of the Insolvency Court; (4) that under S. 37 (1) of the Provincial Insolvency Act, on the annulment of the adjudication, the proceeds of the sale would revert to the insolvent or his sons, as the case may be, and in either case the proceeds would be out of the reach of the Official Receiver by reason of the attachment effected before the re-vesting order began to operate. (*Wadsworth and Patanjali Sastri, JJ.*) OFFICIAL RECEIVER OF GUNTUR *v.* LALCHAND KUSHALCHAND. 1942 M. W.N. 470=A I R. 1943 Mad. 94.

——S 28 (1) and (2)—*Palampat land—What vests in the receiver.*

An insolvent is under S. 28 (1) of the Provincial Insolvency Act required to aid the Court 'in the realisation of his property'. Property here includes moneys received by way of income. Though palampat land granted for the purpose of maintenance does not pass to the Court on insolvency, the same does not apply to income from it (*Stone, C. J. and Rose, J.*) VASANTRAO *v.* UTTAM RAO. I L R. (1942) Nag. 714=200 I C. 524=15 R.N. 1=1942 N.L.J. 246=A I.R. 1942 Nag. 83.

——S. 28 (2) and (4)—*Adjudication order—Receiver not appointed—Proceedings by creditor—District Judge—If necessary party.*

Under S. 28 (2) of the Provincial Insolvency Act all the property of the insolvent vests in the Court. If no receiver is appointed, all future property of the insolvent including future salary vests in the Court. If any creditor takes any proceedings against the insolvent by way of suit or appeal, the District Judge (the Insolvency Court) must be made a party to such proceedings. (*Harris, C.J. and Manohar Lall, J.*) B. N. RY. EMPLOYEES' URBAN BANK LTD. *v.* E. W SEAGER. 201 I C 342=15 R P 47=8 B.R. 789=23 Pat.L T. 35=A I R 1942 Pat. 307.

——S 28 (2)—*Applicability—Insolvency of Hindu father—Suit against son for debt borrowed by father*

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for family purpose—Leave of Insolvency Court—Necessity—Official Receiver—If necessary party.

Leave of the Insolvency Court under S 28 (2) of the Provincial Insolvency Act is not a condition precedent to the filing of a suit against the son of a Hindu insolvent in respect of a debt incurred by the father for the joint family business of both. Where there has been a severance of interest between the father and son before the order of adjudication, the power of the father to sell the son's interest in the family property ceases, and will not therefore vest in the Official Receiver. Hence to a suit by the creditor against such a divided son for recovery of his debt, the Official Receiver in the father's insolvency is not a necessary party. (*Venkataramana Rao and Abdur Rahman, JJ.*) MURALI MOHAN REDDI *v.* BRAHMAVVA. **201 I C. 782=15 R.M 404 =A.I R. 1942 Mad. 327=(1942) 1 M L J. 173.**

——**S.** 28 (2)—Applicability—Transfer by debtor before adjudication—Suit by creditor to set aside under S. 53 T. P Act, after insolvency—Leave of Insolvency Court—Necessity. *See* 1941 Dig., Col. 1025. CHIDAMBARAM CHETTIAR *v.* SELLAKUMARA GOUNDAN. **I. L.R. (1942) Mad. 1=197 I.C. 599=14 R.M. 370= (1941) 2 M.L J. 684 (F.B.)**

——**Ss.** 28 (2), 51 and 52—*Attaching creditor of insolvent's property — Is entitled to priority over Receiver.*

S. 28 (2) of the Provincial Insolvency Act read with Secs. 51 and 52 indicate that an attaching creditor of the insolvent's property has no priority over the receiver in insolvency. It is based on the principle that an attachment creates no charge on property and once an adjudication order is passed which relates back to the date of the presentation of the application for insolvency the attaching creditor is relegated to the same position as other creditors by reason of the combined effect of Sec. 28 (2) and Ss. 51 and 52 of the Act. (*Grille, C.J and Puranik, J.*) LAXMINARAYAN *v.* DINKAR SHANKER RAO. **1942 N.L.J. 599.**

——**S.** 28 (2)—*Joint Dayabhaga family—Insolvency of manager—His power to sell interest of other co parceners—If vests in receiver.*

On the insolvency of the managing member of a joint Dayabhaga family who is not and cannot be the father his power to sell or mortgage the interest of other coparceners for satisfaction of joint debts does not vest in the receiver under S. 28 (2) of the Provincial Insolvency Act. The receiver therefore has no power, by virtue of the adjudication alone, of alienating the share of the other coparceners. (*Mukherjea and Blank, JJ.*) BEJOY KUMAR SAHA *v.* RAMAPATI RASU. **I L.R. (1942) 2 Cal 413=203 I C. 154=15 R.C. 395=46 C.W.N. 808=A.I.R. 1942 Cal. 533.**

——**S.** 28 (2)—*Property—Insolvency of Hindu joint family manager—Power to sell family assets to discharge family debts—If vests in receiver in insolvency.*

Under the Provincial Insolvency Act on the adjudication of the manager of a joint Hindu family as insolvent, his power to sell family assets to discharge debts which are payable out of the joint estate does not vest or devolve on the Official Receiver as such power cannot be regarded as property under S. 28 (2) of the Act Such power vests under S. 52 of the Presidency-Towns Insolvency Act, which sections, however, has no counterpart in the Provincial Insolvency Act. (*Leach, C.J Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) RAMASASTRULU *v.* BALAKRISHNA RAO. **203 I.C 507=15 R M 647=55 L W. 618=1942 M.W N 654 =A I R. 1942 Mad. 682=(1942) 2 M.L.J. 457 (F.B.).**

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——**S.** 28 (2)—Scope and effect—Bar on rights of creditor. *See* 1941 Dig. Col 1025. GARIBIA BIBI *v.* MATHURA PROSAD. **199 I.C. 412=14 R.C. 537.**

——**S.** 28 (4)—Scope and effect—Decree for costs in favour of insolvent after adjudication—If vests in Official Receiver—Right of insolvent to assign. *See* 1941 Dig., Col. 1025. SATYANARAYANAMURTHI *v.* PAPAYYA. **200 I.C. 691=15 R.M. 107=(1941) 2 M. L.J. 834.**

——**S** 28 (4) **and** (5)—*Scope—Employee in private press—Salary less than Rs. 75 per month—Order of adjudication—Direction on insolvent to pay into Court Rs. 15 per month out of salary—Legality.*

The appellant, an employee in a private press on a monthly salary of Rs. 75, was adjudicated an insolvent on his own application. The Court while making the order of adjudication directed the appellant to pay into Court out of his salary Rs. 15 per month for one year.

Held, that the salary of the appellant was exempt under S 60 (1) (*h*), C P. Code, read with S. 28 (5) of the Provincial Insolvency Act, as it was less than Rs. 100 per month, and it was not therefore open to the Court to make this order. S. 28 (4) of the Provincial Insolvency Act must be read with S 28 (5). (*Harries, C. J. and Meredith, J.*) RAGHUNANDAN SAHAI *v.* JAIGOBIND SAHAY. **20 Pat. 866=199 I C 635=14 R. P 601=8 B R 554=1942 P W N 38=23 P L.T 400=A.I.R. 1942 Pat. 194.**

——**S** 28 (5)—Applicability—Masjid service inam lands—Insolvency of holder—Right of Official Receiver to hold and let out for rent *See* GRANT—SERVICE INAM. **(1942) 2 M L J 504.**

——**Ss.** 33 (3) **and** 64—*Relative scope and effect of —Adjudication and discharge—Absence of proof of any debt—Right of a creditor to claim his debt.*

The provisions of S. 33 (3) of the Provincial Insolvency Act and S. 64 of the same Act are not necessarily irreconcilable. It is not laid down in S. 33 (3) that the debt of a creditor must be proved before discharge. The rule is that the application to be included in the schedule must be made before that time and that it must be accompanied by proof of the debt. It may be that the proof is not considered sufficient by the receiver and, if that is so, there is no reason why further proof should not be provided after the discharge of the insolvent. The provisions of S 64 are subject to the rule laid down in S. 33 (3). They are provisions for the final distribution of assets of the insolvent and this distribution may or may not take place before an order of discharge is passed. If the distribution is to take place after the order of discharge, there would be no question of proof by any person who had not already made application supported by such proof as he himself thought sufficient under S. 33 (3) of the Act. Where there is an adjudication and a discharge before there is any proof of any debt and there has been no application by any creditor, it would be too late for a creditor thereafter to apply to the Insolvency Court to include his debt in the schedule and ask for its discharge by the disposal of any property which might be found to belong to the insolvent. (*Allsop and Verma, JJ.*) JAGDAMBA PANDE *v.* RAM KHELAWAN UPADHYA. **203 I C. 81 =15 R.A. 225=1942 A.W R. (H.C.) 283=1942 A.L. W. 508=1942 A.L J. 399=A.I.R. 1942 A. 344.**

——**Ss** 34 (2) **and** 44 (2)—*Construction and scope —Liability of insolvent to indemnify surety—If extinguished on discharge.*

The liability of a debtor to indemnify his surety, though contingent is one provable in the insolvency of the debtor and consequently under S. 44 (2) of the Provincial Insolvency Act, an order of discharge granted in

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the insolvency proceedings absolves the insolvent from his liability to the surety. (*Kuppuswamy Ayyar, J.*) NALLAYYA GOUNDAN *v.* MARAPPA GOUNDAN. 204 I C 248=1942 M W N 678=55 L.W. 726=A.I.R. 1942 Mad. 745 (1)=(1942) 2 M.L J. 626.

——Ss. 34 (2) and 44. (2)—"*Provable debt*"—*Contingent liability of member of Co operative Society not proved—Discharge of member—Effect of—Subsequent order of liquidator assessing his contribution—If* ultra vires—*Power of Civil Court to refuse execution—Co-operative Societies Act, S.* 42 (2) (*b*) *and* (5).

The liability of a member of a Co-operative Society to contribute to the assets of the society in the event of its being dissolved before or during insolvency is a contingent liability and as such a debt provable in insolvency under S. 34 (2) of the Provincial Insolvency Act. The liquidator should either prove it or have it excluded from the schedule under S. 33 if it comes within the provisions of that section. If he does not do so, the member's liability for such debt ceases on his being granted a complete discharge by the Insolvency Court as expressly provided in S. 44 (2) of the Act. An order of the liquidator assessing the contribution of a member under S.42 (2) (*b*) of the Co operative Societies Act after he is granted a complete discharge will be in excess of the limit of his jurisdiction and therefore a nullity, and the Civil Court can decline to execute the order under S 42 (5) of that Act. (*Tek Chand and Beckett, JJ.*) ABDUL GHANI *v.* ANJUMAN IMDAD QARZA RAHMI 202 I C 689=15 R.L. 156=44 P.L.R. 376=A I.R. 1942 Lah 237.

——(as amended in 1935), S. 35—*Scope—If retrospective.*

S. 39 of the Provincial Insolvency Act as amended in 1935 is retrospective and applies to pending proceedings. (*Venkatarimma Rao J.*) VEMANNA *v.* SANJEEVA REDDI. 202 I C 565=15 R.M 528=(1942) M W N 202=A.I.R. 1942 Mad. 474=(1942) 1 M.L. J. 511.

——Ss. 37 and 41—*Adjudication on debtor's petition—Order of discharge on ground of creditors not proving debts—Effect—Power of Official Receiver to sell properties of ex insolvent several years later on creditor's application.*

Where an order of absolute discharge is granted to an insolvent who was adjudicated on his own application on the ground, *inter alia*, that no creditor had proved his debt before the Official Receiver, that means in effect that there is no chance of any administering of the insolvent's property. The administration of the insolvency is brought to an end by the Court's order granting the order of absolute discharge; and there is no longer any power in the Official Receiver to bring any of the properties of the ex insolvent to sale, on the application of a creditor made several years later, on the ground that the insolvent at the time of the discharge was possessed of assets. (*King and Byers, JJ.*) DESIKACHARI *v.* OFFICIAL RECEIVER, CHINGLEPUT. 1942 M W N 551=55 L W. 561 (2)=A.I.R. 1943 Mad. 26=(1942) 2.M.L.J. 714.

——S. 37—*Appointee—Powers and functions—Vesting order—Effect of.*

The appointee in whom the estate of the insolvent is vested under S. 37 of the Provincial Insolvency Act on his adjudication being annulled, is not a mere passive trustee for the debtor retaining the estate for the benefit of the latter, subject to any order of attachment and sale that might be obtained at the instance of any creditor. The word 'vest' as used in the section connotes much more than physical custody or detention. It means that the title of the debtor inheres in the appointee, and

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he has the power to deal with the property. The purpose of "vesting" must be the distribution of the assets amongst all the creditors of the ex-insolvent and that is the only way of fulfilling the object for which the annulment order was made. The appointee therefore is to hold the estate of the debtor till it is completely administered, in accordance with the principles recognized in insolvency laws. It is true that all the provisions of the Insolvency Act may not be made applicable and the appointee may not have all the powers of the Receiver in insolvency, but the general principles of distribution embodied in the insolvency laws, which are based on broad principles of equity and justice, can certainly be applied. (*Mukherjee and Blank, JJ.*) BAIKUNTHA NATH HALDER *v.* KISHORE MOHAN BANERJEE. 47 C.W.N. 74.

——S 37—Power of appointee. *See* 1941 Dig., Col. 1026. NIZAM KHAN *v.* HUKAM CHAND. I.L.R. (1942) Lah. 330=197 I.C. 564=14 R L. 252.

——S 37—Scope—Decree against debtor before adjudication—Annulment of adjudication for failure to apply for discharge—Execution of decree and realization by creditor—Subsequent order of vesting under S. 37—Effect of on fruits of execution. *See* 1941 Dig., Col. 1027. VEERAYYA *v.* KOTI REDDI. 199 I.C. 480=14 R.M. 588=(1941) 1 M.L.J 537.

——S 37—Scope—Vesting order under—Effect of. *See* 1941 Dig., Col 1027. CHANDRAYYA *v.* CHINNAPPA REDDI. 200 I C. 492=15 R.M. 69.

——Ss. 37 and 43—Vesting order after annulment—Jurisdiction of Insolvency Court. *See* 1941 Dig., Col. 1027. NIZAM KHAN *v.* HUKAM CHAND. I.L.R. (1942) Lah. 330=197 I.C 564=14 R.L 252.

——S. 37—*Vesting order—Effect of—Person appointed under—Legal status and position of—Execution sale of debtor's property—Person appointed under S.* 37 *not brought on record—Effect on sale.*

Where the Court passes an order under S. 37 of the Provincial Insolvency Act vesting the property of the insolvent in the Official Receiver or some one other than the debtor, there is no reversion of the debtor's property to the debtor. The only person entitled to represent the estate of the debtor after such an order is the appointee under S. 37. An execution sale of the debtor's property held thereafter with notice to and without impleading the appointee under S. 37 is therefore null and void, and the purchaser gets no title under the sale. (*Somayya, J.*) VENKATASUBBIAH *v.* VENKATASUBBIAH. 203 I.C. 516=15 R.M 655=1942 M.W. N. 114=A I.R. 1942 Mad. 371=(1942) 1 M.L.J. 311.

——S. 37—Vesting order under—Subsequent decree against insolvent and Official Receiver obtained by one creditor—Effect—Payment of money to creditor by receiver under order of executing Court—Power of Insolvency Court to order refund. *See* 1941 Dig., Col 1027. CHANDRAYYA *v* CHINNAPPA REDDI. 200 I.C 492=15 R.M. 59.

——S. 37 (1)—Effect of—Insolvency of Hindu father—Sale of assets—Annulment of adjudication—Absence of vesting order—Attachment of share of insolvent's sons in execution of decree against insolvent alone—Effect—Subsequent order re-vesting assets in Official Receiver—Power of latter to sell sons' shares. *See* PROVINCIAL INSOLVENCY ACT, Ss 28 AND 37 (1). 1942 M W N. 470.

——S. 37 (1)—*Form of order—Order annulling adjudication and directing Official Receiver to deal with property—If proper.*

Where upon the absence of the insolvent on the day fixed for hearing his application for discharge, the

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Court annulled the adjudication and directed the Official Receiver to deal with the estate of the insolvent without making any vesting order.

Held, that although the order was not in conformity with S. 37 of the Provincial Insolvency Act, what it really meant was that the Official Receiver was to be the person in whom the debtor's property was to vest, and that the defect was not one of substance but of form. (*Mukherjea and Blank, JJ.*) BAIKUNTHA NATH HALDER *v.* KISHORE MOHAN BANERJEE. 47 C.W.N. 74.

——S. 38 (2) and (7)—Proposal for composition—Non-acceptance by creditors—Approval by Court under S. 38 (7)—Justifying circumstances. *See* 1941 Dig., Col. 1028. KESHEORAO *v.* NARAYAN. 199 I.C. 151=14 R.N. 270.

——Ss 39 and 37—*Composition scheme sanctioned and embodied in the order—Non-compliance with terms by debtor—Power of insolvency Court to execute order—Annulment, if should be set aside.*

Where a composition scheme sanctioned and embodied in the order provided for the deposit by the debtor of a certain sum in instalments and the latter defaults in complying with the order it is open to the insolvency court, on an application by the creditor, to proceed as in execution and enforce its own orders. There is no need in such a case to set aside the annulment (*Rose, J.*) RATANLAL *v.* POONAMCHAND. I.L.R. (1942) Nag. 732=202 I.C. 135=15 R.N. 69=1942 N.L.J. 313=A.I.R. 1942 Nag. 97.

——S. 39—*Scope—Scheme imposing obligation upon one creditor to give up claim against another creditor—Validity and binding character.*

The Court by approving of a scheme cannot impose an obligation upon one creditor to give up his claim against another creditor; S. 39 of the Provincial Insolvency Act cannot cover the case of debts due to one creditor of the insolvent by another. Where in a scheme put forward by the insolvent there is a proposal that in consideration of the receipt of enhanced dividends, certain creditors should give up their claims against the surety (another creditor) and this is not consented to by the creditors concerned, it cannot be binding upon them under S. 39, although the scheme has been assented to by the requisite number and value of the creditors. (*King and Patanjali Sastri, JJ.*) PARAMASIVAM *v.* CHENCHURAMIREDDY 203 I.C. 574=55 L.W. 172=1942 M.W.N. 140=A.I.R. 1942 Mad. 345=(1942) 1 M.L.J. 316.

——S. 41 (a), (b) and (c)—*Order of conditional discharge—Operation of—Power of Court to revoke order.*

Under S. 41 (*a*), (*b*) and (*c*) of the Provincial Insolvency Act, the discharge may be either absolute or suspended or conditional. If the discharge is absolute, it must obviously come into operation at once. If the discharge is suspended, then obviously it does not come into operation at once but it does automatically come into operation at the end of the specified time. A conditional discharge operates immediately but the insolvency proceedings are not terminated until the conditions imposed have been fulfilled. The Insolvency Court has power to vary the conditions which it has imposed, although it can not revoke the order of discharge. (*Dalip Singh and Sale, JJ.*) SADHU SINGH *v.* MUNSHI RAM. 202 I.C. 421=15 R.L. 122=44 P.L.R. 324=A.I.R. 1942 Lah. 240.

——S. 42—*Refusal of discharge—Principle underlying.*

An insolvent is responsible for incurring debts when he had no assets at all and the purpose of keeping him

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an insolvent is to make plain to the world that his credit is gone so that he cannot cause loss to creditors in the future. His credit will return to him to some extent when he is discharged. That time will be postponed unless he pays 8 as in the rupee or satisfies the Court that the absence of the requisite asset was due to circumstances for which he was not responsible. (*Stone, C. J. and Bose, J.*) VASANTA RAO *v.* UTTAMRAO. I.L.R. (1942) Nag. 714=200 I.C. 524=15 R.N. 1=1942 N.L.J. 246=A.I.R. 1942 Nag. 83

——S. 43—Effect of annulment—Pending proceedings under Ss. 53 and 54—If abate. *See* 1941 Dig., Col. 1028. NIZAM KHAN *v.* HUKAM CHAND. I.L.R. (1942) Lah. 330=197 I.C. 564=14 R.L. 252.

——S. 43—Failure of insolvent to appear on date fixed—Courses open to Court. *See* 1941 Dig., Col. 1029 NIZAM KHAN *v.* HUKAM CHAND. I.L.R. (1942) Lah. 330=197 I.C. 564=14 R.L. 252.

——S. 44—Order of discharge—Effect of—Decree of liquidator of Co-operative Society against insolvent—If can be executed. *See* 1941 Dig., Col. 1029. MOLAR *v.* CO-OPERATIVE CREDIT SOCIETY OF SAMBHALKA. 198 I.C. 627=14 R.L. 341.

——S. 44—Scope and effect—Decree against debtor—Subsequent adjudication of debtor—Attachment of house in execution—Claim by wife—Dismissal—Suit to set aside—Dismissal—Subsequent order of discharge—Effect on decree—Debt—House if can be seized and sold. *See* 1941 Dig., Col. 1030. ABDUL KUTHUS SAHIB *v.* INAVATTULLAH SAHIB. 198 I.C. 787=14 R.M. 493=(1941) 1 M.L.J. 565.

——S. 44 (2)—Applicability—Personal liability of mortgagor—If debt provable in insolvency—Application for personal decree under O. 34, R. 6, C. P. Code, after order of absolute discharge in insolvency of mortgagor—If lies. *See* 1941 Dig., Col. 1030. ATHIAPPA CHETTIAR *v.* IBRAMSA PULAWAR. 201 I.C. 384=15 R.M. 331=A.I.R. 1942 Mad. 151=(1941) 2 M.L.J. 690.

——S. 44 (2)—*Applicability—Secured creditor—Security not realised during pendency of insolvency proceedings—Unconditional order of discharge—If bars remedy of creditor to obtain personal decree against mortgagor.*

By reason of the provisions of S. 47 of the Provincial Insolvency Act, the debt of a secured creditor is not provable until he has realised his security or has abandoned it or valued it. Until one of these events has happened there is no debt provable in the insolvency proceedings during the pendency of those proceedings, and S. 44 (2) of the Act has therefore no application. If a secured creditor has not during the insolvency proceedings realized his security, or surrendered or valued it, S. 44 (2) cannot affect him, as it applies only to debts provable in insolvency, and he is entitled to get a personal decree against the insolvent after he has got an order of absolute discharge, in respect of the balance due to him after sale of the mortgaged property. If he has realized his security before the discharge of the insolvent, and there is a deficiency, the balance of the debt constitutes a debt provable in the insolvency, and S. 44 (2) will operate to cancel it, and the creditor cannot afterwards obtain a personal decree in respect of such balance. (*Leach, C. J. and Happell, J.*) CHOKKALINGA MUDALI *v.* MANICKA MUDALI. I.L.R. (1942) Mad. 448=201 I.C. 407=15 R.M. 333=54 L.W. 741=1942 M.W.N. 134=A.I.R. 1942 Mad. 273=(1942) 1 M.L.J. 11.

——S. 44 (2)—"Debts provable"—Insolvent's liability to indemnify surety—Nature of—Order of discharge—If extinguishes liability to indemnify surety. *See*

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PROVINCIAL INSOLVENCY ACT, SS. 34 (2) AND 44 (2). 55 L.W. 726=(1942) 2 M L J. 626.

——S. 50—*Scope—Payment of dividend—Subsequent application to expunge name of creditor from list of creditors—Competency—Power to direct creditor to bring back dividend.*

A creditor to whom a dividend has been paid cannot be directed to bring back the amount merely by reason of the fact that subsequently the name of the creditor is expunged from the list of creditors. Where after the payment of a dividend an application is made under S. 50 of the Provincial Insolvency Act for expunging the name of the creditor from the list of creditors, if there are no other assets to be realized by the Official Receiver and no prospect of any further dividend, an inquiry into the merits of the application is wholly unnecessary. (*Somayya, J.*) GANGARAJU *v.* LAKSHMINARAYANAMURTI. I.L.R. (1942 Mad. 879=203 I.C. 246=15 R.M. 610=1942 M.W.N. 467=A.I.R. 1942 Mad. 644=55 L.W. 504=(1942) 2 M.L.J. 202.

——S. 51—*Construction and scope—Decree-holder purchasing property of judgment-debtor insolvent in execution of decree—Liability to pay bid amount to Official Receiver—Right to treat sale as cancelled and to restore property to Official Receiver.*

There is no scope under S. 51 of the Provincial Insolvency Act for the passing of an order directing a decree-holder to restore to an Official Receiver property which he has purchased at an execution sale Where a decree-holder has purchased the judgment debtor's property with leave to bid and set off in execution of his decree against the judgment-debtor the intervention of insolvency can never bring about a cancellation of the execution proceedings including the sale. The benefit of the execution represents the bids made at a sale or assets realized otherwise in the execution. The decree-holder cannot therefore claim the right to hand back the property to the Official Receiver instead of paying the bid amount into the hands of the Official Receiver. (*King and Happell, JJ.*) BHIMAJI MOTIJI *v.* OFFICIAL RECEIVER, BELLARY. I.L.R. (1942) Mad. 635=1942 M.W.N. 176=201 I.C. 686=15 R.M 359 =55 L W. 134=A.I.R. 1942 Mad. 425=(1942) 1 M.L.J. 306.

——S. 51—*Scope and effect of—Receiver if can question execution sale of insolvent's property held after presentation of petition.*

The effect of Sub-sec. (1) and (2) of S. 51 of the Provincial Insolvency Act is that the Receiver in Insolvency is in any event entitled to the assets realised after the date of the admission of the petition and that he is entitled even to the property of the insolvent if he can successfully challenge the good faith of auction purchaser in a sale held subsequent to the presentation of the petition in insolvency. The only adverse effects which S 51 has on the rights of the receiver are firstly, that if any assets have been realized in execution of a decree before the date of admission of the petition the receiver will have no right to prevent the decree holder from getting the benefit of those assets even if they are in the hands of theCourt and have not boen paid over to the decree-holder before the date of the admission of the petition by the Insolvency court; and secondly that an auction purchaser who can establish good faith can acquire a good title against the receiver. (*Allsop and Verma, JJ.*) BRIJ BEHARI GUPTA *v.* BUDH SEN I.L.R. (1942) A 421=202 I.C. 7=15 R.A. 95=1942 A.L.J. 437=1942 A W R. (H.C.) 162=1942 A.L W. 368=A.I.R 1942 A. 263.

——S. 51 (1)—"Benefit of the execution"—Meaning of—"Date of admission of the petition"—What is—

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Amount directed to be refunded to Official Receiver—Right to interest on. *See* 1941 Dig., Col. 1031. SAMBASIVA AYYAR *v.* OFFICIAL RECEIVER, WEST TANJORE. 201 I.C 238=15 R.M. 277=A.I.R. 1942 Mad 88=(1941) 2 M.L.J. 918.

——S. 51 (1)—*Date of admission of insolvency petition—Execution sale of property in separate lots—When complete—Payment of balance sale price of all lots—If necessary—Refund by decree-holder—Right to deduct costs of suit—Interest—Inherent power to award.*

In admitting an insolvency petition all that the Court is concerned with is to see whether the petition itself complies with the requirements of the law. If it does, then it admits it. It cannot be said that such a petition must be deemed to have been admitted only on the date when the costs of publishing the notice of the petition are paid. Where properties are sold in execution in separate lots, the sale of each lot is complete when the whole of the balance of the purchase money of each lot is deposited in Court. There is no justification for holding that the assets cannot be deemed to be received by the Court until the purchase consideration for all the lots have actualiy been deposited into Court. The decree-holder is bound to return to the Official Receiver under S. 51 of the Provincial Insolvency Act the purchase price for that lot in respect of which the balance has been paid only after the admission of the insolvency petition. He can, in so refunding, deduct from the amount merely the costs of the execution proceedings and not the costs of the suit out of which the proceedings arose. The Court can, in a case of this kind, direct the refund to be made with interest under its inherent powers. (*Leach, C.J. and Byers, J.*) OFFICIAL RECEIVER, WEST TANJORE *v.* SAMBASIVA AYYAR. I.L.R. (1942) Mad. 757=1942 M.W.N. 498=55 L. W. 436=A.I.R. 1943 Mad. 118=(1942) 2 M.L.J. 178.

——S. 51 (3)—Applicability—Execution sale of insolvent's property after adjudication—"In all cases." meaning of. *See* 1940 Dig., Col 1062. MOTILAL *v.* NATHU I.L.R. (1942) Nag. 377.

——S 51 (3)—*Applicability—If confined to sales before adjudication.*

S. 51 (3) of the Provincial Insolvency Act only applies to sales which have taken place before the order of adjudication. (*Leach, C.J. and Kuppuswami Ayyar, J.*) GURAVAIAH *v.* OFFICIAL RECEIVER, NELLORE. I.L.R. (1942) Mad. 614=201 I.C. 769=15 R.M 408=1942 M.W.N 198=55 L W 119=A.I.R. 1942 Mad. 415 (1)=(1942) 1 M.L J. 283.

——S. 53—Fraudulent transfer—Transfer effected in order to put property beyond reach of son and for the benefit of mistress—If can be avoided. *See* 1941 Dig., Col. 1031. SUBRAMANIAN CHETTIAR *v.* OFFICIAL RECEIVER, WEST TANJORE. 200 I.C. 808=15 R.M. 131=A.I.R. 1942 Mad 294=(1941) 2 M.L J. 212.

——Ss. 53 and 54—*Proceedings under—Scope of—Dismissal of application to cancel transfer—Appeal—Jurisdiction of appellate Court to annul adjudication on ground of failure of debtor to apply for discharge within time fixed.*

In an appeal before the District Judge against an order dismissing an application by the Official Receiver in insolvency to annul transfers made by the insolvent debtor under Ss. 53 and 54 of the Insolvency Act, it is not open to the District Judge to annul the order of adjudication on the ground that the debtor had not applied for his discharge within the time allowed by the order of adjudication. The appeal being concerned merely with the validity of the order by the lower Court refusing to annul the transfers, the District Judge can

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only deal with it on the merits and cannot usurp the function of the Court having seisin of the insolvency proceedings unless that matter specifically comes before him in appeal. (*Leach, C. J. and Byers, J.*) KAMA NAIDU *v.* GANGI REDDI. I.L.R. (1942) Mad. 862= 202 I.C. 490=15 R.M. 516=1942 M.W.N. 430=55 L W. 301=A.I.R. 1942 Mad 483=(1942) 1 M.L J. 588.

——S. 53—Valuable consideration—Good faith and consideration, want of, if necessary for annulment of transfer. *See* 1941 Dig., Col. 1032. MAJID UN-NISSA BIBI *v.* PURANCHANDRA ROY. I.L.R. (1941) All. 603

——S. 54—Burden of proof—Transaction resulting in preference of creditor—It to be presumed fraudulent preference. *See* 1941 Dig., Col. 1032. VENKAYYA *v.* OFFICIAL RECEIVER, GUNTUR. 200 I.C. 110=14 R. M. 707=(1941) 2 M.L J. 810.

——S. 54—Fraudulent preference — Intention—Proof of—Evidence of similar contemporaneous acts of preference—Admissibility. *See* 1941 Dig., Col. 1032 RAMGULZARILAL *v.* BHANUPRASAD. I.L.R (1942) Nag. 441.

——S. 54—Fraudulent preference—Shifting of onus of proof—Principles—Circumstances sufficient to shift onus. *See* 1941 Dig., Col., 1033. RAMGULZARILAL *v.* BHANUPRASAD. I.L R. (1942) Nag. 441.

——Ss. 54-A and 53—*Absence of permission of Court—Proceedings, if* ultra vires.

S. 54-A read along with S. 53 makes it clear that before an application by a creditor for annulment of a transfer referred to in S. 53 is entertained the Court must give a permission to him under S. 54-A. Without the permission the proceedings are *ultra vires*. (*Mir Ahmad, J.*) RAMJAWAI *v.* RAMI DITTA MAL. A.I.R. 1942 Pesh. 90.

——Ss. 56 (3) and 4—Third party setting up title in himself—Procedure to be followed—Meaning of expression 'has not a present right so to remove' in S. 56 (3) —Disputed title—Duty of Insolvency Court. *See* 1940 Dig., Col. 1066. PANDU *v.* WAMAN. I.L.R. (1941) Nag. 757.

——S. 56 (4)—*Liability to account—Property concerned.*

Once a receiver is appointed, all the insolvent's estate vests in him and it does not matter in the least whether the estate was in the hands of the receiver before his appointment or not. He is as much a trustee for that part of the estate as he is for property which he receives from other persons and is as much bound to account. (*Stone, C.J. and Bose, J.*) CHANDULAL *v.* RAGHUNATH DAS. 1942 N.L.J. 82.

——S. 56 (4)—*Point to be determined by Court under.*

What is necessary for the Court to determine under S. 56 (4), Provincial Insolvency Act is whether there has been any loss 'to the property' and not to the insolvent. (*Stone, C.J. and Bose, J.*) CHANDULAL *v.* RAGHUNATH DAS. 1942 N.L J. 82.

——S. 56 (4)—*Receiver—Proceedings against—Discretion—Principles governing exercise of.*

Where in the circumstances of a case there is nothing to justify a positive conclusion of fraud and nothing but a doubtful enquiry on the hands of the Court, it would not be proper to pursue the proceedings against the receiver after several abortive attempts. This is a matter of discretion and should be exercised afresh in every case. Even in criminal matters the Crown does not always prosecute a second or third time when a previous prosecution has proved abortive, if it feels that they would savour of undue harassment or persecution. It is necessary to afford those who undertake the onerous responsibilities and heavy duties of officers of the Court the same general protection. (*Stone. C.J. and Bose, J.*) CHANDULAL *v.* RAGHUNATH DAS. 1942 N.L.J. 82.

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——S 59 and T. P Act (1882), Ss 2 (d) and 54 —*Nature of sale by Official Receiver—Necessity for sale deed—Sale certificate if can be issued.*

When an Official Receiver is appointed all the property of the insolvent vests in him under the Provincial Insolvency Act and he has power under S. 59 of the Act to sell all or any part of that property. It cannot be said that, when he sells property that it is transferred by operation of law or by, or in execution of a decree or order of a Court of competent jurisdiction within the meaning of S. 2 (*d*) of the T. P Act. Even if the insolvency Court ordered the sale and acceptance of the bid which it had no jurisdiction to do, it could not make any difference in the nature of the sale. It therefore cannot be said that S. 54, T.P. Act does not apply by virtue of S. 2 (*d*) of that act and that no sale deed is necessary. As the sale is not in the course of execution proceedings a sale certificate under O. 21, R. 94 could not be issued. (*Bennet and Agarwal, JJ.*) MANGALI PRASAD *v.* ABDUR RAHMAN. 201 I.C. 286=15 R.O. 66=1942 A.W.R. (C.C.) 262=1942 O. A. 290=1942 O W.N. 396=A.I R 1942 Oudh 424.

——S. 59 (a)—Sale by receiver—Deposit of purchase money—Third party establishing title in Civil Court to property sold and obtaining possession—Purchaser's right to refund of money paid. *See* 1941 Dig., Col 1033. RAGHUBIR SARAN DAS *v.* KUNJ BEHARI LAL. I L. R. (1942) A. 120=198 I C. 397=14 R A. 282=1941 A.L.J. 765=A.I.R. 1942 All. 39

——S. 59 (a)—Sale by receiver—Nature of—Registered instrument—Necessity. *See* 1941 Dig., Col. 1034 RAGHUBIR SARAN DAS *v.* KUNJ BEHARI LAL. I.L. R. (1942) A. 120=198 I.C. 397=14 R.A. 282=1941 A.L.J 765=A.I.R. 1942 All. 39.

——Ss. 68 and 75—Official Receiver—If representative of creditors—Receiver refusing to prefer second appeal—Right of individual creditor to prefer appeal—Leave to appeal granted without notice to opposite party—If sufficient to sustain appeal—Remedy of creditor. *See* 1941 Dig., Col. 1034. KASI CHETTIAR *v.* SECRETARY OF STATE. 200 I.C. 366=15 R.M. 32 =(1941) 1 M L J. 531.

——S 68—Right to apply under—"Aggrieved"—Sale by receiver—*Locus standi* of insolvent to impeach. *See* 1941 Dig., Col. 1035. SIDRAM PANDHARINATH *v.* MAHALLYA. 197 I.C. 409=14 R.B. 214.

——S. 75—"Aggrieved"—Interpretation—Creditor's right of appeal—Order refusing to prosecute insolvent under S. 69. *See* 1941 Dig., Col. 1035. ACHHRU RAM *v.* PADAM PARSHAD. I L R. (1941) Lah 779.

——S. 75—*Appeal filed by insolvent—If abates on his death—Right of his legal representatives to prosecute appeal.*

The legal representatives of a deceased insolvent are entitled to be brought on the record after his death to prosecute an appeal presented by him against the order of adjudication. If the Insolvency Court has on a creditor's application adjudicated the deceased as insolvent in spite of his opposition, the order very materially affects his heirs and they "being persons aggrieved" by that order have a *locus standi* to appeal if the debtor had died after the passing of the order of adjudication but before limitation for preferring an appeal had expired. Again, if the insolvent himself had filed the appeal but died after its institution, there seems to be still less reason why the appeal should abate. The order of adjudication adversely affects the heirs so far as the property is concerned and the validity of the order

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can only be effectively adjudicated upon an appeal in their presence. The same consideration will apply equally, if the debtor had been adjudicated insolvent on his own application and the creditors had appealed making him a respondent but he had died. In this case also the heirs have material interest in the decision of the appeal. (*Tek Chand, Monroe and Mahomed Munir, JJ.*) BHAGAT RAM *v.* DHANPAT MAL JAWALADAS I.L.R. (1942) Lah. 746=202 I.C. 140 =15 R.L. 103=44 P.L.R. 347=A.I.R. 1942 Lah 211 (F.B.)

——S. 75—*'Order' holding that 'Court had jurisdiction to entertain applications under Madras Act IV of 1938 and posting them for trial on merits—If appealable 'order'.*

A decision upon jurisdiction has only the effect of regulating procedure and where it is not sufficient to dispose of the application hardly stands on a different footing from a ruling as to the admissibility of a document tendered or the relevancy of a question put and objected to in the course of the trial. Such decisions as to details of procedure and admissibility of evidence may, no doubt, be regarded as orders in a sense but it could not have been intended that such decisions should by themselves be open to appeal apart from the final decision disposing of the application or matter. Accordingly, an order merely holding that the Court has jurisdiction to entertain applications for scaling down debts under Madras Act IV of 1938, in respect of debts due by the insolvent and posting the applications for trial on merits, is not appealable under S. 75 of the Provincial Insolvency Act. (*Wadsworth and Patanjali Sastri, JJ.*) LAKSHMAPPA *v.* VENKATA REDDI 55 L.W. 40 (2)=1942 M.W.N. 92=A.I.R. 1942 Mad. 305=(1942) 1 M.L.J. 113.

——S. 75—Scope—If overrides O. 47, R. 7, C. P. Code—Order rejecting application for review—Appeal. *See* 1941 Dig. Col. 1035. VEERAYYA *v.* KOTIREDDI. 199 I.C. 480=14 R.M. 588=(1941) 1 M.L.J. 37.

——S. 75 (1)—Construction—"Aggrieved by a decision, etc"—It qualify creditor—Refusal of leave to creditor under S. 70 to prosecute insolvent for fraudulent suppression of assets—Right of appeal. *See* 1941 Dig. Col. 1035. LALCHAND HIRACHAND *v.* TULJARAM RAOJI I.L.R. (1942) Bom. 67=198 I.C. 424=14 R.B. 322=43 Cr.L.J. 360=A.I.R. 1942 Bom. 27.

——Ss. 75 (1) and 54 A—*Objection on ground of absence of leave of Court—If can be taken in revision.*

The point that the proceedings are *ultra vires* as no leave of Court was obtained under S. 54-A is an objection on the ground of jurisdiction which can be taken even on revision provided no evidence is required to support it. (*Mir Ahmad, J.*) RAMJAWAI *v.* RAMI DITTA MAL A.I.R. 1942 Pesh. 90.

——S. 75 (1), Second Proviso—*Scope — Second appeal—Order by District Judge in appeal setting aside order of adjudication by Subordinate Court—Second appeal to High Court, if lies.*

It is clear from the second proviso to S. 75 (1) of the Provincial Insolvency Act, that no second appeal lies to the High Conrt from an order made by the District Judge setting aside in appeal an order of adjudication passed by a Subordinate Court. Such an order cannot be said to be an order passed under S. 4 of the Act. (*Broomfield and Wassoodew, JJ.*) KANTILAL BAPUBHAI *v.* RAJNIKANT BABUBHAI I.L.R. (1942) Bom. 175=201 I.C. 188=15 R.B. 63=44 Bom.L.R. 132=A.I.R. 1942 Bom. 159.

——S. 75 (2)—*Proceeding by receiver under Ss. 54 and 53—Appeal by insolvent—If competent.*

PROV. S. C. C. ACT (1887), S. 17.

The Official Receiver in whom the estate of an insolvent vested, started a proceeding under Ss. 4 and 53 of the Provincial Insolvency Act for a declaration that certain mortgages executed by the insolvent were void and were liable to be annulled on the ground that a right to future maintenance was not alienable in law under S. 6 (*dd*) of the T. P. Act. The District Judge held that the mortgages did not come within the mischief of this provision. This order was not challenged by the Receiver, but the insolvent filed an appeal against it.

Held, that in the circumstances the insolvent could be said to be a party aggrieved by the order and an appeal by him was competent, as a question was raised which was of vital importance to him, *viz.* to what extent the monthly maintenance allowances to which he was entitled would vest in the receiver under S. 28 (5) of the Provincial Insolvency Act. (*Mukherjea and Roxburgh, JJ.*) ANIRUDDHA MITRA *v.* OFFICIAL RECEIVER. I.L.R. (1942) 1 Cal. 427=201 I.C. 568=15 R.C. 238 =74 C.L.J. 528=A.I.R. 1942 Cal. 241.

——S. 77—Jurisdiction—Sale of property by aiding Court—Claims to property sold—Jurisdiction to deal with—Absence of formal letter of request—Effect of. *See* 1941 Dig., Col. 1036. RAMAN CHETTIAR *v.* MUTHU PALANIAPPA CHETTIAR. 198 I.C. 562=14 R.M. 458=(1941) 1 M.L.J. 423.

——S. 78—Scope—Decree against Hindu father—Subsequent insolvency—Decree—If kept alive as against sons' shares in assets. *See* PROVINCIAL INSOLVENCY ACT, SS. 28 AND 37 (1). 1942 M.W.N. 470.

——S. 80—*Official Receiver acting under powers conferred by—Position of.*

Where an Official Receiver passes orders acting under powers conferred by S. 80, Provincial Insolvency Act, he acts as a Court and orders passed by District Judge on appeal from such orders are revisable by the High Court. (*Davies.*) RISHI MUNI DEVI *v.* OFFICIAL RECEIVER. 1941 A.M.L.J. 108.

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887) S. 15 and Art. 31—*Jurisdiction—Suit for damages for use and occupation after termination of tenancy—If cognizable by Small Cause Court—Contract—Breach—Damages—Right to in the absence of stipulation in contract.*

Defendant took from the plaintiff a house on a rent of Rs. 13 per month. It was agreed that in default of payment of rent the defendant was liable to be evicted on three days' notice and that interest was to be charged on rent at a particular rate. The defendant having defaulted, the plaintiff served a notice to quit, but the defendant failed to vacate. The plaintiff brought a suit for damages against the defendant in the Small Cause Court which held that it had no jurisdiction to determine the point.

Held, that the Small Cause Court had jurisdiction and could award damages. The remedy in a suit for damages for breach of a contract need not of course, be one of the terms of the contract, but becomes available under the law in case of a breach of a contract without any express stipulation. (*Dhavle, J.*) RAJESHWAR PRASAD SINHA *v.* CHUNI LAL. 198 I.C. 116=14 R.P. 386=8 B.R. 328=23 Pat.L.T. 11=A.I.R. 1942 Pat. 269.

——S. 17—Applicability—Decree amended without notice to party—Application by aggrieved party to recall order of amendment—If one to set aside *ex parte* decree. *See* C. P. CODE. S. 151.8 Cut. L.T. 105.

——S. 17—*Scope- Security bond—If to be produced within thirty days—Filing draft bond—Sufficiency.*

PROV. S C. C. ACT (1887), S. 25.

Under S. 17 of the Provincial Small Cause Courts Act, it is necessary that a registered bond should be filed in Court within thirty days; the mere filing of a draft bond is not sufficient compliance with the provision in the section requiring security to be given. (*King, J.*) KANNA KAKUP *v.* RAMAN NAYAR **55 L W. 573 = 1942 M.W N. 560 = A.I.R 1942 Mad 51 = (1942) 2 M.L.J. 425.**

——**S. 25**—Exercise of discretion under—Principle governing. *See* 1941 Dig., Col. 1038 SAM PAT SHUKUL *v.* SUBKARAN TEWARI. **17 Luck. 226 = A.I R 1942 Oudh 161.**

——**S. 25**—*Exercise of powers under—Palpable injustice and simple error of law.*

It is no doubt true that the power of revision under S. 25, Provincial Small Cause Courts Act, should be sparingly used; but where there has been a palpable injustice and a simple error of law, the High Court may well exercise its powers of revision." (*Pollock, J.*) MADHO *v.* SHAMRAO. **1942 N.L.J. 311.**

——**S. 25** — *Interference—Lower Court taking erroneous view of plaintiff's right to sue—Substantial injustice to defendant.*

Where a person has obtained a decree to which that person is not entitled by reason of the trial Court taking an erroneous view of the plaintiff's right to sue and substantial injustice is thereby done to the defendant, the High Court can interfere in revision under S. 25, Provincial Small Cause Courts Act. (*Agarwal, J.*) JAGANNATH PRASAD *v.* PARANA. **198 I.C. 98 = 14 R.O. 376 = 1941 O A. 1061 = 1941 O.W.N. 1357 = 1942 A.W R (C.C.) 8 = 1942 A.L.W. 14 = A.I.R. 1942 Oudh 202.**

——**S. 25**—*New plea—Plea, not raised in trial Court and depending on question of fact—If can be raised.*

New points depending upon questions of fact which are not raised in the trial Court cannot be entertained for the first time at the stage of revision. (*Dhavle, J.*) COMMISSIONERS OF THE PATNA CITY MUNICIPALITY *v.* KAPUR CHAND LALL. **201 I.C. 8 = 15 R.P. 25 = 8 B.R. 764 = 23 P.L.T. 407 = A.I.R. 1942 Pat. 417.**

——**S 25**—*Power of High Court to restore application dismissed for default.*

An application for revision under S. 25 of the Provincial Small Cause Courts Act which is dismissed for default of appearance cannot be restored, O. 9, R. 9 read with S. 107, C. P. Code, will not apply to such a case. In this respect there is no difference between a revision petition under S. 25 of the Provincial Small Cause Courts Act and one under S. 115, C. P. Code. (*Byers, J.*) SUBBAMMA *v.* VENKATA REDDY **1942 M.W. N. 580 = 55 L.W. 576 = (1942) 2 M.L.J. 356.**

——**S. 25**—Substantial Justice—Interference. *See* 1941 Dig., Col. 1036. DISTRICT COUNCIL, WARDHA *v.* ANNA. **I.L R. (1942) Nag 294.**

——**S. 35**—Decree by sub-Judge in exercise of small cause powers—Execution by successor without such powers—Permissibility. *See* 1941 Dig., Col. 1038 SHIAM SUNDAR DAS *v.* PARSINNI. **197 I.C. 584 = 14 R.L. 260.**

——**Sch II, Art. 8**—Applicability—Co-sharer landlord in possession of holding under S. 22 (2), Bihar Tenancy Act—Suit against by other co-sharers for money payable—Jurisdiction of Small Cause Court. *See* BIHAR TENANCY ACT, S. 22 (2). **23 P.L T. 348.**

——**Sch. II, Art. 8**—Suit for rent of site—cognizability. *See* 1941 Dig., Col 1039. MATA DIN *v.* IMDAD KHAN **A I R 1942 Oudh 145.**

——**Sch. II, Art. 13**—Applicability—Suit on pronote—Consideration dues on account of a hereditary office—Maintainability in Small Cause Court. *See* 1941 Dig., Col. 1039. GOPAL MADHORAO *v.* ACHUT SADASHEO **I.L.R. (1942) Nag 498.**

PUBLIC GAMBLING ACT (1867), S. 13.

——**Sch. II, Art. 35 (ii)**—*Applicability—Suit for damages for wrongful removal of fruit from tree—Jurisdiction of Small Cause Court.*

A suit claiming damages incurred by the plaintiff by reason of the defendant having wrongfully taken fruit from the plaintiff's tree does not fall within the ambit of Art. 35 (*ii*) of Sch. II to the Provincial Small Cause Courts Act and is not excluded from the cognizance of Small Cause Courts. (*Beaumont, C.J. ana Sen, J.*) NILKANTH GANESH *v.* DHONDYA GANU. **203 I.C. 330 = 15 R.B. 212 = 44 Bom.L.R. 733 = A.I.R. 1942 Bom. 316 (2).**

——**Sch. II, Art. 35 (11)**—*Applicability—Suit to recover jewels lent or their value—Cognizability.*

A suit for the return of certain gold bangles lent or their value is not excluded from the cognizability of Courts of Small Causes. (*Yorke, J.*) BASHIR HASAN KHAN *v.* ABRAR FATMA. **1942 A.L.W. 594.**

—— **Sch. II, Art. 41**—Cognizability—Suit by a co-sharer against other co-sharers to recover rent paid on their account—Nature of. *See* 1941 Dig., Col. 1040. SHEO SARAN *v.* SUKHRANI. **17 Luck. 67.**

——**Sch II, Art. 41**—*Manager—Meaning.*

The word 'manager' in Art. 41 of Sch. II, Provinci Small Cause Courts Act, means a recognized manage not a manager *ad hoc*. The mere fact of one perform ing acts of management for another in respect of a particular transaction, would not make him a manager. (*Collister, J.*) GOBARDHAN *v.* PREM BALLABH. **1942 A.W R. (H C.) 350 = 1942 A.L.J. 634 = 1942 A.L.W. 649 = A.I.R. 1943 A. 21.**

——**Sch. II, Art. 41 and C. P. Code (1908), S. 102**—*Applicability of Art. 41—Suit by one of the grantees of* nayabad *land to recover share of reclamation charges from the other.*

Where one of the two grantees (related as uncle and nephew) of *nayabad* land sues the other for his share of expenses incurred in the reclamation, the suit is not 'a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, within the meaning of the first part of Art. 41 of Sch. II, Provincial Small Cause Courts Act. Nor would such a suit fall under the second part of that article when it is not known whether the grantees were members of an undivided family. The ordinary presumption of Hindu Law cannot arise in the absence of any allegations and when the exact relationship is not known. A litigant wishing to invoke Art. 41 must clearly establish that the suit in every respect conforms precisely with the definition. If the amount involved in such case is less than Rs. 500, a second appeal will not lie (*Collister, J.*) GOBARDHAN *v.* PREM BALLABH. **1942 A W R (H C) 350 = 1942 A.L.J. 634 = 1942 A L.W. 649 = A I.R. 1943 A. 21.**

PUBLIC GAMBLING ACT (III OF 1867), S. 5—Guilt or Innocence of accused—If affected by legality of arrest. *See* 1941 Dig., Col. 1040. NAGARMAL, *In re*. **I.L R. (1942) Nag. 426 = 43 Cr.L.J. 89.**

——**S. 5**—Search warrant—Legality—Boundaries of place to be searched not given. *See* 1940 Dig., Col. 1074. EMPEROR *v.* GOVIND PRASAD. **I.L.R. (1942) Nag. 134.**

——**S. 13**—*'Public place'—Test—Bank of temple tank.*

The bank of a tank belonging to a temple, which is not enclosed and to which the public are allowed to have access is a "public place" within the meaning of S. 13 of the Public Gambling Act. The question

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whether any place is a public place within the meaning of this section depends upon the character of the place itself and the use actually made of it. A public place is a place where the public go, whether or not they have a right to go. (*Bhide, J.*) GURBAKHSH RAI *v.* EMPEROR. 198 I.C. 894=14 R.L. 375=43 Cr.L J. 446 =43 P.L R. 725=A.I.R. 1942 Lah. 36.

PUNJAB ALIENATION OF LAND (SECOND AMENDMENT) ACT (X OF 1938)—*Validity—Discrimination on ground of descent—Government of India Act, S.* 298 (1) *and* (2).

Per *Gwyer, C. J. and Varadachariar, J.* (*Beaumont, J.. dissenting*).—The Punjab Alienation of Land (Second Amendment) Act (X of 1938), contravenes sub-S. (1) of S. 298 of the Government of India Act so far as it makes it impossible for persons who are not descended from members of a particular community to acquire or hold on the ground of descent only, any interest in land of the kind included in the definition of the Punjab Alienation of Land Act, 1900, as beneficiaries under a benami transfer in favour of a qualified transferee, and is to that extent inoperative. The provision in the Amendment Act of 1938 which is numbered as S. 13-A of the principal Act of 1900 is clearly discriminatory and taken with the notifications issued under the Act makes a discrimination on the ground of descent only within the meaning of S. 298 (1) of the Government of India Act. A prohibition against a person acquiring or holding property as a beneficiary offends this provision quite as much as a prohibition against his obtaining a transfer of the legal title. Sub-S. (2) of S. 298 of the Government of India Act saves provisions falling within sub-S. (1) only to the extent that they prohibit the sale or mortgage of agricultural land. Other kinds of alienations prohibited by the combined operation of the Act of 1900 and the Amendment Act of 1938 fall outside the scope of S. 298 (2). Sub S. (2) of S. 298 would hit the impugned Act as it was passed after the Government of India Act had come into force, even if it should be held that that subsection had no retrospective operation. The mere fact that it is an amendment of the Act of 1900 cannot place it on the same footing as the Act of 1900. "Prohibit" in S. 298 (2) can only mean the forbidding of a transaction and such a direction is appropriate only in respect of transactions to take place subsequently to the date of direction. The benefit of S. 298 (2) cannot therefore be claimed for the impugned Act so far as it purports to avoid transactions entered into or titles acquired before the impugned Act became law.

Beaumont, J.—The Principal Act is not open to criticism on the basis that it involves a prohibition against the acquiring or holding of land on the ground of descent only, and the impugned Act cannot be impeached merely on the ground that it fortifies, the provisions of the Principal Act. In applying the terms of S. 298 (1) of the Government of India Act it is necessary for the Court to consider the scope and object of the Act which is impugned, so as to determine the ground upon which such Act is based. If the only basis of the Act is discrimination on one or more of the grounds specified in S. 298 (1) then the Act is bad; but if the true basis of the Act is something different, the Act is not invalidated because one of its effects may be to invoke such discrimination. In the present case the true object of the impugned Act is to avoid a method of evading the principal Act, which itself is unobjectionable, and although some of the rights avoided by the Act may be vested in persons whose only disqualification is lack of a particular descent, such lack of descent is not the only, or even the primary, ground on which the rights are avoided.

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Though descent has been made an element in determining the persons who fall within the description of agricultural tribes, the prohibition against alienation is based quite as much on the character of the land and the occupation of the holder, as on his descent. S. 13-A is not therefore *ultra vires*. (*Gwyer, C.J., Varadachariar and Beaumont, JJ.*) PUNJAB PROVINCE *v.* DAULAT SINGH. I.L.R. (1942) Kar. (F.C.) 86=I.L.R. (1942) Lah. 643=200 I.C. 563=15 R.F.C. 7=8 B.R 749= 46 C.W.N. (F.R) 46=45 P.L.R. 1=5 Fed.L.J. 73= A.I.R. 1942 F.C. 38.

PUNJAB ALIENATION OF LAND ACT (XIII OF 1900)—*Validity—Provisions relating to alienations other than sales and mortgages—Government of India Act, S* 298 (1) *and* (2).

Only those parts of the Punjab Alienation of Land Act are now in force in the Punjab, which relate to sales and mortgages of agricultural land and the remaining provisions of that Act prohibiting or restricting other forms of alienations, being repugnant to sub-S. (1) of S. 298 of the Government of India Act, 1935 and not being within the exception contained in sub-S. (2) of that section are no longer law after the 1st of April 1937. (*Tek Chand and Din Mahomed, JJ.*) MADHO SINGH *v.* JAMES R. K. SKINNER 203 I.C. 404=1942 F.L.J. (H.C.) 201=44 P.L.R. 382=A.I.R. 1942 Lah. 243.

——**S. 3**—*Sale to person not member of agricultural tribe without Deputy Commissioner's sanction—If void.*

A sale to a person who is not a member of an agricultural tribe without the Deputy Commsisioner's sanction is not entirely void. (*Almond, J.C.*) NAWABKHAN *v.* PIR NAZIR AHMAD. 203 I.C. 203=15 R. Pesh. 57=A I R 1942 Pesh 81

——**Ss 3 and 2 (8)**—*Sanction by Deputy Commissioner—Appeal or revision—If lies.*

Per *Dalip Singh, J.*—It does not necessarily follow from the provisions of S. 2 (8) of the Punjab Alienation of Land Act which was added by Act X of 1938 that for the future all orders of a Deputy Commissioner even under S. 3 of the Act are subject to appeal and revision. (*Tek Chand, Dalip Singh and Monroe, JJ.*) MALAWA MAL *v.* PUNJAB PROVINCIAL GOVERNMENT I.L.R. (1942) Lah. 758=202 I.C. 45=15 R.L. 86=44 P.L R 353=A I.R. 1942 Lah 194 (F.B.).

——**S. 3**—*Sanction by Deputy Commissioner—Revocation—Power of Financial Commissioner.*

Where a Deputy Commissioner had given sanction to a member of an agricultural tribe to make a permanent alienation of his land to a person who is not a member of the same tribe or of a tribe in the same group before sub-S. (8) was added to S. 2 of the Punjab Alienation of Land Act by Act X of 1938, and in pursuance of sanction so given a sale had been effected, the Financial Commissioner has no authority, *suo motu*, or on being moved by the vendor or other person, to revoke the sanction. An order revoking the sanction being *ultra vires* has no effect on the sale which had been effected. (*Tek Chand, Dalip Singh and Monroe, JJ.*) MALAWA MAL *v.* PUNJAB PROVINCIAL GOVERNMENT. I.L.R. (1942) Lah. 758=202 I.C. 45=15 R.L. 86=44 P.L. R. 353=A I.R. 1942 Lah 194 (F.B.).

——**S. 4**—*Notification No* 1380-*G dated* 13*th July*, 1904—*Word "holding"—Meaning.*

The word 'holding' in the Notification No. 1380-G dated 13th July, 1904 (issued under S. 4) is to be interpreted in the absence of any definition in the Act in its ordinary dictionary meaning and when a man is holding land for the time being as an owner but subject to the possibility of the Deputy Commissioner altering the conditions under which he holds it, he must be consider-

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ed to be a holder of land. (*Almond, J. C.*) NAWAB-KHAN *v.* PIR NAZIR AHMAD. **203 I.C. 203=15 R. Pesh. 57=A.I.R. 1942 Pesh 81.**

——**S. 4 (2)**—*Petition for decision of tribal designation of petitioner—Power of Deputy Commissioner—Incorporation of his decision in revenue records—Procedure.*

Under sub-S. (2) which was added to S. 4 of the Alienation of Land Act by the Punjab Alienation of Land (Second Amendment) Act, 1938, it is open to a person to submit a regular petition to the Deputy Commissioner for a decision on the point whether he is or is not to be deemed to be a member of an agricultural tribe If the decision of the Deputy Commissioner on such application is that the tribal designation of the petitioner is something different to that recorded in the revenue papers, it will be open to the Collector after the matter has been decided by the Deputy Commissioner to direct that the necessary steps be taken in entirely new mutation proceedings to incorporate his decision in the revenue records (*Mitchell, F.C.*) ABDUL JALIL *v.* CROWN. **21 L.L.T. 37.**

——**S. 4 (2) and (3)**—*Scope and effect—Jurisdiction of Civil Courts.*

Sub Ss. (2) and (3) of S. 4, which were added by the Punjab Alienation of Land (Second Amendment) Act X of 1938, to have been intended to do away with the former provisions of the law under which decrees of Civil Courts passed in suits brought by individuals to have it declared that they do or do not belong to a particular tribe, were binding on Revenue Officers and executive authorities. Formerly, any order relating to this matter passed by them was subject to the decree of a Civil Court. For the future, it was laid down that the matter would be decided by the Deputy Commissioner whose order would be appealable to the Commissioner or Financial Commissioner, and that in coming to a decision these officers would not be bound by decrees passed by Civil Courts in suits instituted after a certain date. There is in the amending Act nothing to indicate that Sub-Ss. (2) and (3) of S. 4 were intended to, or did in fact, cut down or otherwise affect the jurisdiction of the civil appellate Court or the High Court in dealing with cases which are brought before these Courts by the Deputy Commissioner himself under the special procedure provided for in S. 21 A. Therefore, in cases in which a question arises whether the transferor or the transferee is, or is not a member of an agricultural tribe and the materials on the record are not sufficient to come to a decision on the point, the civil appellate Court or the High Court is competent to make remands to subordinate Courts for further enquiry and report. (*Tek Chand and Beckett, JJ.*) DEPUTY COMMISSIONER, RAWALPINDI *v.* FARA MURZA. **204 I.C. 148 =44 P.L.R. 533=A.I.R. 1943 Lah. 10.**

——**S. 6 (1) (a)**—*Sale of right to possess land for 20 years—If usufructuary mortgage.*

A sale at an auction of the right to possess land for a period of 20 years on payment of a certain sum in advance, must be deemed to be a usufructuary mortgage under the provisions of S. 6 (1) (*a*) of the Alienation of Land Act and therefore liable to be redeemed under S. 7 (3) of that Act on payment of such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable. (*Mitchell, F.C.*) BABU RAM *v* SHADI. **21 Lah.L.T. 2.**

——**S. 7 (3)**—*Applicability—Mortgage of insolvent's property by receiver—Insolvent and mortgagee belonging to same agricultural tribe—Power of Deputy Commissioner to direct redemption.*

PUNJ. ALIEN. OF LAND ACT (1900), S. 16.

S. 7 of the alienation of Land Act applies solely to mortgages made by a member of an agricultural tribe in favour of a mortgagee who is not a member of the same tribe or of a tribe in the same group. This being so, the Deputy Commissioner has no authority to direct the redemption of a mortgage effected by the Official Receiver on behalf of an insolvent under the provisions of S. 7 (3) of the Act, when the insolvent and the mortgagee are members of the same agricultural tribe in the same village (*Mitchell, F. C.*) SHER KHAN *v.* SARDAR KHAN. **21 Lah L.T. 33.**

——**S 7 (3)**—*Usufructuary mortgage by Official Receiver—Power of Deputy Commissioner to terminate.*

If a temporary alienation is effected by an Official Receiver acting under the orders of an Insolvency Court on behalf of an agriculturist, the Deputy Commissioner can terminate the temporary alienation on payment of an appropriate sum under S. 7 (3) of the Alienation of Land Act, if the transaction is definitely a usufructuary mortgage. (*Mitchell, F.C.*) BABU RAM *v.* SHADI. **21 Lah L.T. 2.**

——**S. 13-A**—Validity—Discrimination on ground of descent. *See* PUNJAB ALIENATION OF LAND (SECOND AMENDMENT) ACT (X OF 1938). **5 Fed. L.J. 73.**

——**S 16**—Mortgagor declared member of agricultural tribe after passing of mortgage decree—Subsequent execution of decree—If barred. *See* 1941 Dig., Col. 1044. RAJU *v.* MANGLA **I.L.R. (1942) Lah. 464=198 I.C. 28=14 R.L. 294=A.I.R. 1942 Lah. 14.**

——**S. 16 (2) and (2-A)**—*Applicability—Temporary alienation by Official Receiver—Provincial Insolvency Act, S. 60 (2).*

By the operation of S. 60 (2) of the Provincial Insolvency Act any temporary alienation effected by the Official Receiver in enforcement of an order of adjudication is subject to the restrictions imposed on a Civil or Revenue Court executing a decree or order by Sub-S. (2) of S. 16 of the Alienation of Land Act. Similarly Sub-S. (2-A) of S. 16 of the said Act also applies to all temporary alienations by an Official Receiver in enforcement of an order of adjudication made after the coming into force of the said sub-section. This being so it follows that any lease or farm made by an Official Receiver after the enactment of sub-S. 2-A of S. 16 of the Alienation of Land Act in enforcement of an order of adjudication is subject to the restrictions imposed on similar temporary alienations in execution of a decree or order of Court by the said sub-section and that such farm or lease can be determined at any time by the owner of the land by tendering to the Deputy Commissioner a proportionate amount of the original consideration. If, however, the temporary alienation was made by the Official Receiver before the enactment of sub-S. (2 A), that is, at a time when he was not precluded from making an unrestricted lease or farm for a period not exceeding 20 years, the lessor will have no right to obtain the determination of the lease on payment of part of the original sum before the end of the period of the lease, when it does not exceed 20 years. (*Mitchell, F.C.*) KANSHI RAM *v.* ALAM SHER. **21 Lah L.T. 27.**

——**S. 16 (2 A)**—*Mortgage by Receiver of insolvent's property—If made in execution of Court's order.*

A mortgage or lease of an insolvent's property by an Official Receiver is not a transaction in execution of an order of a Court, but is an act of a person who by the operation of the insolvency law has been placed in the position which the insolvent held in regard to the pro-

PUNJ. ALIEN. OF LAND ACT (1900), S. 21.

perty in question prior to the insolvency proceedings. In other words the act of an Official Receiver in such cases has precisely the same effect as it it were an act of the original owner himself. (*Michell, F. C.*) SHER KHAN *v.* SARDHAR KHAN. **21 Lah.L.T. 33.**

——Ss 21 and 6—*Jurisdiction of Civil Court—Mortgage of land with possession before Act—After Act mortgagor taking further loan from mortgagee on security of same property on same conditions—Suit, it lies in Civil Court.*

Under S. 21 the jurisdiction of the Civil Courts is only barred in such cases in which the revenue officer is specifically empowered to deal with under the Act. Where a mortgagor having already mortgaged his lands with possession to the mortgagee before the Act takes a further advance from him after the Act on the security of the land already mortgaged to him on the same conditions as the original mortgage, such a transaction does not amount to a fresh alienation of an interest in the land and consequently the provisions of the Punjab Alienation of Land Act are not attracted and, therefore, a civil suit will lie. But if the new transaction purports to cancel the earlier one or contains conditions substantially different from those contained in the original mortgage or an additional area of land is included in the security, the old mortgage is at an end and a new and wholly different relationship between the parties is created to which the provisions of the Punjab Alienation of Land Act will be attracted. (*Almond, J.C and Mir Ahmad, J*) PUNNA RAM *v.* MAZULLAH KHAN. **201 I.C. 722=15 R. Pesh. 28=A.I.R. 1942 Pesh. 63.**

——S. 21—*Question whether particular person is member of agricultural tribe or not—Jurisdiction of civil Courts.*

The civil Courts are entitled to decide whether a particular person is a member of an agricultural tribe or not for it is only in cases where a party to a sale is not a member of an agricultural tribe that the revenue Courts' jurisdiction ousts that of the civil Courts. (*Almond, J. C.*) NAWABKHAN *v.* PIR NAZIR AHMAD. **203 I.C. 203=15 R. Pesh. 57=A.I.R. 1942 Pesh. 81.**

——S. 21-A—*Order of Subordinate Court accepting Deputy Commissioner's petition—Revision—Power of High Court—C. P. Code, S 115.*

The High Court has the power to revise an order of a subordinate appellate Court accepting the Deputy Commissioner's petition under S. 21-A of the Punjab Alienation of Land Act, provided appropriate grounds for revision are made out. The Subordinate Court will be acting illegally and with material irregularity if it does not make any enquiry of its own but merely bases its decision on a report submitted by the Naib-Tahsildar to the Collector in the mutation proceedings, and its order is, therefore, liable to be set aside by the High Court in revision. (*Tek Chand, Din Mohamad and Sale, JJ.*) FAQIR CHAND *v.* DEPUTY COMMISSIONER, JULLUNDUR. **44 P.L.R. 420=202 I.C. 437=15 R.L. 127=A.I.R. 1942 Lah. 228 (F.B.).**

——S. 21-A—*Petition by Deputy Commissioner—Enquiry into facts not apparent on record—Power and duty of Court.*

S. 21-A of the Punjab Alienation of Land Act is not limited to the correction of decrees, which on the face of the record, infringe the provisions of the Act. The section requires, the Court to "find" whether by the decree or order, which the Deputy Commissioner impugns, the provisions of the Act had been infringed, and if in order to determine this question it is necessary to go into the facts which are not apparent on the face of the record, it is not only competent to Court of revision, but it is its duty, to frame an issue, institute an enquiry and come to a decision on it. (*Tek Chand, Din Mahomed and Sale, JJ.*) FAQIR CHAND *v.* DEPUTY COMMISSIONER, JULLUNDUR. **202 I.C. 437=15 R. L. 127=44 P.L.R. 420=A.I.R. 1942 Lah 228(F.B.).**

PUNJAB COLONIZATION OF GOVERNMENT LANDS ACT (V OF 1912), S 18—*Decree against occupancy tenant—Execution—Appointment of receiver—Permissibility.*

A receiver can be appointed to liquidate a decree from the profits of the land by granting a lease for a period not exceeding seven years, although the interest in the land of the judgment-debtor cannot be attached or sold by reason of S 18 of the Colonization of Government Lands Act. (*Tek Chand and Blacker, JJ.*) KARAM DAD *v.* RAM ASRA MAL. **201 I.C. 87=15 R. L. 27=44 P.L.R. 74=A.I.R 1942 Lah. 126.**

——S. 20 (d)—*Nomination of sister's daughter' sons—Power of original tenant.*

Under S. 20 (*d*) of the Colonization of Government Lands Act, an original tenant can nominate by registered deed a successor from among his relatives. The field of selection allowed by this clause is no doubt wide and includes daughter's sons and sister's sons, but does not include sister's daughter's sons. (*Mitchell, F.C.*) EMPEROR *v.* WAZIR SINGH. **21 Lah.L.T. 11.**

——S. 20 (d)—*Nomination of successor by deceased tenant by unregistered will—Validity—Will registered after tenant's death.*

Under S. 20 (*d*) of the Colonization of Government Lands Act, the nomination of a successor by a deceased tenant by an unregistered will is not valid, although it is registered after the tenant's death. Under this provision it is necessary that the will should be registered and registered by the tenant during his lifetime. (*Penny, F. C.*) INAIT *v.* NUR MAHOMED. **21 Lah. L.T. 39.**

——S. 20 (e)—*Object of—Nomination of successor—Duty of Collector.*

Under S. 20 (*e*) of the Colonization of Government Lands Act, the Collector can nominate a successor or successors from among the persons enumerated in Cl. (*d*). The object of this provision is to enable the Collector to select one person or at any rate a very small number of persons to be responsible for the fulfilment of the conditions of the grant, for, if a large number of persons are allowed to inherit it, the enforcement of those conditions is rendered extremely difficult. (*Penny, F. C.*) INAIT *v.* NUR MAHOMED. **21 Lah.L.T. 39.**

PUNJAB COURTS ACT (VI OF 1918), S. 39—Original plaint amended with Court's permission—Nature and forum of suit and appeal—How determined. *See* 1941 Dig., Col. 1046. ABDUL HAMID *v.* KHATOON ZAMAN BEGAM. **197 I.C. 319=14 R.L. 228.**

PUNJAB COURT OF WARDS ACT (II OF 1903), S. 4 - Lease granted before Act set aside—Court subsequently ordering re-sale of lease—Fresh lease if governed by section. *See* 1941 Dig., Col. 1047. MEHR ABDULLA *v.* DASU RAM. **198 I.C. 670=14 R.L. 349.**

——S. 31 (3)—*Certificate filed in original suit—Execution, if can proceed.*

S. 31 (3) refers only to proceedings in respect of which no certificate had already been filed under S. 31 (2) either in the original suit or in the course of execution proceedings. If a certificate was filed in the original suit, execution of decree can proceed on the strength of that certificate and a fresh certificate is not necessary. (*Beckett, J.*) PUNJAB NATIONAL BANK *v.* SETH ADAMJI MAMOOJI. **203 I.C. 595=45 P.L.R. 42=A.I.R. 1942 Lah. 304.**

PUNJAB DEBTORS' PROTECTION ACT (IX OF 1938), S. 3—*Scope and effect—If invalidates transaction completed by Receiver.*

The intention of the Legislature in enacting S. 3 of the Punjab Debtors' Protection Act was to prohibit, for the future, the appointment of receivers for any of the purposes mentioned in the section and to terminate on a certain date all appointments already made; but to invalidate transactions validly entered into by them with third parties during the period of their appointment. Consequently a lease granted by a receiver before the Act came into force during the period of his appointment and within the scope of his authority, will not become inoperative from the date of the termination of his appointment under the Act. (*Tek Chand and Blacker, JJ.*) KARAM DAD v. RAM ASRA MAL. 201 I.C. 87=15 R.L. 27=44 P.L.R. 74=A.I.R. 1942 Lah. 126.

——**S. 9**—*Subsequent holder—Widow of proprietor.*

A widow of a deceased proprietor is not a subsequent holder of his estate. (*Tek Chand and Blacker, JJ.*) RAJA RAM v. LEHNA. 199 I.C. 700=14 R.L. 412=44 P.L.R. 80=A.I.R. 1942 Lah. 87.

PUNJAB EXCISE ACT (I OF 1914) S. 58—N.W.F.P. Government Notification that rules in Punjab Excise Manual shall apply to N.W.F.P.—Rules, *if ultra vires. See* 1941 Dig., Col. 1045. SHER SINGH v. EMPEROR. 197 I.C. 420=14 R. Pesh. 49=43 Cr.L.J. 169

PUNJAB GENERAL SALES TAX ACT (IV OF 1941) S. 8—*Basis of assessment.*

S. 8 of the Punjab General Sales Tax Act contemplates the assessment of a dealer for the year for which he submits, or is asked to submit, his return though the tax can of course be levied in a subsequent year. An assessment for a year cannot, therefore, be based on a return of the aggregate sales for the previous year, as this would be in conflict with the provisions of the Act itself. Further S. 8 (1), (2) and (3) read with S. 3 of the Act contemplate the taxing of a dealer on his actual turn over in any year and not on a hypothetical turn over for that year. (*Heaton, F.C.*) DEVI DAS v. EMPEROR. 21 Lah.L.T. 41.

——**S. 8 (2)**—*Legality of notice—Power of District Taxation Officer to delegate.*

The District Taxation Officer is not empowered either in the Punjab General Sales Tax Act or the rules thereunder to decide about the legality of a notice issued under S. 8 (2) of the Act. The proper, in fact the only authority to pass an order regarding the legality, propriety or regularity of any notice or proceeding under the Act (other than an order on an appeal against an actual assessment) is the Financial Commissioner. (*Heaton, F.C.*) DEVI DAS v. EMPEROR. 21 Lah.L.T. 41.

——**S. 8 (2)**—*Notice for submission of returns for any period to date—Validity.*

S. 8 read with R. 1 (3) of the Punjab General Sales Tax Act does not contemplate the submission of a return for a year prior to the 1st April, 1941, the date on which the Act came into force, and the assessment and levy of a tax on the basis of it. Consequently a notice under S. 8 (2) of the Act requiring a dealer to submit a return of the turn over of his business for the year 1940-41 is invalid. (*Heaton, F.C.*) DEVI DAS v. EMPEROR. 21 Lah.L.T. 41.

——**S. 13**—*Order framed under—Conflict between rules and Act—Which must prevail.*

The rules framed under S. 19 of the Punjab General Sales Tax Act must be treated by virtue of sub-S. (3) of that section as though they were part of the Act itself. If there is a conflict between a rule and a provision of the Act, it has to be determined which is the leading provision and which the subordinate provision, and which must give way to the other. (*Heaton, F.C.*) DEVI DAS v. EMPEROR. 21 Lah.L.T. 41.

PUNJAB LAND REV. ACT (1887), S. 31.

——**S. 19**—*Rules under, R. 5 (3)—Validity.*

Rule 5 (3) of the rules made by Government under S. 19 of the Punjab General Sales Tax Act is in conflict with the provisions of the Act itself for the reasons (*a*) that the rule contemplates the levying of a tax on the proceeds of sales effected before the coming into force of the Act, and (*b*) that it is the actual turn over in a year and not the hypothetical turn over in a year which can be taxed. In such a matter it must be the provisions of the Act itself which should be the governing consideration and that the provisions of the rules must therefore give way to those of the Act itself. (*Heaton, F.C.*) DEVI DAS v. EMPEROR. 21 Lah.L.T. 41.

PUNJAB LAND RECORDS MANUAL Chap. II, R. 16—*Order reverting person from officiating appointment—Order of appointment to selection post—Appealability.*

Under R. 16 of the Kanungo Service Rules in Chap. II of the Land Records Manual no appeal lies from an order of a Deputy Commissioner reverting a person from an officiating appointment as a District Kanungo or from an order of appointment to the selection post of District Kanungo. (*Mitchell, F.C.*) DAULAT RAM v. NASIR-UD-DIN. 21 Lah.L.T. 13.

PUNJAB LAND REVENUE ACT (XVII OF 1887), S. 12—Promissory note—Holder in due course being money lender—Obligation to prove consideration—Negotiable Instruments Act, S. 43. *See* 1941 Dig., Col. 1049. NUBA v. BAGAR KHAN. 198 I.C. 485=14 R.L. 333=A.I.R. 1942 Lah. 18.

——**S. 13**—*Order of Collector refusing to recommend increase in number of lambardars—Appeal, if lies.*

No appeal lies against a decision of the Collector refusing to make a recommendation to the Commissioner that he should exercise his powers under Land Revenue Rule 14 to sanction an increase in the number of lambardars in a particular estate. (*Mitchell, F.C.*) ALA-WALI v. EMPEROR. 21 Lah.L.T. 12.

——**S. 13**—*Discretion of Commissioner under Land Revenue Rule 14—Exercise.*

The Financial Commissioner will not be inclined to interfere with the order of the Commissioner refusing to exercise his discretionary powers under Land Revenue Rule 14 to sanction an increase in the number of lambardars in a particular estate. (*Mitchell, F.C.*) ALA-WALI v. EMPEROR. 21 Lah.L.T. 12.

——**S. 13**—*Election proceedings—Revision—Principle.*

Election proceedings do not confer rights and it has always been the practice of the Financial Commissioner's Court to discourage petitions relating to these proceedings in revision. (*Garbett, F.C.*) BABU v. HUKMA. 21 Lah.L.T. 4.

——**S. 15**—*Lambardars' cases—Concurrent decision of Collector and Commissioner—Interference.*

The principle that in the matter of appointment of lambardars the concurrent decision of the Collector and the Commissioner should not be interfered with and the Collector's discretion should be respected, does not apply to cases in which the Collector or the Commissioner's decision runs counter to the spirit of the principle underlying the Land Revenue Rules. (*Penny and Heaton, F.C.*) FATEH-UD-DIN AHMAD KHAN v. ABDUL FATEH KARAM KHAN. 21 Lah.L.T. 47.

——**Ss. 31 and 44**—*Entry in record of rights—Presumption of truth—Statement made in Court—Statement in writing.*

PUNJAB LAND REV. ACT (1887), S. 117.

The presumption of truth attaches to the entry in the record of-rights and the annual record and it lies heavily on the person who alleges that the entry is wrong, to prove that it is so. Surati Dehi is the result of a general survey and is not a part of the record-of rights and no presumption of correctness attaches to the entries made in it. The statements made in the Surati Dehi do not purport to have been made by any person and are the result of hearsay information gathered by the Surveying Officer. They are not signed by any individual. It follows that irrespective of their being a part of record of-rights or not, they cannot be preferred to the entries made in the record-of-rights and annual records which are based on available particulars and to which a presumption of truth attaches. (*Mir Ahmad, J.*) ABDUL JABBAR *v.* AZIZUL HAQ 200 I.C. 299=15 R. Pesh. 5=A.I.R 1942 Pesh. 35

——Ss. 117, 158 (1)—*Revenue Officer deciding to determine question of title himself—Civil Court's jurisdiction—If barred.*

Once the revenue officer decides to determine the question of title himself under S 117, the jurisdiction of the Civil Court is precluded by S. 158 (1) of the Act. (*Almond, J.C.*) ABDULLAH SAID *v.* TAJ MAHOMED KHAN. 198 I.C. 618=14 R. Pesh. 71=A.I.R. 1942 Pesh 16.

——S. 127 (2) (d) - *Reference to arbitration—Discretion of Assistant Collector—Revision*

The power of an Assistant Collector of the 1st grade to refer to arbitration any dispute arising in the course of partition proceedings without the consent of parties under S. 127 (2) (*d*) of the Land Revenue Act, is only a discretionary power. If the Assistant Collector does not consider the case suitable for the use of this discretionary power, it is not possible for a revising authority to interfere when there has been no irregularity of any kind in the exercise of jurisdiction. (*Mitchell F C.*) BHAGWAN DAS *v* NARAIN DAS 21 Lah L T. 20.

PUNJAB LIMITATION (CUSTOM) ACT (I OF 1920), S 7 and Art 1—*Disposition of property by registered will—Testator living more than six years threafter—Suit by reversioner for possession—Limitation*

A person governed by custom made a disposition in ancestral immovable property by a registered will of 1925, but his reversioner did not have knowledge of the execution or contents of the will till after the death of the testator in 1935. The question referred to the Full Bench was whether his suit for possession instituted in 1937 was barred under S. 7 of Act I of 1920, because he had failed to sue for declaration within six years of the registration of the will under Art. 1 of the Act.

Held, that the suit was not barred under 7 of the Act and that the word "deed" in Article 1 (firstly) of the Act should not be construed as equivalent to the word "document" but should be construed to have its ordinary meaning which would exclude a will. (*Tek Chand, Dalip Singh and Blacker, JJ.*) SOHAN SINGH *v* JAGIR SINGH. I.L.R. (1942) Lah. 364=200 I.C. 131 =14 R.L. 444=44 P.L.R. 178=A.I.R. 1942 Lah. 114 (F B)

——Art. 1 (firstly)—'Deed'—If includes will. *See* PUNJAB LIMITATION (CUSTOM) ACT, S. 7 AND ART. 1. 44 P L R 178 (F B.)

——Art 2 and S 7—Alienation by widow—Suit for possession by collaterals—Limitation Act. Art 141. *See* 1941 Dig. Col 1050 BARKAT *v.* MAHOMED SHAFI. I L R. (1942) Lah 41.

PUNJAB MUNICIPAL ACT (III OF 1911), Ss. 18 and 238 (2)—*Supersession of Municipal Committee—Frame of suit.*

PUNJAB MUNICIPAL ACT (1911), S. 61.

The provisions of S. 18 of the Punjab Municipal Act relating to the corporate character of the Committee and the manner of suing, must be read subject to the provisions of S. 238 (2) which lays down the consequence of a supersession. Where a Municipal Committee is superseded, the person competent to take proceedings on behalf of the Municipal administration is the Administrator and even if the true view should be that he should take proceedings in the name of the Committee, failure to take proceedings in the name of the Committe is a defect purely of a formal character, which could be cured by amendment. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) ADMINISTRATOR, LAHORE MUNICIPALITY *v.* DAULAT RAM KAPUR. I.L.R. (1942) Kar. (F.C.) 34=199 I.C 331=14 R.F.C. 16=1942 A W R (F.C.) 7=1942 O A. 141=1942 A.L. W 213=1942 P W N. 135=1942 O W N 297=5 F. L.J. 27=44 P.L.R. 284=8 B.R 586=1942 M.W.N. 393=46 C.W.N. (F.R.) 69=55 L.W. 765=23 Pat. L T. 304=A. I. R. 1942 F. C 14=(1942) 2 M.L.J. 1 (F.C).

——S. 56 (g)—*Sub-soil of road owned by Government—Road, if can vest in Municipal Committee.*

A road the sub soil of which is owned by the Government cannot vest in the Municipal Committee under S. 56 (*g*). (*Almond, J. C.*) MAHOMED AKBAR KHAN *v.* PROVINCIAL GOVERNMENT. N.W F P. 197 I.C. 856=14 R. Pesh. 65=A.I.R. 1942 Pesh. 1

——S. 61—*Octroi leviable on goods imported within municipal area—Transmission of parcels from factory outside to post office within municipal limits—If amounts to "importation."*

Where the octroi is leviable by the municipality on all goods imported within the municipal area the transmission of parcels from a factory situate outside the municipal limits to the post office within the municipal limits for despatch to various destinations amounts to 'importation' and therefore an octroi duty is leviable. (*Sale, J.*) MUNICIPAL COMMITTEE JALALPUR JATHAN *v* SURAJ PARKASH. 199 I.C. 130=14 R.L. 377=44 P.L.R. 463=A I.R. 1942 Lah 11.

——S 61 2)—*Levy of octroi on salt by Municipal Administration—Validity—Government of India Act S 100 List I. Entries 44, 45 and 47.*

The imposition of an octroi duty on salt by the Municipal administration of Lahore under S. 61 (2) of the Punjab Municipal Act which empowers a Municipal administration to impose any tax which a Provincial Legislature has power to impose in the Province under the Government of India Act 1935, is invalid. Under entry 47 of List I of the Government of India Act, salt is within the exclusive jurisdiction of the Central Legislature and by virtue of S. 100 (1) a Provincial Legislature is wholly precluded from dealing with salt and imposing on it either a tax or a cess. The powers of the Central Legislature to impose duties or taxes on salt must not be limited to those derivable under entries No. 44 and 45 of List I. Entry No. 47 is in unqualified terms, therefore it is not possible to put any limitation upon the extent of exclusion of provincial interference so far as this item is concerned. The general mention of a subject as in entry No. 47 was not meant merely to give a general power of control to the Central Legislature but includes powers of taxation (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) ADMINISTRATOR, LAHORE MUNICIPALITY *v.* DAULAT RAM KAPUR I.L.R. (1942) Kar. (F.C.) 34=14 R.F.C. 16=199 I.C. 331 =1942 A W.R (F C) 7=1942 O A. 141=1942 A L. W. 213=1942 P.W N 135=5 F.L.J 27=1942 O W. N. 297=23 Pat.L.T. 304=44 P.L.R. 284=8 B.R. 586

PUNJAB MUNICIPAL ACT (1911), S. 81.

=1942 M.W.N. 393=46 C.W.N. (F.R.) 69=55 L.W. 765=A.I.R. 1942 F.C. 14=(1942) 2 M.L.J. 1 (F.C.).

———S. 81—*Application under—Amount claimable under Act—Power of Magistrate to decide.*

It is settled law in the Punjab that a Magistrate dealing with an application under S. 81 of the Punjab Municipal Act has himself power to decide whether the amount claimed is in fact an amount claimable under the Act, on objection being raised before him. (*Beckett, J.*) UTTAM SINGH v. MUNICIPAL COMMITTEE, RAWALPINDI. **199 I.C. 254=14 R.L. 395=43 Cr.L.J. 542=44 P.L.R. 4=A.I.R. 1942 Lah. 72.**

———S. 88—*Method of assessment wrong—Remedy of aggrieved party.*

The act of a municipal committee in adopting a wrong method of assessment merely amounts to an irregular exercise of jurisdiction and the aggrieved party must seek his remedy from the forum provided in the statute. The Civil Court has no jurisdiction. (*Sale, J.*) MUNICIPAL COMMITTEE, JULALPUR INTERIM v. SUBAJ PARKASH. **199 I.C. 150=14 R.L. 377=44 P.L.R. 463=A.I.R. 1942 Lah. 11.**

———S. 169 (g)—" No longer required thereto "—Discretion of committee. *See* 1941 Dig., Col. 1051. JOHRI LAL v. PURABI RAM. **199 I.C. 273=14 R.L. 317=A.I.R. 1942 Lah. 28.**

———S. 193 (4)—Applicability—Scheme sanctioned under U.P. Town Improvement Act as applied to Delhi. *See* 1941 Dig., Col. 1051. MANOHAR DEBGO v. EMPEROR. **14 R.L. 153=43 Cr.L.J. 108.**

PUNJAB PRE-EMPTION ACT (1 OF 1913) S. 3 (1) and (2—*Water rights sold independently of land—If agricultural land or village immovable property.*

A right to water can be had only if it is enjoyed by the owner or occupier of land as such, that is to say, as an owner or occupier of some land. Where the water rights have been sold independently of the land to which they originally belonged the land having been taken away by the Government the water rights cannot be said to be "land" within the meaning of S. 2 (3) Punjab Land Alienation Act, and their sale is not a sale of "agricultural land" within the meaning of S. 3 (1) Punjab Pre-emption Act. But "water rights" are immovable property for they are rights to water which is attached to the earth and therefore they are village immovable property as defined in S. 3 (2), Punjab Pre-emption Act. (*Agarwal, J.C. and Mir Ahmad, J.*) ABDUL QAYUM v. MANOHAR MANCHAN. **199 I.C. 329=14 R. Pesh. 82=A.I.R. 1942 Pesh. 18.**

———S. 15 (a)—*Burden of plaintiff—Right of legal representative to continue suit.*

Where a plaintiff in a suit under S. 15 (a) dies, it is just and equitable that his legal representatives should be permitted to continue the suit. (*Agarwal, J.C.*) SARFRAZ KHAN v. MAHOMED YAHYA KHAN. **199 I.C. 82=14 R. Pesh. 61=A.I.R. 1942 Pesh. 25.**

———S. 15 (b) 1913—Construction. *See* Cases.

PUNJAB PURE FOOD ACT (1929), S. 7.

When deciding the question of the superiority of the right of pre-emption under S. 15, cl. (*b*), *thirdly*, the Courts have only to keep in view the plaintiff and the vendee and no other relations of the vendor. They have to take it that the vendor has died and have to find out as to who of the parties before them—the pre-emptor and the vendee—is entitled to inherit his property to the exclusion of the other. The person who is so entitled has a superior right of pre-emption. If he is a pre-emptor he gets a decree; and if he is a vendee, the pre-emptor's suit is dismissed. On the other hand if it is discovered that they are entitled to inherit equally their right to pre-empt is declared to be equal and the pre-emptor fails. (*Mir Ahmad, J.C.*) MAHOMED ALI KHAN v. ZEWAR NISA. **199 I.C. 353=14 R. Pesh. 81=A.I.R. 1942 Pesh. 22.**

———S. 15 (c)—*Patti or other sub-division of estate—Meaning—Land to which water rights were attached sold—Pre-emption in respect of water rights—Kandi in which land sold was situate—If can be taken as unit for comparing rights of pre-emptor and vendee.*

The patti or other sub-division of the estate contemplated by S. 15 (*c*) normally connotes the existence of a homogenous group of persons cultivating a block of land. When the land to which the water rights were attached has been sold, the existence of a *Kandi* in relation to mere water rights is a mere fiction and therefore the *Kandi* in which the land to which the water rights were attached was situate cannot be taken as a unit for comparing the rights of the pre-emptor and the vendee in a claim for pre-emption in respect of the water rights. The water rights in such a case must be regarded as independent of the land to which they belonged. Consequently the plaintiff cannot be said to have a superior right merely because he was the owner of the land and the vendee was not. (*Agarwal, J.C. and Mir Ahmad, J.*) ABDUL QAYUM v. MANOHAR MANCHAN. **199 I.C. 329=14 R. Pesh. 82=A.I.R. 1942 Pesh. 18.**

———S. 15 (c)—*Water rights—Revenue paid—Rights, if an estate.*

Where land revenue is paid for the water rights the right to use water must be regarded as an estate within the meaning of S. 15 (*c*). (*Agarwal, J.C. and Mir Ahmad, J.*) ABDUL QAYUM v. MANOHAR MANCHAN. **199 I.C. 329=14 R. Pesh. 82=A.I.R. 1942 Pesh. 18.**

PUNJAB PURE FOOD ACT (VIII OF 1929), S. 7—*Destruction of case of ghee by Inspector after order of release by Magistrate—Legality—Inspector disobeying those instead—Suit by owner—Suit if time barred—Limitation Act, Arts. 2 and 48.*

The Inspector under the Act took into custody certain case of ghee suspecting it to be adulterated. Subsequently the Magistrate released the property as the ghee was not found to be adulterated and directed the Inspector to return the same to the owner. The Inspector instead of returning the tins destroyed the same.

Held, that (1) after that order of release it was the duty of the Inspector to see that the owner was called upon to take the tins back and it was idle to plead that it was the owner's duty to get them back. The destruction of the tins after the order of release by the Magistrate was unlawful; (2) when the Magistrate had found in his order directing the release of the ghee that the ghee was not adulterated, the Inspector could not be said to have destroyed the tins in the bona fide belief that he was entitled to do it according to the Punjab Pure Food Act which contained no provision for the destruction of goods after they were directed to be released to the owner; (3) therefore the suit to recover the tins or the

PUNJAB PURE FOOD ACT (1929), S. 11.

value thereof was governed by Art. 49 and not Art. 2, Limitation Act, and the limitation under Art. 49 ran from the date of the order of release by the Magistrate; (4) the aforesaid suit lay against the Government and not against the Municipality. (*Mir Ahmad, J.*) HARNAM SINGH *v.* N.-W. F. PROVINCE GOVERNMENT. 202 I. C. 218=15 R. Pesh. 38=A.I.R. 1942 Pesh. 57.

——S. 11—*Certificate of Public Analyst—If can be basis of conviction.*

A certificate of the Public Analyst given under S. 11 of the Punjab Pure Food Act is not sufficient on which to base a conviction. The question whether the food is adulterated or not is one for the Court to decide and not one for the Public Analyst. The form prescribed by the Act clearly contemplates that the Analyst is merely to give his opinion as to whether the article which he analyses has an excess or deficiency in constituents which are shown in Cols. 4 and 5 of the schedule attached to rule 3 of the rules framed under the Act. It is then for the Courts to come to the conclusion after considering the opinion of the analyst on this point whether the food is adulterated or not. (*Almond, J.C.*) GANDA RAM *v.* EMPEROR. 200 I.C. 880=15 R. Pesh. 16=43 Cr.L.J. 728=A I R. 1942 Pesh. 47 (2)

PUNJAB REGISTRATION OF MONEY LENDERS ACT (1938), S. 2 (8)—"Loan"—Advance without interest. *See* 1941 Dig., Col. 1053. GANDU MAL CHIRANJI LAL *v* MATU. 198 I.C. 263=14 R. L. 312=A.I.R. 1942 Lah 30.

——S. 3—Applicability—Conditions. *See* 1941 Dig., Col. 1053 GANDU MAL CHIRANJI LAL *v.* MATU. 198 I.C. 263=14 R L. 312=A.I.R. 1942 Lah. 30.

——S. 3 (a) and (b) and (cl.) (iv)—*Applicability—Pending suits—Policy of Legislature.*

The Punjab Registration of Money-Lenders Act applies only to suits instituted *after* the date on which it came into force. It specifically exempts from its operation suits pending on that date. In those cases, it is not necessary for the plaintiff to get himself registered or licensed; they are to be decided as if the Act had not been passed. Obviously, Cls. (*a*) and (*b*) of S 3 both relate to the suits which have been instituted after the commencement of the Act, and lay down that plaintiff must be registered and must hold a license either at the institution of the suit, or if he is not so registered and licensed at that time he must get himself registered and licensed during the pendency or the suit. It is clear from cl. (iv) of the section that the policy and the intention of the Legislature was not to penalise a money-lender for omission to get himself registered or licenced before the institution of the suit, but to place facilities in his way to get himself so registered and licensed before the passing of the decree. (*Tek Chand, Rhide and Din Mahomed, JJ.*) ISHAR DAS *v.* NUR DIN. 203 I.C. 564=44 P.L.R. 529=A I.R. 1942 Lah 298 F.B.).

——S. 3 (iv)—*License cancelled pending suit—Suit, if liable to be dismissed.*

If at the commencement of a suit the plaintiff is registered as a money-lender and holds a license but during the pendency of the suit the license is cancelled, his suit is not liable to be dismissed except in the particular case specifically mentioned in S. 9 (*b*) of the Act. (*Tek Chand, Rhide and Din Mahomed, JJ.*) ISHAR DAS *v.* NUR DIN 203 I.C. 564=44 P.L.R 529=A I R 1942 Lah 298 (F B)

PUNJAB RELIEF OF INDEBTEDNESS ACT (VII OF 1934), Ss 5 and 6—Preliminary mortgage decree passed before amending Act of 1940—Interest

PUNJ. REL. OF INDEBT. ACT (1934), S. 30.

if can be reduced so as to conform to latter Act—Usurious Loans Act, S. 3 (1), Proviso (*ii*). *See* 1941 Dig., Col. 1053. GHULAM MAHOMED *v.* RAJESWAR I.L. R (1942) Lah. 199=197 I.C. 353=14 R.L. 230.

——S. 13—*Discharge of debt—Order for—Power of Court to pass.*

There is nothing in the Punjab Relief of Indebtedness Act, 1934, which gives the Board power to pass an order of discharge in any circumstances at all. What is actually provided in S. 13 is that if a statement of debts is not submitted in time, the debt shall for all purposes be deemed to have been duly discharged. It is thus for the executing Court to decide whether the debt should be deemed to have been discharged by reason of any failure on the part of the decree-holder or not. If there has been any such failure, no order of the Board for discharge of the debt is necessary. On the other hand, if there has in fact been no failure it is not in the power of the Board to discharge the debt. Even if the debt has been discharged, there is a further provision that either the Board may revive it on good cause being shown, and there is nothing in the Act to provide for any further discharge after revival. (*Beckett, J.*) NAWAB *v.* MOTI RAM. 201 I.C. 118=15 R.L. 31=44 P.L.R. 224=A I.R. 1942 Lah. 164 (1).

——Ss. 13 and 9—*Sub-mortgagee—If mortgagor's creditor.*

A sub-mortgagee by way of absolute assignment who takes over the original debt along with the mortgage under a sale of the mortgagee's rights, can be regarded as a creditor of the mortgagor for the purposes of the Act, but a sub-mortgagee by way of further mortgage who holds a mortgage over the original mortgagee's interest in the property and does not take over the debt secured by the first mortgage cannot be regarded as a creditor of the mortgagor for purposes of the Act. (*Beckett, J.*) BABU RAM *v.* MOHAMMAD ALI. 199 I. C. 562=14 R. L. 414=44 P. L. R. 473=A I.R 1942 Lah. 80.

——S. 13 (2)—*Power of Board to discharge debt.*

A Debt Conciliation Board has no power to discharge a debt under S 13 (2). If a creditor fails to comply with the provisions of the Act regarding the submission of a statement of account within the prescribed time, his debt will be deemed to be automatically discharged and no order of the Board is required for this purpose. (*Beckett, J.*) BABU RAM *v.* MOHAMMAD ALI. 199 I. C. 562=14 R. L. 414=44 P. L. R. 473=A.I.R. 1942 Lah. 80.

——Ss 14 and 15-A—Question of enforceability of decree—Determination of—If determines questions of debt. *See* 1941 Dig., Col. 1054. K. L. GAUBA *v.* PUNJAB COTTON PRESS CO., LTD. 198 I.C. 125=14 R L. 302.

——S. 25—Jurisdiction of Civil Court—Enquiry into nature and value of debts. *See* 1941 Dig., Col. 1054. K I. GAUBA *v.* PUNJAB COTTON PRESS CO. LTD. 198 I.C. 125=14 R L 302.

——S. 25—*Order of Board* ultra vires—*Jurisdiction of Civil Court.*

The Civil Court has full power to hold that an order of the Debt Conciliation Board discharging debts is without jurisdiction on the ground that the value of the debts exceeded its pecuniary juri diction. (*Tek Chand and Blacker, JJ.*) RAJA RAM *v.* LEHNA 199 I.C. 700=14 R.L. 412=44 P.L.R 80=A.I.R. 1942 Lah. 87

——S. 30 (as amended)—Application under—Nature of—Court-fee payable, *See* 1941 Dig., Col.

PUNJ. REL. OF INDEBT. ACT (1934), S. 30.

1054. GHULAM MAHOMED *v.* RAJESWAR. **I.L.R. (1942) Lah. 199=197 I.C. 353=14 R.L. 230.**

——**S 30**—Application under—Proof of capacity or status of applicant—If need be apparent on record. *See* 1941 Dig., Col. 1055. JANKI NATH *v.* BISHAN SINGH. **I.L.R. (1942) Lah. 149=198 I.C. 267=14 R.L. 313 (F.B.).**

——**S. 30 (1) (as amended)**—*"Commencement of this Act"—Meaning of.*

The words "commencement of this Act" in S. 30 (1) of the Punjab Relief or Indebtedness Act of 1934 as amended by Act XII of 1940, mean commencement of the Act of 1934 and not of the amending Act. A decree passed in a suit instituted after the commencement of the Act of 1934 and before the Amending Act of 1940 in respect of a debt advanced before the commencement of the Act of 1934 is, therefore, covered by S. 30 (1) as amended, and the decree-holder is not entitled to execute it for more than twice the amount of the sum originally advanced. (*Tek Chand and Beckett, JJ.*) KALIAN DASS *v.* JAFFAR BEG. **202 I.C. 433=15 R. L. 126=44 P.L.R. 399=A.I.R. 1942 Lah. 254.**

PUNJAB RESTITUTION OF MORTGAGED LANDS ACT (IV OF 1938)—*Validity — Repugnancy to Existing Indian Law—Discrimination—Government of India Act, Ss.* 107 *and* 298.

The Punjab Restitition of Mortgaged Lands Act (IV of 1938) is not void on the ground that it is repugnant to the provisions of an existing Indian Law or as contravening the provisions of S. 298 of the Government of India Act. Although the impugned Act excuses performance of a contract it cannot be said to be repugnant to S. 37 of the Contract Act inasmuch as the contract itself excuses performance of a contract where such performance is dispensed with or excused by any other law. Similarly the qualifying or saving words in S. 9, C. P. Code, preclude the contention that an Act which bars a civil remedy in certain cases is repugnant to the provisions of C. P. Code. There is no provision in the impugned Act which conflicts with the Indian Limitation Act, and if there were any, the saving of special or local laws in S. 29 (2) of the Limitation Act would preclude the argument of repugnancy. The Act also does not clearly or in terms take away any rights which a mortgagee may have under Ss. 69 and 70 of the Contract Act. (*Gwyer, C.J., Varadachariar and Zafrulla Khan, JJ.*) MEGH RAJ *v.* ALLAH RAKHIA. **I.L.R. (1942) Kar. (F.C.) 40=I.L.R. (1942) Lah. 623=11 R.F.C. 25=200 I.C. 198=5 Fed. L.J. 33=1942 M.W.N. 403=8 B.R. 695=23 P.L.T. 502=55 L.W. 484=46 C.W.N. (F.R.) 61=44 P.L.R. 437=A.I.R. 1942 F.C. 27.**

PUNJAB SIKH GURDWARAS ACT (VIII OF 1925), Ss. 30 (ii) and 7 (4)—*Notice under S.* 7 (4)—*Person absent from place of residence at the time—It can be imputed knowledge of fact to which notice relates.*

A person who is absent from his place of residence at the time when the notice under S. 7 (4) is served cannot be said to have any knowledge of the fact to which the notice relates and if a person is absent altogether from the place where the notice is issued, there can be no question of his exercising any reasonable diligence to acquire knowledge of the facts to which the notice relates which are not even remotely present to his mind. This is all the more so when the property which is in his possession and was claimed on behalf of the Gurdwara has absolutely no connection whatever with the Gurdwara and he could never imagine that any claim could be put forward to that property on behalf of the Gurdwara. (*Tek Chand, Din Mahomed and Bhide, JJ.*)

PUNJAB TENANCY ACT (1887), S. 4.

GURMUKH SINGH *v.* INTAZAMIA COMMITTEE GURDWARA BHAI SEWA SINGH. **I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah. 19 (F.B.)**

——**Ss. 30 (ii) and 7 (4)**—*Notice under S.* 7 (4) *served on transferor of property—Knowledge of latter, if can be fixed on transferee.*

Where long after the transfer of his property by *A* to *B*, the property is claimed by a Gurdwara under S. 7 and *A* is served with a notice in respect of the Gurdwara's claim under S. 7 (4), *A's* knowledge of the fact to which the notice relates cannot be fixed on *B* and therefore it cannot be said that even by exercise of due diligence, *B* could have been aware of the fact that the property purchased by him from *A* had been claimed on behalf of the Gurdwara. (*Tek Chand, Din Mahomed and Bhide, JJ.*) GURMUKH SINGH *v.* INTAZAMIA COMMITTEE GURDWARA BHAI SEWA SINGH. **I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah. 19 (F.B.).**

——**Ss. 32 and 30**—*Applicability — Case falling within provisos to S.* 30 (i) *and* (ii)—*Jurisdiction of Court.*

The words "might be made" in S. 32 cannot be construed to mean "might have been made." S. 32 applies only to those cases, which were instituted either before the commencement of the Act or which were instituted after the commencement of the Act but before the expiry of the prescribed period of limitation for making a claim under the various sections referred to therein. S. 30 applies on the other hand, to cases where a claim might have been made but was not made within the prescribed period. Under S. 30, it is only in the exceptional circumstances mentioned in the provisos to S. 30 (*i*) or (*ii*) that the claim will be tried on merits in a suit falling under S. 30. S. 32 on the other hand, makes no reference at all to any such circumstances. Consequently, S. 32 does not apply to cases covered by proviso to S. 30 (*i*) or by the proviso to S. 30 (*ii*) and the Court has jurisdiction to decide the same. (*Tek Chand, Din Mahomed and Bhide, JJ.*) GURMUKH SINGH *v.* INTAZAMIA COMMITTEE GURDWARA BHAI SEWA SINGH. **I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah. 19 (F.B.).**

——**S. 145**—*Meeting of committee to authorise certain person to institute suit on its behalf—Irregularity in convening meeting—Effect of.*

Any irregularity or defect in convening a meeting of the committee of a Gurdwara to authorise a person to institute and prosecute a suit on behalf of the Gurdwara is condoned by S. 145, and the suit instituted by such a person cannot be dismissed by reason of that irregularity or defect in the absence of proof that it has occasioned a failure of justice. (*Tek Chand, Din Mahomed and Bhide, JJ.*) GURMUKH SINGH *v.* INTAZAMIA COMMITTEE GURDWARA BHAI SEWA SINGH. **I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah. 19 (F.B.).**

PUNJAB TENANCY ACT (XVI OF 1887), Ss. 4 (1) and 77—*'Land'—If includes trees standing on agricultural land.*

Trees standing on agricultural land are not land for the purposes of the Tenancy Act. Consequently a suit between the owner of the trees and the person who has planted them is not a suit between a landlord and his tenant and is cognizable by a Civil Court. (*Din Mahomed, J.*) NASIB SINGH *v.* AMIN CHAND. **200 I.C. 697=15 R.L. 18=44 P.L.R. 157=A.I.R. 1942 Lah. 152.**

——**S. 4 (5)**—*"Holds"—Meaning of.*

PUNJAB TENANCY ACT (1887), S. 50.

The word "holds" in S. 4 (5) does not include a mere "right to hold" but means "actually or constructively" holds. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. 202 I.C. 497=15 R.L. 133=44 P.L.R. 488=A.I.R. 1942 Lah 217.

——S. 50—*Suits between dispossessed tenant and his landlord—Jurisdiction of Civil Court.*

All the remedies of a tenant who has been dispossessed are provided in the Tenancy Act and therefore all suits between dispossessed tenant and his landlord should be disposed of by the Revenue Court. No suit lies to a Civil Court after the expiry of the period of one year provided by S. 50 (*Almond, J.C. and Mir Ahmad, J.*) KHOIDAD KHAN *v* HAIDAR KHAN 202 I.C. 577=15 R. Pesh. 44=A.I.R. 1942 Pesh. 65 (1)

——S. 77 (3)—*Scope—Matters arising out of pleas of defendants.*

Per *Bhide, J.*—The words "no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted" in S. 77 (3) are comprehensive enough to include disputes or matters whether they are raised in the averments in the plaint or arise out of the pleas of the defendants. If they are raised in the plaint, the suit would not be initially cognizable by a Civil Court. But, if they arise out of the pleas of the defendants, the suit may be initially cognizable by a Civil Court, but would cease to be so when the Court finds that there is a dispute or matter with respect to which a suit falling within one of the clauses of S 77 (3 could be instituted. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR 202 I C 497=15 R.L 133=44 P. L.R. 488=A I R. 1942 Lah. 217 (F B).

——S. 77 (3)—*Words "dispute or matter"—Meaning of.*

The words "dispute or matter" in S. 77 (3) must be read as qualified by the words "with respect to which any such suit might be instituted." (*Tek Chand Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR 202 I C. 497=15 R L. 133 =44 P.L R. 488=A I.R. 1942 Lah 217 (F B.).

——S 77 (3) (d)—*Applicability—Test.*

Per *Bhide, J.*—In order to see whether S. 77 (3) (*d*) applies to the circumstances of a case it is necessary to see whether all its requirements are fulfilled. It is, therefore, necessary to consider not only the nature of the dispute, but also the status of the parties as mentioned therein. Unless it is shown in any particular case that there is a "matter" to be decided with respect to which one or the other party could institute a suit which would be cognizable by a Revenue Court only, the jurisdiction of the Civil Courts will not be ousted. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. 202 I C. 497=15 R.L. 133=44 P.L.R. 488=A.I.R. 1942 Lah 217 (F B).

——S 77 (3) (d) and Proviso (1)—*Scope and applicability—Suit by occupancy tenant out of possession to recover possession from his landlord—If cognisable by Civil Court—Power of Civil Court to try question whether occupancy right has been extinguished by abandonment.*

Section 77 (3) (*d*) contemplates suits either by a tenant, that is, a person, who claims to be a tenant and is a tenant to establish a claim to a right of occupancy, or by a landlord, that is, a person who claims, or is admitted to be, or is found to be the landlord, to prove that a person admitted to be a tenant has not a right of occupancy. S. 77 (3) (*d*) applies only when the relationship of landlord and tenant is admitted and the nature of the tenancy alone is in dispute. A suit by an occupancy tenant who is out of possession to recover possession from his landlord of the land to which he claims the occupancy rights does not fall within S. 77 (3) (*d*) because it is not a suit by a "tenant" to establish a claim to a right of occupancy and therefore is initially within the jurisdiction of the Civil Court. In such a suit the Civil Court is not precluded by reason of S. 77 (3), Proviso (1) from trying the question raised by the defendant that the occupancy right has been extinguished by abandonment because the suit as filed by the tenant does not come within S. 77 (3) (*d*) and if it were brought by the defendant landlord against the plaintiff tenant on the plea of abandonment it would not be within S. 77 (3) (*d*) because the landlord would not be admitting the plaintiff tenant to be a tenant in the hypothetical suit. (*Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. 202 I.C. 497=15 R.L. 133=44 P.L.R. 488=A I R. 1942 Lah. 217 (F.B.).

RAILWAYS ACT (1890), S. 55.

——S. 77 (3), Proviso (1)—*Scope—'Matter'—Meaning of.*

The word "matter" in S. 77 (3), Proviso (1) is more comprehensive than the word "dispute." A matter on which the parties are "at issue" may be described as a "dispute", but when the parties are not at issue, the matter could only be described as a "matter." The object of the proviso was that whether the parties are or are not at issue on a particular matter, if the matter is such that it can only be heard and determined by a Revenue Court and if a finding has to be given thereon the Court should adopt the procedure laid down in the proviso. Even if a point is not disputed, a finding may still be necessary and may have to be given on the admission of a party. The proviso must obviously be read with S. 77 (3). (*Tek Chand, Dalip Singh, Bhide Abdul Rashid and Muhammad Munir, JJ.*) BARU *v.* NIADAR. 202 I.C. 497=15 R.L. 133 =44 P.L.R. 488=A.I.R. 1942 Lah. 217 (F.B.).

——S. 84—*Ground for revision—Error of law*

A mere wrong decision on a point of law does not amount to a material irregularity in the exercise of jurisdiction and does not justify interference on revision. (*Mitchell, F.C.*) DOST MAHOMED *v.* WARYAM. 21 Lah L T. 17.

——Ss. 84 and 5 (1) (c)—*New point—Question of residence of tenants—It can be raised in revision.*

Where in a case in which certain tenants contested their liability to ejectment on the ground that they were entitled to occupancy rights under S. 5 (1) (c) of the Tenancy Act, no question was raised in the trial Court that the tenants had not been settled in the village by the founders and no objection on this score was raised in the grounds of appeal before the Collector, the point cannot be raised in revision. (*Mitchell F.C.*) DOST MAHOMED *v.* WARYAM. 21 Lah L.T. 17.

——S 100 (1) (b) and (2)—*Suit cognisable by Civil Court decided by Revenue Court—Appellate Revenue Court's decree—If can be registered in appellate Civil Court.*

Where a suit cognizable by a Civil Court has been decided by the Revenue Court, the appellate Revenue Court's decree can be registered in the appellate Civil Court provided the parties were not prejudiced by the mistake as to jurisdiction. (*Almond J.C.*) HABIB KHAN *v* HAMIDULLAH ASHRAF. 198 I.C. 183=14 R. Pesh. 69=A.I R. 1942 Pesh. 7.

RAILWAYS ACT (IX OF 1890), S. 55 (5)—*Suit to recover undercharge after delivery of consignments—Maintainability.*

RANBIR PENAL CODE, S. 302.

Under S. 55 (5) of the Railways Act, a railway administration may recover by a suit the sums for which it can detain goods under S. 55 (1). A railway administration is therefore entitled to recover by suit undercharges in respect of consignments even after all the goods have been delivered over to the consignee. (*Somayya, J.*) KRISHNA NAYAK & SONS *v.* SOUTH INDIAN RAILWAY CO., LTD. **203 I C 228=15 R M. 607=1942 M W.N. 493=A.I.R. 1942 Mad. 627 =(1942) 2 M.L J 348.**

RANBIR PENAL CODE, S. 302—*Proof of offence —Existence of motive—If material.*

The existence of motive is not material in a case of murder where the commission of the offence has been fully established by other evidence (*Abdul Qayoom, C.J and Kichlu J.*) BASHIR AHMAD *v.* STATE. **44 P.L.R. J. & K. 47.**

——**S. 335**—*Applicability.*

S. 335 of the Ranbir Penal Code can only apply when the existence of grave and sudden provocation is proved. (*Abdul Qayoom, C.J.*) BADRI *v.* STATE. **44 P.L.R. J. & K 53.**

RANGOON CITY MUNICIPAL ACT (VI OF 1922). S. 12 b)—Public service—Meaning—President of Municipal Committee—If employed in public service —His removal on ground of danger to public peace—If amounts to a declaration of being unfit for employment in public service *See* 1941 Dig., Col 1062 WILCOX *v.* PATEL **199 I.C. 274=14 R R. 252=A I R. 1942 Rang 30.**

——**S. 15 (1)**—"Corruption" —Meaning—Holding out as Barrister after being disbarred—If amounts to corruption *See* 1941 Dig., Col. 1062 WILCOX *v.* PATEL. **199 I.C. 274=14 R.R. 252=A I.R. 1942 Rang 30**

——**S 15 (1) and (3)**—Construction—'Any election' *See* 1941 Dig., Col 1062. WILCOX *v.* PATEL. **199 I C 274=14 R.R. 252=A I R. 1942 Rang 30.**

——**S. 15 (1)**—*Whole election when void.*

If in any case it is found that there is wholesale bribery and corruption, which it is not possible to bring home to any particular candidate and which is so widespread that it cannot be said that there has been any real election, then the whole election is void; and, if there are two or more seats, the election of both or all of those who were returned will in such a case, be upset. But in a case where one returned candidate is to be taken to be without blemish, a guilty candidate whose election has been held to be not valid should not be enabled to upset the result as regards his innocent fellow candidate. There may sometimes be cases in which, owing to the number of votes polled for the various candidates, it would not be proper to say that the invalidity of the election is confined to invalidating the election of one candidate. Each case has, of course, to be considered in the light of its own particular facts and circumstances. (*Sharpe, J.*) PILLAI *v.* DANGALI. **199 I.C. 110=14 R.R. 231=A I R. 1942 Rang. 52**

——**Ss. 229 230 and 235 (iii) and Sch I, Chap. VI, Rr 4-A and 4 B**—*Scope and limits of the rule-making powers of the Corporation—Validity and force of those rules—Rr. 4 A and 4-B, if* ultra vires.

The Municipal Corporation of Rangoon derive their rule-making power from Ss. 229 and 230 of the Rangoon Municipal Act. According to the provisions of those sections, the Corporation can add rules to the schedules so long as they are not inconsistent with any provision of the Rangoon City Municipal Act in order to provide for any of the matters dealt with in the schedules or for any of the purposes specified in S. 235 in cases where the legislature has not done so either through oversight

RECEIVER.

or inadvertence, or amend, alter or annul the rules already framed by the legislature in cases where such rules are found unsuitable, unworkable or defective. The idea underlying the delegation of part of their legislative power is to enable the latter body to discharge the functions entrusted to it efficiently. This is apparent from the wording of S. 235. The words 'generally for carrying out the purpose of this Act' in Cl. (*iii*) of S. 235 should not be read as being '*ejusdem generis*' with what has preceded them in the said section. The words are so wide and general in their scope that they cover all the purposes of the Act for which no provision has been made by the legislature. It is a residuary clause. When a rule or bye-law is framed or passed under such powers, it must be treated as if it were enacted by the legislature itself, provided, of course, it is fair and reasonable and the rule-making body has not exceeded its rule-making powers. Rr. 4 A and 4-B of Chap. VI of Sch I to Rangoon City Municipal Act which enable it to impose conditions as to deposits in cases of tender and forfeiture of such deposits in cases of withdrawal of such tenders are intended to facilitate the carrying out of the provisions of Rangoon Municipal Act and come clearly within the rule-making power of the Corporation. (*Ba U, J.*) MUNICIPAL CORPORATION OF RANGOON *v.* SAW WILLIE. **1941 Rang L.R. 724=A.I.R. 1942 Rang. 70**

——**S 235 (iii)**—Construction — Clause if *ejusdem generis* with the preceding clauses. *See* RANGOON CITY MUNICIPAL ACT, SS. 229 230 AND 235 (*iii*) AND SCH. I, CHAPTER VI, RR. 4-A AND 4-B. **1941 Rang. L R 724.**

——**Sch. I Ch. III, R. 2 (2) (b)**—Qualification to be elected a Councillor Monthly value of building occupied—Test—Occupation of portion not separately assessed—Effect. *See* 1941 Dig., Col. 1063. NARAYANA *v.* DIGAL **199 I C. 257=14 R.R. 240=A.I.R. 1942 Rang 17.**

RANGOON HIGH COURT (APPELLATE SIDE) RULES Rr 5 and 57—Leave to appeal to Privy Council—Copy of judgment not filed till after expiry of limitation—Effect. *See* 1941 Dig., Col. 1063. DAW SAW NYUN *v.* DAW I WA. **197 I C. 741=14 R.R. 141.**

RANGOON INSOLVENCY ACT (1909), S. 7, Proviso—Scope and applicability of section and proviso—Transfer by insolvent's creditors to wife of insolvent—Wife claiming the property as heir—Jurisdiction of Insolvency Court to decide question *See* 1941 Dig., Col. 1063 VISSALAKSHI ACHI *v.* OFFICIAL ASSIGNEE. **197 I C. 513=14 R R 132**

——**S 36 (5)**—Scope of *See* 1941 Dig., Col. 1064. VISSALAKSHI ACHI *v.* OFFICIAL ASSIGNEE. **197 I. C 513=14 R.R. 132.**

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See also (1) C. P. CODE, O. 40.
(2) PROVINCIAL INSOLVENCY ACT.

——Debts borrowed on personal credit for payment of Government peishkush—Right of creditor to decree against assets of estate—Right to first charge in respect of peishkush. *See* 1941 Dig., Col. 1065. SUBRAMANIA IYER *v.* ULAGALUMPERUMAL SETHURAVAR. **201 I. C. 724=15 R.M. 386=(1941) 1 M L.J 586.**

——*Fit and proper person—Person found entitled to letters of administration.*

Ordinarily it is a person who has an interest in property who may be expected to see that it does not go to waste. Hence a person who has been found by the Court to be a fit person to be granted letters of administration in respect of the estate, is also a fit person to be appointed a receiver of the estate. (*Ba U and Shaw,*

RECORD OF RIGHTS.

JJ) U. TUN YIN *v.* MAUNG BA HAN. 198 I.C. 621 =14 R.R. 217=A.I.R. 1942 Rang. 12.

RECORD OF RIGHTS — *Khasra girdawaris — Khudkasht—Meaning.*

The mere entry of khudkasht in khasra girdawaris of a certain village in the name of a person is not conclusive that the person resides in that village for purposes of cultivation as khudkasht does not only mean cultivation by the person himself but also includes cultivation through his servants and associates. (*Tek Chand, Din Mahomed and Bhide, JJ*) GURMUKH SINGH *v.* INTAZAMIA COMMITTEE GURDWARA BHAI SEWA SINGH. I.L.R. (1942) Lah. 217=199 I.C. 395=14 R.L. 388=44 P.L.R. 21=A.I.R. 1942 Lah. 19 (F.B.).

REGISTRATION ACT (XVI OF 1908)—Scope and effect of—If affects Court's jurisdiction to grant specifi- performance—Person not presenting deed for registration—Right to sue for registration or for execution and registration of new deed. *See* SPECIFIC PERFORMANCE—JURISDICTION. 21 Pat. 150

——**S. 2 (7) and Agra Tenancy Act, S. 3 (13)**—*Lease—Kabuliyat, if included in — Registration—Necessity*

Both under the Agra Tenancy Act and the Registration Act, a lease includes a kabuliyat. Hence if a lease required registration the Kubuliyat likewise required it and could not be admitted in evidence without registration. (*Shirreff, J.M. and Sathe, J.M.*) SAKHAWAT ALI *v.* MAHBOOB ALI. 1942 O.W.N. (B.R.) 79=1942 O.A. (Supp.) 46=1942 A.W.R. (Rev.) 46=1942 R. D. 111.

——**S. 17** - Partition—Registration Necessity—Lists of property—Test. *See* 1941 Dig., Col. 1066. GANPAT GANGAJI *v.* NAMDEO. I.L.R. (1942) Nag. 73.

——**Ss. 17 and 49 and Evidence Act (1872), S. 91** —*Unregistered lease of land for more than a year—Oral evidence as to fact of lease—Admissibility.*

Though a written unregistered lease of land for more than a year is inadmissible in evidence, oral evidence regarding terms of contract, grant, etc. The oral evidence regarding the fact of the lease is admissible and can be taken into consideration. (*Sathe, J.M.*) BHOLA NATH UPADHYA *v.* BHIKUTI NARAIN SINGH. 1942 R.D. 505=1942 O.W.N. (B.R.) 415=1942 A.W.R. (Rev.) 287=1942 O.A. (Supp.) 313.

——**S. 17 (1)**—Agreement for mortgage—If creates charge—Registration—Necessity. *See* T. P. ACT, S. 3 44 Bom.L.R. 727.

——**S. 17 (1)**—*Assignment of mortgage decree—Consideration less than Rs. 100—Registration.*

Where a mortgage decree concerning immovable property is assigned for a consideration of less than Rs. 100, the deed does not require registration under S. 17 of the Registration Act, although the amount due under the decree assigned, is more than Rs. 100. The test for registration is the value of the property affected by the deed of assignment and the pecuniary consideration stated in the deed of assignment for the transfer is the amount to be taken into consideration for the purpose of determining whether it is compulsorily registrable (*Divatia, J.*) SUNDARABAI BALAPPA NAIK *v.* GURUSHIDDAPPA GURUBASAPPA. I.L.R. (1942) Bom. 190=200 I.C. 440=15 R.B. 4=44 Bom. L.R. 164=A.I.R. 1942 Bom. 134.

——**S. 17 (1)**—Construction—Pattas of 1867 not requiring registration under Registration Act of 1866—If compulsorily registrable under Act of 1908—If inadmissible for want of registration. *See* 1941 Dig., Col.,

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1067. NAGARAJA RAO *v.* KOOTHAPPAN. 198 I.C. 606=14 R.M. 474=(1941) 1 M.L.J. 759.

——**S. 17 (1) (b)**—Applicability—Co-sharers—Deed purporting to divide properties—Allotment intended to be final—Registration—Necessity—Parties contemplating later comprehensive deed—Effect—Suit in ejectment against co-sharer on basis of deed—Competency—T. P. Act, S. 53-A. *See* 1941 Dig., Col. 1067. VEERA RAGHAVA RAO *v.* GOPALRAO. 201 I.C. 367=15 R. M. 318=A.I.R. 1942 Mad. 125=(1941) 2 M.L.J. 707.

——**S. 17 (1) (b)**—*Applicability—Sale of land—Land in possession of mortgagee—Vendee asked to pay off mortgagee and to pay balance after deducting redemption charges to vendor—Subsequent agreement giving up claim to balance of sale price—If requires registration—Admissibility when unregistered.*

The plaintiffs (appellants) who had mortgaged their lands with possession under a mortgage of 1868 sold their equity of redemption in part of the mortgaged lands to the 1st defendant for Rs. 3,000 under a registered sale deed dated 29th August, 1916; the sale price was to be spent in redeeming the mortgage on that part and the other lands and only the balance, if any, remaining after doing this and after deducting the cost of the litigation was to be paid by the plaintiffs. The latter agreed to pay the 1st defendant any excess over Rs. 3,000. The other mortgaged lands, after redemption were to be handed over to the plaintiffs. On the next day, 30th August, 1916, the parties entered into an agreement in writing, which was not however registered, under which the plaintiff gave up their claim to any balance there might be after paying off the mortgagee, and the 1st defendant on the other hand was to redeem the mortgage whatever it costs him. The 1st defendant filed a redemption suit in 1917 and obtained a decree for redemption in 1920 without having to pay any amount to the mortgagee. This was confirmed in appeal in 1921. The plaintiffs subsequently brought a suit against the 1st defendant to recover by sale of the property sold to him, the sum of Rs. 3,000 and interest less the expenses of litigation spent by him in respect of the redemption suit on the ground that he had a vendor's lien under S. 55 (4) (*b*) of the T. P. Act. The 1st defendant pleaded the agreement of 30th August, 1916, in bar of the suit, but it was contended that it was inadmissible for want of registration, and that it was compulsorily registrable under S. 17 (1) (*b*) of the Registration Act as it operated to extinguish the plaintiff's charge under S. 55 (4) (*b*), T. P. Act.

Held, (1) that the statutory charge under S. 55 (4) (*b*) was on the property sold, and in this case the property sold being the equity of redemption which was all that the plaintiffs had to sell, as the price was to be paid on redemption and not before, there could be no question of any charge on the equity of redemption there being an implied contract to the contrary; (2) that the plaintiffs were not seeking to enforce a charge on the equity of redemption but only seeking to recover their money by sale of the land after redemption of the mortgage, and it was therefore doubtful if S. 55 (4) (*b*) could operate to give the plaintiffs a charge on the land after redemption; (3) that assuming that there could be a charge, it would only arise when the ownership of the land passed to the 1st defendant after redemption of the mortgage; and since before that time there was a contract to the contrary by reason of which no charge for the unpaid price could arise, the claim to it having been abandoned, the agreement did not require registration, because it did not operate to extinguish any right or interest to, or in the land, the plain-

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tiffs having at that time no such right or interest. (*Broomfield and Macklin, JJ.*) SHANKAR BALA JAGTAP *v.* GOTIRAM PANDURANG 199 I C. 481= 14 R.B. 364=43 Bom.L R. 1014=A.I.R 1942 Bom. 67.

——Ss. 17 (1) (b) and 49—Partition of Hindu joint family—What constitutes—Registration—Necessity—Absence—Effect. *See* 1941 Dig., Col. 1069. GANPAT GANGAJI *v*, NAMDEO. I.L.R. (1942) Nag. 73.

——S 17 (1) (d)—Agreement as to meaning of lease —If amounts to new lease. *See* 1941 Dig., Col 1069. MANIK CHANDRA SADHUKHAN *v* GOUR KRISHNA PRAMANIK. 197 I.C. 360 = 14 R.C. 343.

——S. 17 (1) (d) and (2) (v)—Applicability—Agreement to lease—Provision for execution of formal lease and for registration thereof—Possession delivered under agreement and parties acting as if tenancy existed—Effect—Registration. *See* 1941 Dig., Col. 1069 BECHARDAS DAMODARDAS *v.* AHMEDABAD BOROUGH MUNICIPALITY. I.L.R. (1941) Bom. 529 =198 I.C. 188=14 R B. 273.

——S. 17 (1) (d)—*Compromise—Agreement for lease upon terms of* kabuliat *already executed—Need for registration.*

A compromise which is an agreement for a lease upon the terms of a *kabuliat* already executed, amounts to a present demise and has, therefore, to be registered before it becomes admissible. (*Harries, C.J. and Fazl Ali, J.*) JAGDISH CHANDRA DEO *v.* BISESWAR LAL 199 I.C. 341=14 R.P 582=8 B.R. 547=23 P L.T. 673=A.I R. 1942 Pat. 323.

——S 17 (2) (vi)—*Scope—Award—Charge created on land—Decree on—Award unregistered—Validity of decree when not impeached or set aside—Right of stranger to challenge.*

Where a decree is passed upon an unregistered award passed on arbitration which creates a charge on immovable property, and it has not been set aside or challenged in a proper proceeding, it cannot be held that the decree is a nullity and of no effect, by reason of S. 17 (2) (*vi*) of the Registration Act. At any rate a stranger to the proceedings cannot challenge its validity. (*Broomfield and Wassoodew, JJ.*) KRISHNAJI KONDO *v* NARAYAN ANANT. I.L.R. (1942) Bom. 183=200 I.C. 456=14 R.B. 406=44 Bom L.R. 158=A.I.R 1942 Bom. 132.

——S. 17 (2) (ix)—*Endorsement of payment on mortgage deed—Admissibility—Proof of extinguishment of mortgage.*

The wording of Cl. (*ix*) of S. 17 (2) of the Registration Act clearly implies that an endorsement of payment on a mortgage deed is also regarded as a receipt since the expression used is "any other receipt" and the limitation of the exemption from registration intended to apply to all such receipts including those which might be endorsed on the mortgage deed itself. Although an endorsement made on the deed is inadmissible in evidence to prove extinguishment of the mortgage, this ban will not prevent its being taken into evidence in proof of the payment of the money. A mortgage is not extinguished only by a subsequent agreement between the parties. It is extinguished ordinarily by operation of law after satisfaction. Thus, a mortgage can come to an end without any subsequent registered agreement, and in fact ordinarily does. This being so, there is no reason why evidence, either oral or in the nature of unregistered receipts should not be led to prove actual payment of the mortgage dues. Once the payment of the full dues under the mortgage has been established, then the extinguishment follows as an inference of law. Where the full amount of the mortgage money is proved to have been paid and the mortgage bond is produced from the custody of the mortgagor, there follows a presumption under S. 114 of the Evidence Act that the mortgage has been discharged. (*Meredith, J.*) RAM KUMAR MISSIR *v.* RAM NATH MISSIR. 199 I C. 30 =14 R.P. 523=8 B.R. 485=23 P.L T. 46=1942 P. W.N. 44=A.I.R. 1942 Pat. 315.

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——S. 17 (2) (xi)—Endorsement on mortgage deed of payment extinguishing mortgage—If exempt from registration. *See* 1941 Dig., Col. 1070. NAMAN *v* HARI SINGH. I.L.R. (1942) Lah 324.

——S. 23 A—*Application for re-registration—Limitation—Starting point—Validity of registration disputed in written statement—Finding by Court that it is invalid.*

In a suit for possession on the basis of a registered deed, the defendant pleaded that the document was inadmissible in evidence as the registration was not valid. The plaintiff thereupon applied for return of the document for presentation for re-registration but the Court feeling doubt as to the invalidity of the registration went into the question and gave a finding that it was invalid. The plaintiff then applied for re-registration.

Held, that limitation under S. 23 A ran from date of the finding by the Court and not from the date when the plaintiff knew about the plea taken by the defendant. (*Almond, J.C. and Mir Ahmad, J.*) KHEM CHAND *v.* CHETAN SINGH 200 I.C. 632=15 R. Pesh. 8=A.I.R. 1942 Pesh. 37.

——S. 28—*Sale-deed — Vendor residing in one district and conveying property in another district—Vendor asking vendee to accept conveyance of small property in his district also to enable registration in his district—If renders registration invalid.*

There is nothing in law to prohibit a person conveying property in one district and residing and owning property in another district and asking the vendee to accept a conveyance also of some small property in the district in which he resides so that the sale-deed may be registered there and he may not be put to the trouble and expense of a journey to the other district. It is not correct to say in such a case that the sale-deed is not validly registered at the place where it is got registered. (*Fazl Ali and Shearer, JJ.*) SHAIKH MAHOMED YAKUB *v.* SHAIKH ABDUL MANAN. 21 Pat 710= 203 I.C. 422=15 R.P. 174=9 B.R. 85=A.I.R. 1943 Pat. 48.

——S. 28—*Scope—Inclusion of property to procure registration of sale-deed in particular sub district—When fraud on registration—Property included existing and belonging to vendor—Title passing to vendee—Effect—Registration—Validity—Oral evidence to show intention—Admissibility.*

Where some of the properties mentioned in a sale-deed does not exist at all or is property of which no effective use or enjoyment can be made, the sale-deed cannot be said to relate to that property within the meaning of those words in S. 28 of the Registration Act. But this principle does not apply when those properties, which are alleged to have been included to get the deed registered in a particular place, are described with such particularity that there is no difficulty at all in identifying them, and belong to the vendor. It cannot be said in such case the sale-deed is not validly registered on the ground of fraud on registration as the properties can be effectively used and enjoyed and as the title to them undoubtedly pass to the vendee. Oral evidence in such a case to show that the vendee intended not to take possession of these properties and intended ultimately to allow his title to it to be extinguished is irrelevant when the

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properties do exist and the title thereto passes to the vendee, though when the validity of the sale-deed is impeached on the ground that it could not be legally registered in a particular sub-district, oral evidence may be adduced to show that the properties in that sub-district which it purported to convey either did not exist or could not be ascertained with certainty or if it did exist and could be ascertained, were of such a nature that no effective use or enjoyment could be made of it. (*Fazl Ali and Shearer, JJ.*) SHAIKH MAHOMED YAKUB *v.* SHAIKH ABDUL MANAN. **21 Pat. 710=203 I C. 422=15 R.P 174=9 B.R. 85=A.I.R. 1943 Pat. 48.**

——S. 49—Admission to registration—Effect, if renders valid transaction otherwise invalid under different laws. *See* 1941 Dig., Col. 1071. MAHOMED KHUDABUX *v.* RAMCHANDRA RAO. **198 I C. 449=14 R.N. 224.**

——S. 49—*Applicability—Award under Bengal Agricultural Debtors Act.*

S. 49 of the Registration Act has no application to an award under the Bengal Agricultural Debtors Act (*Roxburgh, J.*) FAZAL AHMAD *v.* ETIM ALI. **200 I.C 341=15 R.C. 58=46 C.W.N. 391=A.I.R. 1942 Cal. 337.**

——S. 49—*Effect of—Value of unregistered document.*

Under S 49 of the Registration Act a document required by law to be registered cannot if it is not registered be received as evidence of any transaction affecting the property concerned. The document itself does not create any rights or liabilities. At best it can serve only as an admission, but it is not conclusive evidence of the fact admitted. It can no doubt operate as estoppel if the necessary conditions are present. (*Shirreff S M. and Sathe, J.M.*) GANESH *v.* SUNDAR. **1942 R D. 501=1942 O.W N. (B.R) 411=1942 A.W.R. (Rev.) 288=1942 O A. (Supp) 314.**

——S. 49—Scope—Sale deed—Vendee asked to pay off mortgage and to pay surplus to mortgagor (vendor) —Subsequent agreement abandoning claim to surplus which may remain after redemption—Agreement not registered—Admissibility in evidence. *See* REGISTRATION ACT, S. 17 (1) (*b*). **43 Bom.L R. 1014.**

——S. 49—Unregistered document—Creation of title —Operation of equitable doctrine. *See* 1941 Dig., Col. 1072 SHAN KRI *v.* MILKHA SINGH. **I.L.R. (1942) Lah. 79=197 I.C. 282=14 R.L. 221.**

——Ss. 49 and 17—Unregistered sale deed—Purchaser let into possession by vendor—Whole of consideration made good—Position of purchaser. *See* 1941 Dig., Col. 1072 SHANKRI *v.* MILKHA SINGH. **I.L.R. (1942) Lah. 79=197 I.C 282=14 R.L. 221.**

——S. 49—Unregistered sale—Use to which it can be put. *See* 1940 Dig., Col. 1107. UMAR HAJI *v.* BADRI DAS. **I.L R. (1942) Nag. 145.**

——S. 49, Proviso—*Applicability—Collateral purpose—Lease deed creating permanent tenancy but unregistered—Lessee entering into possession and holding adversely to lessor for over 12 years—Effect of—Admissibility of lease to prove nature of possession of lessee—Acquisition of permanent tenancy—Adverse possession.*

The father of the appellant, the inamdar of a village executed on 4th November, 1918, a document purporting to grant in favour of the plaintiffs a perpetual tenancy of certain land on condition that they were to pay the assessment and local fund. The terms of the document were such that it would create a permanent tenancy, but the document was not registered. The plaintiffs, however, entered upon the land by reason of the deed and held possession under it till 1936 when the appellant forcibly dispossessed them. The plaintiffs thereupon

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brought a suit for possession. It was found that the possession of the plaintiffs from 1918 to 1936 was openly under the right created by the document and to the knowledge of the appellant, and that their ownership of the perpetual tenure had become complete.

Held that the document of 1918, being unregistered could not affect the property or be received as evidence of any transaction affecting the property by reason of S. 49 of the Registration Act, yet it could be looked at as evidence for the collateral purpose of showing the character of the possession taken and held by the plaintiffs (the grantees under the deed).

Held, futher, that the plaintiffs had acquired a permanent tenancy as mirasdars and occupants of the land by prescription, and such a limited interest could be acquired by adverse possession. (*Broomfield and Sen, JJ.*) VISHVANATH HAIBATRAO *v.* RANGANATH DHONDO. **I.L.R. (1942) Bom. 595=203 I.C. 238 =15 R.B. 203=44 Bom.L.R. 534=A.I.R. 1942 Bom. 268.**

——S. 49, Proviso—Applicability—Partition of Joint Hindu family—Nature and scope of—Unregistered document—Admissibility. *See* 1941 Dig., Col. 1072. GANPAT GANGAJI *v.* NAMDEO. **I.L.R. (1942) Nag. 73.**

——S. 49, Proviso — "Collateral transaction"—Meaning of—Partnership — Dissolution—Suit for accounts—Partnership deed referring to leases of immovable property—Deed not registeted—Admissibility to prove partnership. *See* 1941 Dig., Col 1073. RADHOMAL ALUMAL *v.* ALLAH BAKSH. **198 I.C. 720=14 R S. 151=A.I.R. 1942 Sind 27.**

——S. 49, Proviso—*Unregistered lease—Admissibility—Proof of character of lessee's possession.*

Under the proviso to S. 49 of the Registration Act, an unregistered lease which requires to be registered under S. 17 (1) (*d*) of the Act is admissible in evidence for the collateral purpose of explaining the character of possession of the lessee. The proviso by specifying the cases in which an unregistered document may be received as evidence does not exclude its admissibility for a collateral purpose. It cannot be received as evidence of any transaction affecting the immovable property. Its use for the purpose of establishing the character of possession does not amount to using it as evidence of any transaction affecting immovable property within the meaning of S. 49. (*Pal J.*) SURUCHIBALA RAY *v.* SURUJ MIA. **46 C.W.N. 419.**

——(as amended in 1929), S. 49, Proviso—*Unregistered sale deed—Suit for specific performance of contract to sell contained in—Maintainability—Law in Madras.*

Under the proviso added to S. 49 of the Registration Act, by the amending Act of 1929 an unregistered document affecting immovable property may be, even if not registered, received in a suit for specific performance as evidence of a contract. An agreement to sell cannot, according to the view prevailing in Madras, be spelt out of a sale-deed and cannot form the basis of a suit for specific performance, and it may be that, in the absence of a specific agreement to sell a property, it is not possible in the Madras Presidency to regard an unregistered sale deed as sufficient to support a suit for specific performance of a contract to sell. But it does not follow that an express contract to sell must necessarily be regarded to have merged in a sale deed, when that deed is not accepted by the vendee or happens to be incomplete in regard to its terms or is otherwise legally inoperative (*Abdur Rahman, J.*) VENKASUBBAMMA *v.* SUBBIAH. **55 L W. 563=1942 M.W. N. 571=A.I.R. 1942 Mad. 716.**

REGISTRATION ACT (1908), S. 60.

——**S. 60**—*Endorsement— Presumption—Admission of execution before Registrar.*

Registration is a solemn act to be performed in the presence of a competent official appointed to act as Registrar whose duty it is to attend the parties during the registration and see that the proper persons are present, are competent to act and are identified to his satisfaction and all these things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order. Consequently, where the thumb impression of the executant appears on the Registrar's endorsement and the Registrar apparently satisfied himself by enquiries from a witness to execution and registration who was known to him that the executant was the person who had executed the document and admitted its execution before him the admission of the execution of the document by the executant must be deemed to have been proved by the endorsement of the Sub Registrar in view of the provisions of Ss. 59 and 60. (*Almond, J.C. and Md. Ibrahim, J.*) AGHA WALAYAT SHAH *v.* MT. MAHBUB **204 I.C. 327=A.I.R. 1942 Pesh. 83.**

——**S. 60** –Sub-Registrar s endorsement—If relevant for proving execution of document. *See* 1941 Dig., Col. 1073. HARNAM SINGH *v.* DT. OFFICIAL RECEIVER. **197 I C. 581=14 R L 261.**

——**S. 60 and Evidence Act (1872), S. 67**—*Value of certificate of registration—It substantive evidence of execution—Mere proof of admission of execution—It satisfies requirements of S. 67, Evidence Act.*

The certificate of registration has an evidentiary value attached to it by S. 60 of the Registration Act. But it is made applicable only for the purpose of proving that the document has been duly registered and that the facts mentioned in the endorsements made under Ss. 52 and 58 of the Act has occurred as there mentioned. It proves the admission of execution by the person who purported to execute the document. It may be considered for the purpose of corroboration, but it cannot serve as substantive evidence. Admission of execution though good against executants and their representatives would not be binding on third parties. Mere proof of admission of execution would not satisfy the requirements of S. 67 of the Evidence Act which requires that the signuture of the executant must be proved to be in his handwriting. (*Niyogi, J.*) BULAKIDAS HARDAS MAHESARI *v.* SK. CHOTU MAHOMEDAN. **I.L.R. (1942) Nag. 661=200 I.C. 194=14 R.N 326=1942 N.L J. 214=A.I.R. 1942 Nag. 84.**

——**Ss. 77 and 23-A**—"*Refuses to order the document to be registered*"—*Refusal to register by Registrar—If covered.*

The words "refuses to order the document to be registered" cover both cases, that is to say, where the Registrar refuses to order the registration of a document in his own office or where he refuses to direct that the Sub Registrar should register it. (*Almond, J.C. and Mir Ahmad, J.*) KHEM CHAND *v.* CHETAN SINGH **200 I.C. 632=15 R. Pesh. 8=A.I R. 1942 Pesh 37**

——**Ss. 77 and 23-A**—"*Registered*"—*Refusal to re-register—If included.*

The word "registered" in S. 77 includes re-registered. Hence a disappointed applicant under S. 23-A has a right to bring a suit under S 77. (*Almond, J.C. and Mir Ahmad, J.*) KHEM CHAND *v.* CHETAN SINGH **200 I. C. 632=15 R. Pesh. 8=A I.R 1942 Pesh. 37.**

RELIGIOUS ENDOWMENTS.

See also (1) HINDU LAW—RELIGIOUS ENDOWMENTS.

(2) MAHOMEDAN LAW—WAKFS.

(3) RELIGIOUS ENDOWMENTS ACT.

REVENUE RECORDS.

(4) MAD. HINDU RELIGIOUS ENDOWMENTS ACT.

——Acquisitions by individual members of religious fraternity—If becomes property of institution—Udasis—Governing rule. *See* 1941 Dig., Col. 1074. COMMITTEE OF MANAGEMENT OF GURDWARA PENJA SAHIB *v.* MAHOMED NAWAZ KHAN. **I.L.R. (1941) Lah. 803=I.L R. (1941) Kar. (P.C.) 110=74 C.L. J. 428=23 Pat.L.T. 1 (P.C.).**

——Dedication—Onus. *See* 1941 Dig., Col. 1074. COMMITTEE OF MANAGEMENT OF GURDWARA PENJA SAHIB *v.* MAHOMED NAWAZ KHAN. **I.L R. (1941) Lah. 803=I.L R (1941) Kar. (P.C.) 110=74 C L J. 428=23 Pat.L.T. 1 (P.C.).**

——Muth—Mahant—*Position and powers of—If mere manager of* muth *property—Office and property—If pass together.*

Although *muth* property may not vest in the *Mahant* as owner, it is he that has the right to its possession. The property is attached to the office of *mahant* and none but the *mahant* has the right to hold the property. The property passes with the office. There is no distinction between the property and the office of the endowment. The one is attached to the other. Where the office of *mahant* devolves by succession the successor not only succeeds to the office of *mahant*, but, by virtue of such office, he acquires the right to possession of the *muth* property. Although the position of a *mahant* is that of a manager, it does not follow that the *mahant* has no higher right than a mere manager. He has large powers over the property of the *muth* akin to those of an owner in trust. He has some interest in the *muth* property which on his death devolves by inheritance on his successor. (*Dhavle and Chatterjee, JJ.*) KRISHNA DEVANAND RAMJEE *v.* KAPILDEO RAMJEE. **21 Pat. 197=198 I.C. 535=14 R.P. 468=8 B.R 429=23 P. L.T. 547=1941 P.W N. 755=A.I.R. 1942 Pat. 251.**

—— Religious office—Alienation—Validity—Office of trusteeship—Relinquishment in favour of one in line of succession, but not next heir—Validity of. *See* 1941 Dig., Col 1075. JANAKI AMMAL *v* SANJEEVI CHETTIAR. **200 I C. 698=15 R.M. 112=(1941) 1 M. L J. 510.**

RELIGIOUS OFFICE – *Devolution — Hereditary office—If can be diverted or alienated by holder.*

In the case of a religious office which is hereditary there is no room left for disposing of the rights and duties thereof by assignments and settlements, nor can it be said that it can at any time be diverted according to the whim of any particular holder. (*Mockett and Kunhi Raman, JJ.*) MAHOMED HOOSAIN FAROKI *v* SYED ABDUL HUQ. **202 I.C 323=15 R.M. 482=55 L.W 303=A.I R. 1942 Mad 485=(1942) 1 M. L J. 564.**

RES JUDICATA.

See C. P. CODE, S, 11.

REVENUE PROCEEDINGS—Res judicata—*Order in correction of patwari papers case—If operates as* res judicata *in subsequent declaration suit—Compromise in such proceedings—Binding nature.*

Though an order in a correction of patwari papers case does not operate as *res judicata* in subesequent declaration suit, yet if it is based on a compromise in such proceedings, the compromise would be binding on the parties in subsequent proceedings. (*Sathe, J.M.*) MAHABIR *v.* RAJ KUWAR. **1942 O A. (Supp.) 90=1942 O.W N. (B R.) 136=1942 A.W.R. (Rev.) 84=1942 R D. 202.**

REVENUE RECORDS—*Entries in as to shares—Value.*

REVENUE RECORDS.

The mere definition of shares in the Revenue Record is not conclusive but it does not follow from it that it has no evidentiary value. (*Nivogi, J.*) WASANT NILKANTH POTEV *v.* BALWANT RAO. **1942 N.L.J. 478.**

——*Khasra—Value.*

A Khasra is normally a field book containing a list of the tenants in occupation of agricultural land and it is not one of the registers which are included in the record-of-rights which carries with it a presumption that the statements made in it are true. (*Allsop and Verma, JJ.*) DIN MOHAMMAD *v.* SECRETARY OF STATE **203 I. C. 74=15 R.A 198=1942 A.L.W. 616=1942 A L J 422=1942 A W R. (H C) 287=A.I.R 1942 A. 353.**

——Khewat—Entries as to rent—Evidentiary value. *See* 1941 Dig., Col. 1076. HUMAYUN REZA *v.* TARINI CHARAN TEWARI. **A.I.R. 1942 Pat. 83.**

—— *Settlement entry—Presumption of correctness.*

A settlement entry cannot be held to be incorrect merely because earlier entries are inconsistent with it. In such circumstances the presumption on the other hand is that the settlement entry is the more correct of the two. (*Shirreff, S.M. and Sathe, J.M.*) TALUQDAR *v.* HASHMAT. **1942 O.A (Supp.) 209=1942 O.W.N (B R.) 330=1942 R.D. 419=1942 A.W.R. (Rev.) 189.**

——*Settlement entry—Presumption of truth.*

A settlement entry must be presumed to be true until the contrary is shown. The mere fact that a document of 1873 is produced is not enough to prove that the entries of the settlement which took place 8 years later were necessarily wrong. (*Shirreff, S.M. and Sathe, J.M.*) BRIJ NARAIN SINGH *v.* PADARATH KURMI **1942 O.W N. (B R.) 229=1942 O.A. (Supp.) 156 (2) =1942 R.D. 295=1942 A.W.R. (Rev.) 136 (2)=1942 A.L.J. (Supp) 28.**

RIPARIAN RIGHTS—*Public navigable river—Bed of—Ownership—Right of Crown—English Common law rules—Applicability in India—Lankas in navigable river—Right of proprietor of zamindari taking possession without objection by Government—Effect on right of Crown.*

The bed of a public navigable river in India is vested in the Crown. The tide is not a factor in deciding the ownership of the bed of such a river in India. The English common law rules with regard to riparian ownership, without modification, are inapplicable to India where conditions are dissimilar. The fact that the officials of the Revenue department allowed the proprietor of a zamindari to take possession of lankas or new formations in the river without objection cannot in itself affect the rights of the Crown. (*Leach, C.J. and Burn, J.*) MAHARAJAH OF PITHAPURAM *v.* SECRETARY OF STATE. **I.L.R. (1942) Mad. 532=55 L.W. 217=1942 M.W N. 225=A.I R. 1942 Mad. 406 (2)=(1942) 1 M.L. J. 344.**

SALE OF GOODS—C. I. F. contract--Printed form with typewritten portion—Conflict—Construction—Contract for sale of goods to be delivered in two instalments—Wrongful refusal by buyer to take delivery of first instalment—Right of seller to cancel contract and claim damages. *See* 1941 Dig., Col. 1077. SHA MOOLCHAND KESARIMULL *v.* ASSOCIATED AGENCIES. **I.L R. (1942) Mad. 33=201 I.C. 244=15 R. M, 283=A I.R. 1942 Mad. 139=(1941) 2 M L.J. 281.**

SALE OF GOODS ACT (III OF 1930), Ss. 18 and 19—Transfer of shares in company—When complete —Title—When passes—Agreement to transfer and delivery of share certificate—Effect of. *See* 1941 Dig, Col 1078. KUPPIAH CHETTY *v.* SARASWATI AMMAL, **200 I.C. 615=15 R.M. 101=(1941) 2 M.L.J 571.**

——**S. 54 (4)**—Contract rescinded by exercise of right of re-sale by seller—Arbitration clause in contract—If wiped out. *See* 1941 Dig., Col. 1079. CHANDU LAL PARMA NAND *v* GRAHAMS TRADING CO. (INDIA), LTD. **I.L.R. (1942) Lah. 788=198 I.C. 17 =14 R.L. 296**

SEA CUSTOMS ACT (VIII OF 1878), S. 30 (b) —*False declaration of real value of goods imported—Prosecution for—Proof required.*

In a prosecution of an importer of goods for abetment of cheating by causing a false declaration to be made of the real value of the goods as defined in S 30 (*b*) of the Sea Customs Act, it is not sufficient to prove that the Customs Officers in fact applied S. 30 (*b*) of the Act, or that the importer sought to have the real value determined under S. 30 (*b*) It is incumbent on the prosecution to prove that those conditions were fulfilled which entitled the Customs Officers to apply S. 30 (*b*) and not S. 30 (*a*). In other words, the prosecution must prove that the price mentioned in S. 30 (*a*) could not be ascertained. (*Barley and Lodge, JJ.*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* H. C. PATEL **I L.R. (1942) 2 Cal. 62=201 I C. 338=15 R.C. 190=43 Cr.L.J. 651=46 C.W.N. 414= A.I.R. 1942 Cal. 351.**

——**S. 30 (b)**—*Real value of imported goods—What is—Importer giving estimate of real value and furnishing false evidence in support—If guilty of cheating.*

The mere fact that an importer paid a particular price for a particular goods is not sufficient to prove that that price is the real value for the purposes of S. 30 (*b*) of the Sea Customs Act. It must be shown that goods of the like kind and quality could not be delivered at that place at a lower price. Therefore, an offence of cheating by "causing a false declaration to be made of the real value" of goods cannot be made out against an importer, when all that is alleged against him is that he gave an estimate of the real value of the goods imported and furnished false evidence in support of that estimate. (*Bartley and Lodge, JJ.*) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* H. C. PATEL. **I.L.R. (1942) 2 Cal. 62=201 I.C. 338= 15 R.C. 190=43 Cr.L.J. 651=46 C.W.N. 414=A.I. R. 1942 Cal 351.**

——**Ss 188 and 191**—*Scope—Jurisdiction of Civil Courts—Order of confiscation by Collector—Revision before Central Board of Revenue—Confirmation of order after hearing party's counsel—Civil suit—Competency.*

Where by an act of Legislature powers are given to a person for a public purpose from which an individual may receive an injury, if the method of redressing the injury is indicated by the statute, the ordinary jurisdiction of Civil Courts is ousted and a suit does not lie. Where an order of confiscation passed by the Collector under the Sea Customs Act is taken up to the Central Board of Revenue under S. 188 of the Sea Customs Act and the Board confirms the order under S. 191, after hearing the advocate for the party aggrieved and no attempt is made to show that the Board in passing the order has in any way infringed the principles of justice or the provisions of the Act, there is no right of suit in the Civil Court even if the procedure of the Collector of Customs was not in accordance with the Act or with the principles of justice. There being a definite remedy provided by the Act, *viz.*, an application under S. 191 of the Sea Customs Act, no civil suit will lie. (*King, J.*) CHOCKALINGAM CHETTIAR *v.*

SECOND APPEAL.

GOVERNMENT OF MADRAS. **55 L.W. 498=A.I.R. 1942 Mad. 704=(1942) 2 M.L.J. 193.**

SECOND APPEAL.

See C. P. CODE, S. 100.

SIND CHIEF COURT RULES, PROCESS FEES, Item V—Applicability—Sale by Commissioner or Receiver—Levy of poundage—If justified. *See* C. P. CODE, O. 21, RR. 64 AND 65. **I.L.R. (1942) Kar 196.**

SIND FRONTIER REGULATIONS (1892), S. 8—Scope—If governs S. 13. *See* CR. P. CODE, S. 439. **I.L.R. (1942) Kar. 246.**

——**S 8**—*Scope—Order under S. 476, Cr. P. Code—If can be referred.*

The functions of the Council of Elders are akin to those of assessors, but the questions which may be referred to the Council under S. 8, Sind Frontier Regulation, are the guilt or innocence of persons accused of offences punishable under the Penal Code with death or transportation for life. An order under S. 476, Cr. P. Code, is not such a question. It is only a finding that a prosecution is expedient. (*Davis, C.J. and Weston, J.*) KARAMDIN *v.* EMPEROR. **I.L.R. (1942) Kar. 66=200 I. C. 630=15 R. S. 2=43 Cr. L. J. 705=A. I. R. 1942 Sind 75.**

——**S. 13**—Scope—If controlled by S. 8—Jurisdiction of Sessions Judge—Trial for offence under S, 366, I. P. Code—Order for stay—Legality—Revision by High Court. *See* CR. P. CODE., S. 439. **I.L.R. (1942) Kar. 246.**

SIR—*Joint* sir—*Entry as to conditions.*

If all the sub-divisions of a particular plot is shown to have formed one joint *sir khata* at any time then it might be treated as the joint *sir* of all the persons whose names are entered. But if separate sub-khatas have existed from time immemorial, it would indicate that each party had not only separate possession but also separate title. (*Sathe, J.M.*) TALUGA KAORI *v.* RAM BRICHH MISRA. **1942 O.A. (Supp.) 489 (2)=1942 O.W.N. (B.R.) 648**

SOCIETIES REGISTRATION ACT (XXI OF 1860)—Society registered under—Position of—Status and rights of members—Suit on behalf of society—Frame of—Right of individual members to maintain action. *See* 1941 Dig., Col. 1082. KRISHNAN *v.* SUNDARAM. **197 I.C. 308=14 R.B. 209=I.L.R. (1941) Bom. 497.**

SPECIAL CRIMINAL COURTS ORDINANCE (II OF 1942)—*Applicability to pending cases.*

The wide powers given to the District Magistrate under the Special Criminal Courts Ordinance of directing what cases shall be tried thereunder cannot be limited by holding that he has not the power to direct that a case, which is awaiting trial in which no proceedings have taken place, shall be tried under the ordinance. (*Thomas C.J.*) BHAGWAT DAYAL BAIJAL *v.* EMPEROR. **203 I.C. 505=1942 O A. 574=1942 A.W.R. (C.C.) 346 (3)=1942 O.W.N. 705=1942 A.L.W. 676=1942 A.Cr.C. 213=44 Cr.L.J. 92=A.I.R. 1943 Oudh 44.**

——*If retrospective in operation,*

There is no express provision which makes the Special Criminal Courts ordinance applicable to offences committed before the ordinance came into force. But from the wide powers which have heen given to District Magistrates to direct what cases should be tried under the ordinance it can reasonably be said to apply to all offences committed whether before or after the ordinance came into force. (*Thomas, C. J.*) BHAGWAT DAYAL BAIJAL *v.* EMPEROR. **203 I.C. 505=1942 O.A. 574=1942 A.W.R (C C.) 346 (3)=1942 O.W.N 705=**

SP. CR. C. ORDINANCE (1942), S. 6.

1942 A.L.W. 676=1942 A. Cr. C. 213=44 Cr.L.J. 92=A.I.R. 1943 Oudh 44.

——*If* ultra vires *the Governor General—If has retrospective operation.*

The Special Criminal Courts ordinance is not *ultra vires* the Governor General.

(Per *Majority of the F.B.*). Offences committed even before the date of the coming into force of ordinance can be tried by the special judge under the ordinance. (*Iqbal Ahmad, C.J., Collister and Bajpai, JJ.*) SALIG RAM *v.* EMPEROR. **1942 A.W.R. (H C.) 392 (1)=1942 A.L.J. 686=1942 A.L.W. 725=A.I.R. 1943 A. 26 (F.B.).**

——*Procedure—Police report made on* 30—8—1942—*Accused remanded on* 23—8—1942 *till* 6—9—1942—*Trial commenced on* 4—9—1942—*If illegal or defective.*

There is no provision in the Special Criminal Courts Ordinace of 1942 or anywhere else providing any special period which the accused ought to have after the submission of the charge sheet and before the commencement of the trial. The accused were remanded on 26—8—1942 until 6—9—1942. A police report dated 30—8—1942 was received by the sub-divisional magistrate on 1—9—1942. On 3—9—1942, the District Magistrate submitted the case to the special Judge for trial on 4—9—1942, though remand had been given till 6—9—1942.

Held, that though it might have been desirable that the trial should not commence before 6—9—1942, it could not be said that in the matter of fixing the date of trial any provision of law was contravened or that there was any illegality. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTON. **1942 P.W.N. 219=23 P.L.T. 684.**

——**(as amended by Ordinance XLII of 1942)**—*Scope and operation of—Offence committed in Bihar on* 22—8—1942—*Cognizance taken on Police report of* 30—8—1942—*Procedure under ordinance—Applicability—Bihar notification of* 26—8—1942—*Effect of.*

The Bihar Notification dated 21st August, 1942, declaring that the Special Courts Ordinance of 1942 is in force in the Province of Bihar, is plainly intended to refer to the ordinance in its amended form, *i.e.*, as amended by ordinance XLII of 1942, and not in its original condition, although the amending ordinance was not published in the Bihar Gazette until the 26th August, 1942, it having been enacted on 19—8—1942 and published in the Gazette of India. S. 1 of the Amended Ordinance specially enacts that the ordinance shall come into force at once, which means, the date of its enactment. An offence committed in Bihar on 22—8—1942 and taken cognizance of on a police report of 30—8—1942 can therefore be tried under the ordinance as amended by the Amending Ordinance XLII of 1942. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTO. **1942 P.W.N. 219=23 P.L.T. 684.**

——*To what offences applicable.*

It is for the executive authorities concerned to consider and decide what offences shall be tried under the Special Criminal Courts Ordinance. It is not for the Special Judge to sit in Judgment on the District Magistrate and make enquiry and decide whether a particular offence was or was not connected with the state of emergency referred to in the ordinance. (*Thomas, C.J.*) BHAGWAT DAYAL BAIJAL *v.* EMPEROR. **203 I.C. 505=1942 O.A. 574=1942 A.W.R. (C C.) 346 (3)=1942 O.W.N. 705=1942 A.L.W 676=1942 A.Cr.C. 213=44 Cr.L J 92=A.I.R. 1943 Oudh 44.**

—— **S. 6**—*Procedure—Accused asked to cross-examine prosecution witnesses after charge—Request for*

SP. CR. C. ORDINANCE (1942), S. 8.

adjournment—Refusal—Omission to give reasons—Legality.

Where a charge is framed and the accused is asked which of the prosecution witnesses he wishes to cross-examine, the accused is permitted by S. 256, Cr. P. Code to ask for permission to answer the question at the next hearing of the case and to request an adjournment of the hearing for that purpose. Such a request under S. 256, Cr. P. Code, can be refused by the trying magistrate for reasons to be recorded in writing. The Special Criminal Courts Ordinance does not, however, require the special judge to give any adjournment for any reason unless he thinks it necessary in the interests of justice; and though it may be preferable for the special judge to give some reason for refusing the request for adjournment by the accused to enable him to say which of the prosecution witnesses he would cross-examine, it cannot be said that a bare refusal without giving reasons is contrary to law, nor would it be just to make too much of the fact that in certain aspects the accused has not been able to make a complete defence or to fully develop the points taken or suggested. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTO. **1942 P.W.N 219=23 P.L.T. 684.**

——(as amended by Ordinance XLII of 1942), **S. 8**—*Review—Procedure to be followed.*

S. 8 of the Special Criminal Courts Ordinance which provides for a review lays down no particular procedure to be followed in dealing with the proceedings in review. The procedure which is ordinarily followed in the High Court in dealing with a death reference under S. 374, Cr. P. Code, is therefore to be followed as far as possible, with this difference, namely, that the hearing is before a single person nominated under S. 8 instead of before a Bench of two judges as in the case of Referred Trials. (*Rowland, J.*) EMPEROR *v.* SAJIWAN MAHTO. **1942 P.W.N. 219=23 P.L.T. 684.**

SPECIAL MARRIAGE ACT (III OF 1872), S. 10 and Sch. 2—*Bengal Forms Nos.* 1622 *and* 1623—*Commented on.*

The words "when the parties are of full age" and the words "when the bridegroom is of full age and the bride minor" in Bengal Forms Nos. 1622 and 1623 respectively which have been adopted without the slightest legal justification in supersession of the statutory form, are misleading inasmuch as a party may have attained the age of majority according to the personal law to which he or she is subject and still be under the age of 21 years and therefore incapable of contracting a marriage under the Act except with the father's or guardian's consent. A marriage between a bride below 21 years and a bridegroom over 20 years solemnised in Bengal Form No. 1622 without the bride's guardian's or father's consent is invalid. (*Panckridge, J.*) DOLLY BATHENA *v.* SHAIK FAZLE ELLAHI. **201 I C. 470= 15 R.C. 204=A I R. 1942 Cal. 42**

SPECIFIC PERFORMANCE — *Jurisdiction—If affected by Registration Act—Person not presenting document for registration—Right to maintain suit for registration or for specific performance.*

A plaintiff who has not presented his document for registration can maintain a suit either to get it registered or to compel his vendor and a third party to execute a new deed in his favour and register that new deed. The Registration Act does not touch or affect the equitable jurisdiction possessed by the Civil Courts to pass a decree for specific performance where circumstances exist entitling the plaintiff to such a decree. (*Agarwala and Meredith, JJ.*) IOGENDRA SAHU *v.* GUNEI SAHU. **21 Pat. 150=201 I.C. 260=15 R. P. 42=8 B.R. 776=23 P.L.T. 580=A.I.R. 1942 Pat. 311.**

SPECIFIC RELIEF ACT (1877), S. 23.

SPECIFIC RELIEF ACT (I OF 1877), S. 9—Exclusive possession in the case of co-owners—If possible. *See* 1941 Dig., Col. 1082. ABDUL AZIZ *v.* SHEIKH AMIR. **I L.R. (1942) Nag. 322.**

——**S. 9 and Civil Procedure Code—S. 115**—Maintainability of suit—Suit for possession—No question of tenancy alleged or admitted—Order or decree under S. 9, Specific Relief Act—Interference in revision. *See* 1941 Dig., Col. 1083. RAJAI SINGH *v.* SURAJ BALI. **197 I C. 554=14 R.O. 327=A.I.R. 1942 Oudh 179.**

——**S. 9**—*Suit on title—Decree on basis of possession—If can be granted.*

Where a plaintiff bases his suit on title, he cannot be given a decree for possession under S. 9 even if he has been dispossessed within six months of the date of the suit. (*Almond, J C.*) HALIM YASIN *v.* MUSTAKIM ALAF DIN. **198 I C. 290=14 R. Pesh. 70=A.I.R. 1942 Pesh. 8.**

—— **S. 22**—*Discretionary nature of the remedy of specific performance—Exercise of discretion—Justifying circumstances.*

According to S.22, Specific Relief Act, the jurisdiction of the court to decree specific performance is discretionary Where one of the defendants was an idol and the other was the person who transferred the property to the idol with deliberate intention of avoiding the claim of the plaintiff, it was *held*, that the idol was above all earthly hardships and that the circumstances did not justify the refusal to exercise the discretion in favour of the plaintiff. (*Madeley, J.*) SRI MAHADEOGI *v.* BALDEO PRASAD. **204 I.C. 253=1942 A.W.R. (C.C.) 349=1942 O.A. 541=1942 O.W.N. 652=A.I.R. 1943 Oudh 89.**

——**S. 22**—*Specific performance against subsequent purchaser with pre emption right—If can be decreed.*

Where specific performance is sought to be enforced against a subsequent purchaser who has got a right of pre-emption, the Court should, in the exercise of its discretion under S. 22 of the Specific Relief Act refuse to decree specific performance. (*Chatterji and Shearer, JJ.*) DULHIN RAJKISHORE KUER *v.* MAHOMED QAIYUM. **198 I.C. 890=8 B.R. 475=14 R.P. 516=A.I.R. 1942 Pat. 366.**

——**S. 23 (b)**—*Contract—Assignability—Limits—Assignment of right to obtain reconveyance of property sold—Rights of parties.*

A contract is ordinarily assignable, and under S. 23 *b*) of the Specific Relief Act, specific performance of a contract may be obtained by the representative in interest of any party thereto excepting in cases where any personal quality of such party is a material ingredient in the contract or where the contract provides that the interest shall not be assigned. Where on a sale the vendor obtains an agreement from the vendee to reconvey the property on certain terms and he assigns that right to obtain reconveyance to his own daughter the vendee is bound to reconvey on her complying with the conditions and is not entitled to demand further money for doing something which he was bound to do. (*Pollock, J.*) KRISHNARAO *v.* BALWANTRAO. **1942 N L.J. 322.**

——**S. 23 (c)**—*Applicability—Compromise of doubtful claims between members of same family—All members—If to be parties—Person not actual party to compromise—Right to sue on.*

There is neither principle nor authority which would justify a Court in holding that there can be no compromise of doubtful claims between members of the same family, falling under S. 23 (*c*) of the Specific Relief Act, unless it is between all the members of the family. S. 23 (*c*) was specifically designed to meet such cases as where senior members of a family compromise a dis-

SPECIFIC RELIEF ACT (1877), S. 23.

pute regarding the rights both of themselves and of the other members of their respective branches. *B* and the defendant were two brothers forming a Hindu joint family. *B* died and after his death, his widow, *S*, brought a suit in 1921 against the defendant for possession of certain lands on the ground that her husband had separated from the defendant before his death. The suit was compromised by a compromise decree dated 16—12—1921 under which the defendant was to remain in exclusive possession of all the lands and to pay maintenance to *S* during her life and after her death to the plaintiff, who was her daughter-in law (widow of her predeceased son). Defendant was paying maintenance to *S* and after her death to plaintiff for some years. When he stopped paying plaintiff brought a suit for maintenance under the terms of the compromise. The defendant pleaded that the plaintiff was not a party to the contract and so could not sue upon it.

Held, that the compromise in question was a family settlement and fell precisely within the letter and spirit of S. 23 (*c*) of the Specific Relief Act, and was enforceable by the plaintiff.

Rowland, J.—S. 23 (*c*) was not reconcilable with the rule in *Tweddle* v. *Atkinson*, and where the two conflict the statute [S. 23 (*c*)] must prevail. (*Rowland and Chatterji, JJ.*) JANAKI BALA DEBYA *v.* MAHESWAR DAS. **21 Pat. 377=201 I.C. 660=15 R.P. 70=8 B.R. 812=1942 P.W.N. 149=A.I.R. 1942 Pat. 460.**

——**S. 23 (c)**—Scope and effect—Exception to rule that third party to contract cannot sue. *See* CONTRACT—THIRD PARTY. **21 Pat. 377.**

——**S. 35**—*Effect of default in depositing amount directed to be deposited by decree for specific performance—Remedies of parties—Policy of courts.*

Where a decree for specific performance does not state what is to happen if payment is not made by the successful plaintiff within the time fixed, the result of the plaintiff's being out of time will not be to cause the sanction automatically to fall; but the other side can operate under S. 35 of the Specific Relief Act by motion in the action itself and the Court in considering the motion would rescind the decree if it thought that the facts were such as to justify the taking from the plaintiff the relief that he got, because of his default. Normally on such a motion the Court would not, for any default, there and then dismiss the suit, in other words, rescind the decree, but would give further time. (*Stone, C. J. and Bose, J.*) SHRI MURTHI PARASNATHJI *v.* GULABCHAND MITHULAN JAIN. **203 I.C. 628=1942 N.L.J. 520.**

——**S. 38**—*Completed conveyance—Rescission of.*

Rescission can be allowed not only of a contract of sale but also of a completed conveyance. (*Davis, C.J. and Weston, J.*) ALLAHDINO BACHO *v.* UDHOOMAL. **I.L.R. (1942) Kar. 32=202 I.C. 584=15 R.S. 51=A.I.R. 1942 Sind 81.**

——**S. 42**—*Applicability—Suit under O. 21, R. 63, C. P. Code.*

A suit under O. 21, R. 63, C. P. Code, is a special suit under a special procedure provided by statute, and is, therefore, not subject to the general provisions of S. 42, Specific Relief Act. So long as it is strictly in accordance with the terms of R. 63 of O. 21, C.P. Code, it is not barred by any general provision of law. S. 42 does not apply to such a suit. (*Meredith and Shearer, JJ.*) MT. ANRAJO KUER *v.* RAMDAYAL SINGH. **21 Pat. 300=200 I.C. 557=15 R.P. 2=8 B.R. 713=24 P.L.T. 5=A.I.R. 1942 Pat. 406.**

——**S 42**—*Declaratory suit — Maintainability—Mortgagor's suit for declaration that he is full proprietor and that another had no longer any mortgagee rights,*

SPECIFIC RELIEF ACT (1877), S. 42.

A suit by a mortgagor for a declaration that he was the full proprietor and that another had no longer any mortgagee rights over the property in issue which could be attached by one who had obtained a decree against the latter, is maintainable under S. 42, Specific Relief Act. (*Thomas, C.J., Agarwal and Madley, JJ.*) SHEORAJ SINGH *v.* GAJODAR PRASAD. **203 I.C. 131=15 R.O. 162=1942 A.W.R. (C.C.) 318 (2)=1942 O.W.N. 607=1942 O.A. 404=A.I.R. 1942 Oudh 465 (F.B.).**

——**S. 42**—Declaratory suit — Maintainability—Right to consequential relief arising during pendency of suit. *See* 1940 Dig., Col. 1120. SULEMAN *v.* ABDUL SHAKOOR. **I.L.R. (1941) Nag. 735.**

——**S. 42**—*Declaratory suit—When not maintainable—Suit for declaration that* ex parte *decree was null and void.*

Where a suit was brought for a mere declaration that a certain *ex parte* decree passed against the plaintiff was null and void on the ground that it was obtained by suppressing the processes of the Court.

Held, that if the decree was null and void, no prayer for setting it aside was necessary, but that on the facts stated by the plaintiff the decree must be set aside before any useful relief could be granted to him, and that the suit must fail under S. 42 of the Specific Relief Act for want of his asking for a consequential relief. (*Fazl Ali, J.*) KAMLA KANT JHA *v.* MUKTINATH JHA. **8 B.R. 107=197 I.C. 185=A.I.R. 1942 Pat. 309.**

——**S. 42**—Declaratory suit without consequential relief—Maintainability—Test. *See* 1941 Dig., Col. 1085. ONKAR SINGH *v.* SHRIKISHAN. **I.L.R. (1942) Nag. 503.**

——**S. 42**—*Discretion of Court—Ineffective or useless declaration—Refusal of.*

Where the grant of a declaration would not be effective and would be useless, the Court in its discretion should not make it. It is well settled that under S. 42 of the Specific Relief Act a Court would not make a declaration of an abstract right exclusive of practical utility especially when that declaration cannot or may not be productive of any benefit to the party seeking or obtaining the declaration. A declaration that a licence should have been renewed by a Municipality for the year 1936-1937 is perfectly useless when made in 1942 and the Court will therefore refuse to grant it. (*Harries, C. J. and Fazl Ali, J.*) MAHOMED ISMAIL *v.* PATNA CITY MUNICIPALITY. **21 Pat. 449=A.I.R. 1943 Pat. 34.**

——**S. 42**—Discretion of Court—Suit by wife for declaration of dissolution of Christian marriage—Wife embracing Islam—Parties not domiciled in India—Husband a non-resident foreigner. *See* LETTERS PATENT (CALCUTTA), CL. 12. **46 C.W.N. 465.**

——**S. 42**—*Legal character—If includes status—Actual denial of plaintiff's legal character—If necessary for cause of action.*

Per *Nasim Ali, J.*—The words "legal character" in S. 42 of the Specific Relief Act are wide enough to include the status of a person. In order to entitle the plaintiff to bring a suit under this section, it is not necessary that the defendant should actually deny the plaintiff's legal character. If the defendant is interested to deny the plaintiff's legal character, plaintiff may come to Court for a declaration that he or she is entitled to the legal character. (*Derbyshire, C.J., Ameer Ali and Nasim Ali, JJ.*) NOOR JEHAN BEGAM *v.* EUGENE TISCENKO. **I.L.R. (1942) 2 Cal. 165=200 I.C. 176=14 R.C. 679=75 C.L.J. 242=46 C.W.N. 465=A.I.R. 1942 Cal. 825.**

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——S. 42—Relief under—Discretion—Plaintiff out of possession—Defendant in possession—Prayer for injunction and not for possession. *See* 1941 Dig., Col. 1086. ANILA BALA DEVI *v.* MADHABENDU NARAIN ROY. 200 I.C. 469=15 R.C. 41=A.I.R. 1942 Cal. 245.

——S 42—Relief under—Discretion—Refusal to exercise—Decree *brutum fulmen*. *See* 1941 Dig., Col. 1085. BISHWA NATH SARAN SINGH *v.* MUJTABA HUSAIN. 16 Luck, 742.

——S. 42—*Relief under—Suit in respect of a security bond—Declaration as to nullity of transfer of decree not covered by the bond—Availability.*

In a suit in respect of a security bond it is not competent to the plaintiff to claim a declaration that a transfer by the defendant of certain decree not covered by the bond is null and void as against him and that any decree which he might obtain in the present suit would be executable against the said decree. (*Collister and Baipai, JJ.*) JAGAT SINGH *v.* BEHARI LAL. 199 I. C. 212=14 R.A. 351=1942 A.L.J. 37=1941 A.W.R (H.C.) 389=A.I.R. 1942 All 104.

——S. 42—Scope—Office of Mahant of Math—Suit for declaration of title to and possession of—Maintainability without prayer for possession of math properties—Plaintiff not in possession—Effect. *See* 1941 Dig., Col. 1086. KANDASWAMI THAMBIRAN *v.* VAGHEESAM PILLAI. I.L.R. (1942) Mad. 13=(1941) 2 M.L. J. 463 (F.B.).

——S. 42—*Suit for mere declaration in respect of property in* custodia legis—*Maintainability.*

S. 42 of the Specific Relief Act is not a bar to a suit for mere declaration where the property is in *custodia legis*. But the court has always a right to refuse the declaration where the circumstances justify such a decision. (*Bennett and Madeley, JJ.*) MAHOMED ASAD ALI KHAN *v.* SADIQ ALI KHAN. 1942 O.A. 536=1942 O.W.N. 657=1942 A.W.R. (C.C.) 346 (2) =A.I.R. 1943 Oudh 91.

——S. 42—*Suit under—Maintainability—Plaintiff not choosing to make an objection under O. 21, R. 58, C. P. Code.*

There is nothing to prevent a person who does not choose to object under O. 21, R. 58, C. P. Code from bringing a suit under S. 42, Specific Relief Act. (*Thomas, C.J., Agarwal and Madeley, JJ.*) SHEORAJ SINGH *v.* GAJODAR PRASAD. 203 I.C. 131=15 R.O. 162=1942 A.W.R. (O.C.) 318 (2)=1942 O.W.N. 607=1942 O.A. 404=A.I.R. 1942 Oudh 465 (F.B.).

——S. 42, Proviso—*Applicability—Plaintiff basing case on possession—Finding against him—Defendant's possession not undisputed—Dismissal of suit—If justified.*

Where a plaintiff claims to be in possession and maintains that stand throughout the case, though he may be found as a fact to be out of possession, but the possession is shown to have been hotly contested and the defendant's possession is not undisputed it cannot be said that the plaintiff's claim to be in possession is so frivolous as to justify a Court in dismissing the declaratory suit under the proviso to S. 42, Specific Relief Act. (*Shirreff, S.M. and Sathe, J.M.*) THAGIA *v.* SUNDER PANDEY. 1942 O.A. (Supp.) 200=1942 R.D. 403=1942 O.W.N. (B.R.) 314=1942 A.W.R. (Rev.) 180.

——S. 42, (Proviso) and United Provinces Tenancy Act, S. 59—*Declaratory suit—Maintainability—Possession disputed but found against.*

(Per *Sathe, J.M.*).—A declaratory decree is not barred merely because the possession which the plaintiff claimed to be having and tried to prove is found to be not with him by the Court.

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(Per *Shirreff, S.M.*).—Where the plaintiff's claim to be in possession is found to be false and supported by false evidence, the proviso to S. 42, Specific Relief Act would apply to bar mere declaratory relief. (*Shirreff, S.M. and Sathe, J.M.*) RAM DULAREY *v.* BADRI BISAL. 1942 A.W.R. Rev. 480=1942 O.A. (Supp.) 506=1942 O.W.N. (B.R.) 668.

——S. 42, Proviso—Suit under S. 121 of Agra Tenancy Act on basis of subsisting possession—Possession found against—Suit if barred under S. 42, Specific Relief Act as one for mere declaration. *See* AGRA TENANCY ACT, S. 121 and SPECIFIC RELIEF Act, S. 42 PROVISO. 1942 R.D. 284=1942 O.W.N. (B.R.) 218.

——S. 42, Illus. (e)—*Aplicability—Gift by widow—Suit by nearest reversioner to declare void—Maintainability.*

A suit for declaration that a gift by a Hindu widow is void as against the reversionary heirs of her husband is one which is contemplated by S. 42 of the Specific Relief Act (illus. e) and is maintainable, when the plaintiff is the nearest prospective reversioner. The word "alienation" in illustration (*e*) to S. 42 is not restricted to a sale or mortgage, but covers also a gift. (*Davis, C.J. and Weston, J.*) SADHUMAL *v.* HASSANAND. I.L.R. (1942) Kar. 340=203 I.C. 566=15 R.S. 81=A.I.R. 1942 Sind 143.

——Ss. 54 and 56 (a) and (b)—*Applicability—Injunction to restrain holder of decree from executing his decree—Suit for—Maintainability—If barred under S. 56 (a) and (b)—Direction to make note in suit register that decree holder has been restrained by injunction from executing decree—If injunction against Court.*

Ss. 54 and 56 of the Specific Relief Act are to be read together as supplementing each other; the former defines the circumstances under which a perpetual injunction can be granted and the latter enumerates cases where an injunction must not be granted. The plaintiff was a mortgagee of a share which was owned by the defendant, who had executed the *rehan*, and the paintiff was entitled under it to collect the rents from the tenants, but he was not recorded in the Collector's register until some time after the mortgage. Meanwhile the defendant (mortgagor) sued a number of tenants for rent and got a decree in spite of the defence set up by the tenants that they had paid the rents to the plaintiff who was entitled to collect the same. The plaintiff thereafter brought a suit for a declaration that the *rehan* deed executed by the defendant still subsisted, that so long as it was not redeemed the defendant was not entitled to collect the rents from the tenants, and that the decree obtained by the defendant against the tenants was not binding upon him. He also prayed for an injunction to restrain the defendant from realising the decree amount from the tenants and to restrain the tenants (who were also impleaded as formal parties) from making any payment to the defendant under the decree. The defendant pleaded that no injunction could be granted in view of S. 56 (*a*) and (*b*) and that no injunction could be granted against the executing Court. The Court granted an injunction and directed a note to be made of it in the register of the Court which passed the decree. The plaintiff did not at all ask in his plaint for staying any judicial proceeding, but simply asked for an injunction against the defendant to restrain him from executing his decree.

Held, that the case clearly fell under S. 54, Specific Relief Act and did not fall under S. 56, and Cls. (*a*) and (*b*) had no application at all to the case.

Held, further, that a direction by the Court to make a note in the relevant register of the Court which passed

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the decree in favour of the defendant to the effect that the defendant has been restrained from executing his decree would not amount to an injunction against the Court. (*Harries, C.J. and Faul Ali, J.*) SHEO NANDAN PRASAD *v.* SREO PARSAN PATHAK. **200 I.C. 389=14 R.P. 651=8 B.R. 683=23 Pat.L.T. 270=A.I.R. 1942 Pat. 349.**

——**S. 54**—Injunction—When may not be issued. *See* 1941 Dig., Col. 1087. GULAB SINGH *v* PUNJAB ZAMINDARA BANK, LTD. **199 I.C 667=14 R.L. 423=A.I.R. 1942 Lah. 47.**

——**S. 56 (k)**—Suit for injunction restraining building of house—Proof of special damage—Necessity—*Ultra vires* act of Municipal Committee—If can confer right to sue. *See* 1941 Dig, Col. 1088. CAWASHAH BOMANJI *v.* PRAFULLA NATH. **197 I.C. 570=14 R. N. 175.**

STAMP—*Duty payable—Nature of document—How determined.*

For the purpose of finding out whether a document is properly stamped or not it is not permissible to look at it in the light of a plaint that has been drafted several months after its execution. The nature of a document can be determined only from the language it employs and the purpose which it is intended to serve (*Din Mahomed, J.*) UTTAM CHAND *v.* PERMA NAND. **203 I.C. 7=15 R.L. 160=44 P.L.R. 188=A.I.R. 1942 Lah. 265.**

STAMP ACT (II OF 1899), Ss. 2, 14 and 35—Insufficiently stamped promissory note—Admissibility. *See* 1940 Dig., Col 1124. JAWANMAL *v.* AKAJI ANAND. **I.L.R. (1941) Nag. 761.**

——**S. 2 (15)**—*Partition decree drawn up without proper stamp—Effect of.*

Where the Court has drawn up a partition decree without the proper stamp whether after a considered decision or whether only by inadvertence, there is no lack of inherent jurisdiction, though there might be an irregularity or illegality in the exercise of jurisdiction and therefore it cannot be said that there is no decree in existence at all. There is a decree but not a decree that can be acted upon until proper stamp is supplied. but the decree can be validated by the addition of the proper stamp and therefore it cannot be said that there is no decree at all in the sense that that decree is merely a piece of waste paper which cannot be validated by the addition of the stamp unless the presiding officer re-signs the decree after it is stamped. (*Dalip Singh, Din Mohammad and Sale, JJ.*) GOPI MAL *v* VIDYA WANTI. **I L R. (1942) Lah. 307=203 I.C. 34=15 R.L. 162=A I.R 1942 Lah. 260 (F B.)**

——**S. 2 (16) and Sch I Arts. 12 and 46**—*Document referring to a prior partition—Signing by parties—Reference to arrangements to conduct an existing partnership—Nature of the instrument.*

Where a document refers to a previous partition and to certain properies being divided later on and is signed by the parties and also refers to an already existing partnership and makes provision for the future conduct of the partnership it is neither a deed of partition nor partnership nor award. (*Allsop, Verma and Hamilton, JJ.*) TIRATH RAJ *In re.* **201 I C 578=15 R. A. 67=1942 A.L W. 436=1942 A.W.R. (H C.) 173 =A.I.R. 1942 All. 220 (F.B.).**

——**S 2 (22)**—*Agreement or promissory note—Requisites.*

Where a document was on a separate sheet of paper and a sum of money was described to be payable to the named person and the note included a promise to repay it by a fixed future date and the promise was unconditional and was signed by the person promising to pay

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amount it falls within the definition of a promissory note and cannot be held to be an agreement. (*M. R. Davies.*) SOOWA LAL *v.* NORAT MAL. **1941 A.M.L. J. 117.**

—— **S. 12 (3)**—*Cancellation—Sufficiency.*

Under S. 12 (3) of the Stamp Act, the cancellation of the stamp need not be in such a manner that it is impossible for a criminally-minded person to use that stamp again in any circumstances whatever. Cancellation is effected within the meaning of this clause, if it is done in such a manner that a person seeing the stamp so cancelled will realise at once that it had already been used and should not be used again, or in other words if it has been defaced in such a manner that it cannot be used again without some manipulation of words, figures, pen, or ink. (*Davis, C.J and Weston J.*) MOTIRAM NATHUMAL *v.* MANGHARAM TIRATHDAS. **I L.R. (1942) Kar. 56=201 I.C. 711=15 R.S. 16=A.I.R. 1942 Sind 130.**

——**S. 19**—Promissory note executed abroad—Suit thereon in British India—Need for affixing stamp and cancelling note—Procedure before endorsement of note. *See* 1941 Dig., Col. 1089. SIVASUBRAMANIA THEVAN *v.* KALANKARAYAN KONAR. **200 I.C 342=15 R.M. 84=54 L.W. 768=(1941) 2 M.L.J. 301.**

——**S. 32 (2)**—*Scope—"Certificate"—Letter by Collector opining that no stamp duty is necessary on an assignment of a promissory note—If binding and conclusive on Civil Court.*

Though the Collector might erroneously decide that no stamp duty was necessary in regard to an assignment of a promissory note, his decision would be final if he had granted a certificate on the document in questionn It would not then be open to a Civil Court to questio- an endorsement on the document even though the Col- lector ought not to have granted the certificate, because it was out of time. A letter, however, from the Collector expressing his opinion that no stamp duty was necessary is not a certificate which is contemplated by S. 32 (2) of the Stamp Act, and hence the same is not binding or conclusive on the Civil Court. (*Horwill, J.*) MURUGAVYA PILLAI *v.* RAJAGOPALA PILLAI. **202 I C. 77=15 R.N. 430=1942 M W N 192=55 L.W 156=A.I.R. 1942 Mad. 381=(1942) 1 M.L J. 325.**

——**S 33**—*Document ordered to be returned as not proved—If part of judicial record.*

When a Court orders a document to be returned because it is not proved it can no longer be considered to be part of the judicial record and cannot therefore properly come before the Court again in the performance of its functions, unless, of course by any chance the order is reviewed and the document is allowed to be tendered again in evidence. But otherwise, it would remain in the custody of the Court after such order only for being returned to the party concerned. (*Skemp, Bhide and Din Mohammad, JJ.*) PURAN CHAND *v.* EMPEROR. **202 I.C. 670=15 R L. 150=A.I.R. 1942 Lah. 257 (S B.).**

——**S. 33**—*Document sent by Court to Collector under S. 38 (1)—If comes before him in exercise of his functions.*

If a Court which has no jurisdiction to impound a document, impounds it and sends it to the Collector as provided in S. 38 (1) of the Stamp Act, the document does not come either before the Collector or the higher revenue authorities in the exercise of their functions, and consequently they are not competent to impound it. (*Skemp, Bhide and Din Mohammad, JJ.*) PURAN CHAND *v* EMPEROR. **202 I.C. 670=15 R.L. 150=A.I.R. 1942 Lah. 257 (S.B.).**

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——S. 33—*Impounding of document—Power of Court after becoming* functus officio.

A Court has no power to impound a document under the Stamp Act after it has become *functus officio*. (*Skemp, Bhide and Din Mohammad, JJ.*) PURAN CHAND *v.* EMPEROR. **202 I.C. 670=15 R.L. 150=A.I.R. 1942 Lah. 257 (S.B.).**

——S. 33—*'Produced'—Meaning — Power of Court to compel production of document for impounding it.*

The word "produced" as used in S. 33 of the Stamp Act means produced in the ordinary course of law and not produced under compulsion. Further a document is produced by a party only when it is sought to be proved and a witness is examined in respect thereof and not earlier. It is highly improper for a Court to compel a party to produce an original document with a view to impound the document, because the Court has been informed that it is not sufficiently stamped. (*Din Mahomed, J.*) UTTAM CHAND *v.* PERMA NAND. **203 I.C. 7=15 R.L. 160=44 P.L.R. 188=A.I.R. 1942 Lah. 265.**

——S. 33 (1)—*Essentials for the applicability of—'Produce'—Meaning.*

The essentials required by S. 33 (1) of the Stamp Act which confers the authority to impound are that either the document must be 'produced' or come before the judge 'in performance of his functions.' The word 'produce' has a technical meaning and means either produced in response to a summons or produced voluntarily for some judicial purpose, such, for instance as evidence. It cannot refer to a document which falls accidentally or incidentally into a judge's hands. It carries with it, when used in this connection, a mental element just as the word 'deliver.' There must be an intention to produce, just as there must be an intention to deliver. The mere physical act of production is not enough when there is no intention to produce. It is further necessary that the document should come before the judge, 'in the performance of his functions' *as a judge*. Hence where a witness summoned to produce a document produces it along with others not connected with the case before the Court, the latter cannot be impounded under the provisions of S. 33 (1) of the Stamp Act (*Bose, J.*) NARAVANDAS NATHURAM, *In re*. **204 I.C. 94=1942 N.L.J 564.**

——S. 35 and Sch. I, Art. 48—*Applicability—Letter empowering letting of land.*

If a letter written by a zamindar empowers his karinda to let the land to anybody, it would be a power of attorney and would be inadmissible in evidence if unstamped in view of S. 35 read with Art. 48, Sch I of the Indian Stamp Act. (*Shirreff, S.M. and Sathe, J.M.*) RAMESHWARI PRASAD *v.* MADHO LAL. **1942 R.D. 365=1942 O.W.N. (B.R.) 276=1942 A.W.R. (Rev.) 257 (1)=1942 O.A. (Supp.) 283 (1).**

——Ss. 35 and 36—*Execution of unstamped partition decree—Subsequent objection that decree could not be acted upon—If barred.*

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S. 35 is in terms wider than S. 36, for while S. 35 refers both to admission in evidence and to acting upon and to registration and to authentication, S. 36 only refers to admission into evidence. There is obviously a distinction in admitting into evidence and acting upon. Where the executing Court executes an unstamped partition decree it acts upon the decree within the meaning of S. 35. In such a case there can be no question of admitting the decree in evidence under S. 36 and inasmuch as S. 36 does not contain the words "acted upon" a subsequent objection on the ground that the decree could not be acted upon is not barred. (*Dalip Singh, Din Mohammad and Sale, JJ.*) GOPI MAL *v.* VIDYA WANTI. **I.L.R. (1942) Lah. 307=203 I.C. 34=15 R.L. 162=A.I.R. 1942 Lah. 260 (F.B.).**

——S. 35—*Unstamped document—Validity.*

Failure to stamp a document which has got to be stamped under the provisions of the Stamp Act does not affect the validity of the transaction embodied in the document. (*Mukherjea and Blank, JJ.*) PURNA CHANDRA CHAKRABARTY *v.* KALIPADA ROY. **201 I.C. 557=15 R.C. 234=46 C.W.N. 477=A.I.R. 1942 Cal. 386.**

——Ss. 35 and 2 (15)—*Unstamped partition decree—Execution—Jurisdiction of executing Court.*

Where a partition decree is drawn up without proper stamp and the executing Cout without objection proceeds to execution, there is no lack of inherent jurisdiction in the executing Court, to act upon the decree, that is to execute it but there is an illegality or error affecting its jurisdiction in proceeding to act upon a decree which the statutory bar provided by S. 35 forbids it from doing. Once the proper stamp is supplied, the validity of the decree would date back to the date of the decree and therefore the execution application instead of being struck off might proceed as from that date. But this would not validate the proceedings that had taken place before the proper stamp was supplied. Those proceedings would still be without jurisdiction in the sense that the Court was barred by statute from proceeding in the way it did without a proper stamp and therefore the proceedings were without any legal justification. (*Dalip Singh, Din Mohammad and Sale, JJ.*) GOPI MAL *v.* VIDYA WANTI. **I.L.R. (1942) Lah. 307=203 I.C. 34=15 R.L. 162=A.I.R. 1942 Lah. 260 (F.B.).**

——S. 38 (2)—*Jurisdiction of Collector.*

So far as S. 38 (2) of the Stamp Act is concerned, the Collector derives his jurisdiction only from the order which has been made within the Act, and if an order is made which is *ultra vires* even the Collector's jurisdiction is not being properly exercised. (*Din Mahomed, J.*) UTTAM CHAND *v.* PERMA NAND. **203 I.C. 7=15 R.L. 160=44 P.L.R. 188=A.I.R. 1942 Lah. 265.**

——S. 43—*Launching of prosecution—Duty of Collector*—Prima facie *case, if sufficient.*

The proviso to S. 43, Stamp Act requires that unless the Collector is satisfied that the offence was committed with an intention of evading payment of the proper duty, no prosecution should be launched. The Collector cannot leave this question to the Court that is responsible for trying the case. A *prima facie* case is not sufficient. The section is mandatory in this respect. The Collector must himself record a finding that he is satisfied that such an intention existed. (*M. R. Davies*) RAM SWAROOP *v.* EMPEROR. **1941 A.M.L.J. 111.**

——S. 56 and C. P. and Berar Stamp Rules, R. 27—*Powers of Chief Controlling Revenue Authority—Setting aside Collector's order cancelling licence of a stamp vendor.*

The powers of Chief Controlling Revenue Authority under S. 56 of the Stamp Act are limited to control over

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the exercise of powers by C llectors under Chs. IV and V. Though R. 27 of the C. P. and Berar Stamp Rules gives the Chief Controlling Revenue Authority concurrent powers with the Collector to revoke a license, it cannot be inferred from that, that Authority can set aside an order by the Collector cancelling the licence of a stamp vendor. (*Binnney, F. C.*) LOKMAN DHONDBA *v.* BABU RAO GANPATRAO. **1942 N.L.J. 544.**

——**S. 57 (1)**—*Words "such case"—Meaning of.*

The words "such case" in S. 57 (1) refer to the questions propounded by the Financial Commissioner on which he felt doubt and not questions which he finally answered. The High Court therefore on a reference under S. 57 (1) will refuse to go into the questions which were finally answered by the Financial Commissioner. (*Skemp, Bhide and Din Mohammad, JJ.*) PURAN CHAND *v.* EMPEROR **202 I.C. 670=15 R.L. 150= A.I.R. 1942 Lah. 257 (S.B.).**

——**S. 61 (1)**—*Form of bringing the matter to the notice of the High Court— Letter of Chief Inspector of Stamps—Sufficiency.*

A letter from the Chief Inspector of Stamps is sufficient compliance with all that is required by the Legislature in the matter of S. 61 (1) of the Stamp Act. A regular application in the form of a revision by the Collector is not necessary. (*Baipai, Braund and Dar, JJ.*) SHYAM LAL BIDHI CHAND *v.* MUKUND LAL. **I.L.R. (1942) A. 157=199 I.C. 252=14 R.A. 358= 1942 O.A. (Supp) 98=1942 R.D. 192=1942 A.L. J. 87=1942 A.L.W. 108=1942 O.W.N. 97=1942 A. W.R. (H.C.) 64=A.I.R. 1942 A. 147 (F.B.).**

——**S. 61 (2) and Civil Procedure Code, S. 115**—*Order under S. 61 (2)—If revisable under S 115.*

The Oudh Chief Court has got power to entertain a revision under S. 115, C. P. Code, against the order of the District Judge under S. 61 (2) of the Stamp Act. (*Ghulam Hasan, J.*) HUBRAJI *v.* DEPUTY COMMISSIONER, FYZABAD. **204 I.C. 363=1942 O.W.N. 793 =1942 O A 632.**

——**S. 62 (1)**—*Scope of—Penalty paid for validation—Deduction from fine levied in later prosecution.*

Where a penalty has been paid before a Civil Court for the validation of a document which should have been stamped but was not, deduction ought to be made of the amount so paid from out of the fine levied on the party in subsequent criminal prosecution under S. 62 (1), Stamp Act. (*Pollock, J.*) EMPEROR *v.* KANHAYA-LAL **1942 N.L.J. 514.**

——**Arts. 1, 5 and 15**—*Entry with respect to balance struck in account book—Construction—Acknowledgment, or agreement or bond.*

The question whether an entry with respect to a balance struck in an account book is to be classed as an acknowledgment agreement or bond for the purpose of duty chargeable under the Stamp Act has to be decided on the basis of the language used. It is the phraseology used and not the legal implications following from it that determines the duty chargeable on such cases. Stamp duty is not based on the legal obligation flowing from a document but is based on the nature of the document itself. What is taxed in other words is not the transaction but the document and therefore whatever implied promise there may be involved in an unconditional acknowledgment, it can never be a bond unless the obligation is contained in the document itself in express terms. In most cases in which balances are struck from time to time, the object is to extend the period of limitation and nothing more. The promise to pay is made at the time when the original loan is advanced and there is no necessity to make any fresh promise to pay so long as the period for limitation has not expired. But when the debt remains

STAMP ACT (1899), Art. 55.

unpaid and the period of limitation is about to expire, the creditor generally requires the debtor to make an entry in his account-book acknowledging the balance due so that it may serve to extend the period of limitation. Such entries usually fall within the category of "acknowledgments" as given in Art. 1, Sch. I of the Stamp Act, except when they are taken out of the scope of the Article by the proviso thereto. The phraseology employed usually is *baqi dene*, *baqi lane*, or *baqi rahe*, but all these expressions appear to mean really the same thing, *viz*, that such and such balance is payable. When this phraseology is employed and there are no other words expressing any promise to pay the entries should be taken to amount to mere acknowledgment and would be chargeable as such. Of course if the acknowledgment includes any stipulation as to interest or to deliver any goods or other property the entry will be taken out of the scope of the Article, by virtue of its proviso. If the phraseology of the entry itself contains a distinct promise to pay, it will be classed as an agreement. If the entry is also attested it will be classed as a bond. (*Dalip Singh Bhide and Ram Lal, JJ.*) SHIV RAM PUNNUN RAM *v.* FAIZ. **I.L.R. (1942) Lah. 282=199 I.C. 161=14 R.L. 397=44 P.L.R. 10 =A.I.R. 1942 Lah. 50 (F.B.).**

——**Arts. 23 and 55**—*Applicability—Deed called* dastbardari *transfering property to children and grandchildren of executant, a widow—If a conveyance or release.*

Art. 55, Stamp Act obviously predicates the existence of a claim upon another person or against any specified property, which claim the person executing the document renounces by means of deed of release. Hence it cannot apply to case of a deed by a Hindu widow which though styled a *dastbardari* transfers possession of her property *inter-vivos* to her daughter and her children. It is really a conveyance within the meaning of Art. 23, Stamp Act. (*Ghulam Hasan, J.*) HUBRAJI *v.* DEPUTY COMMISSIONER FYZABAD. **204 I.C. 363= 1942 O.W.N. 793=1942 O A. 632.**

——**Art. 30. Exemption**—Applicability—Advocate enrolled in Rangoon High Court before separation of Burma from India—Application after separation for enrolment as advocate of Madras High Court—Payment of enrolment fee over again—Necessity *See* BAR COUNCILS ACT, S 8. **(1942) 1 M.L.J. 599 (F.B.)**

——**Arts. 40 (b) and 57**—*Mortgage deed executed by judgment debtor as security for due performance of decree—How chargeable—Word 'surety' in Art. 57 if can be extended to case of principals.*

Where in compliance with the condition imposed for the stay of execution of a decree the judgment-debtor executes a mortgage bond charging his properties as security for the due performance of any decree that might ultimately be passed against him the document is chargeable as a mortgage deed under Art. 40 (*b*) of the Stamp Act. It cannot be treated as a security bond under Art. 57 for the words 'executed by surety' in that Article must be given their plain and natural meaning and there is no justification for extending the scope of the word 'surety' to the case of principals who are parties to the proceedings on whose behalf the deed is executed. (*Thomas, C.J., Ghulam Hasan and Agarwal, JJ.*) HUNTER *v.* EMPEROR. **200 I.C. 680=15 R.O. 37=1942 A.W.R. (C.C.) 244=1942 O A. 265=1942 A Cr.C 97=1942 O.W.N. 363=A.I.R. 1942 Oudh 371 (F.B.).**

——**Art. 55**—Applicability—*Dastbardari* transferring property to children and grandchildren of executant, a widow. *See* STAMP ACT, ARTS. 23 AND 55. **1942 O.A. 632.**

STAMP ACT (1899), Art. 57.

——**Art. 57**—'Surety'—Meaning. *See* STAMP ACT, ARTS. 40 (*b*) AND 57. 1942 O.W.N. 363.

SUCCESSION ACT (X OF 1865) S 121—Applicability and scope of—Will by Hindu in 1899—Rule of construction—Forfeiture clause—If clause in *terrorem* English law. *See* HINDU LAW—WILL. **I L.R. (1942) Kar. 392.**

SUCCESSION ACT (XXXIX OF 1925), Ss. 57 and 213—*Probate—Necessity—Will of Hindu of Ajmer affecting property in Calcutta.*

Where the will of Hindu in Ajmer deals with property in Calcutta, the legatee cannot establish his right thereunder without first obtaining probate or letters of administration. (*M. R. Davies.*) MUKAND KUNWAR, SETHANI *v.* KANWAR UMRAO MAL LODHA. **1941 A.M.L.J. 132.**

——**S. 114**—Applicability—Charitable trusts made in perpetuity. *See* 1941 Dig., Col. 1093. MARIANO *v.* PROVOST. **197 I C. 452=14 R.R. 122.**

——**S. 118**—Chatitable bequest by testator with near relatives—Validity—Requirements of law—Proper construction of—S. 118. *See* 1941 Dig., Col. 1094. MARIANO *v.* PROVOST. **197 I C. 452=14 R R. 122.**

——**S. 129**—Applicability—Prior gift void—Effect on ultimate gift. *See* T. P. ACT, S. 26. **44 Bom.L.R. 256.**

——**S. 134**—Applicability and scope—Will by Hindu in 1899—Forfeiture clause—Validity—If clause *in terrorem*—English law. *See* HIDU LAW—WILL. **I.L R. (1942) Kar. 392.**

——**Ss. 142 and 150**—Applicability—Testator having funds in Bank—Gift of sum to son for purchase of house and direction for payment of sum out of amount in bank—If specific or demonstrative. *See* 1941 Dig, Col. 1094. MADHAVA RAO *v.* ADMINISTRATOR-GENERAL, MADRAS. **201 I.C. 143=15 R.M. 243= A.I.R. 1942 Mad. 17=(1941) 2 M.L.J. 677.**

——**S. 192**—*Applicability*—Muth *property—Application by person claiming right of succession to last* mahant—*Competency.*

S. 192 of the Succession Act would apply to *muth* property held by a *mahant*. S. 192 and the following sections comprising part VII of the Succession Act are intended to provide for speedy relief against wrongful possession in cases of succession, by summary proceedings. There is no reason why Part VII should not apply to property held by a deceased *mahant* of a *muth* or *asthal*. An application under S. 192 of the Succession Act in respect of such property by a person claiming the right of succession thereto is therefore maintainable. (*Dhavle and Chatterjee, JJ.*) KRISHNADEVANAND RAMJEE *v.* KAPILDEO RAMJEE **21 Pat. 197=198 I.C. 535=14 R.P. 468=8 B.R. 429=23 P.L.T. 547= 1941 P.W.N. 755=A.I.R. 1942 Pat. 251**

——**S. 192**—*Proceedings under—Liability of supratdar to restore property entrusted—Separate suit, if necessary—Inherent jurisdiction to order restoration in same proceedings.*

Where in proceedings under S. 192 of the Succession Act, property is ordered to be left with a supratdar and on letters of administration being granted the supratdar fails to deliver the property entrusted to him, the Court has inherent jurisdiction to direct the supratdar to restore possession and enforce it in the same proceedings and avoid multiplicity of proceedings. (*Pollock, J.*) SADASHEO *v.* GUJABAI. **1942 N.L.J. 325.**

——**S. 193**—*Requirements not fulfilled—Revision.*

Although the omission to observe strictly all the requirements of S. 193 of Succession Act may constitute a material irregularity in the exercise of jurisdiction, the High Court will not interfere in revision if the petitioner has availed himself of another remedy open to him by instituting a regular suit. (*Sale, J.*) PREM SINGH *v.* TULSI RAM. **200 I.C. 850=15 R.L. 23=44 P.L.R. 109=A.I.R. 1942 Lah. 151.**

SUCCESSION ACT (1925), S. 213.

——**Ss. 211 and 307**—Administrator—Powers of—Mortgage of estate for purposes of business of deceased—Validity. *See* 1941 Dig., Col. 1095. KUBERDAS DEVCHAND *v.* JERKISH NAOROJI. **198 I.C. 609= 14 R B. 326=A.I.R. 1942 Bom. 54.**

——**Ss. 211 and 213**—Executor obtaining probate—If becomes legal representative of testator from time of his death. *See* 1941 Dig., Col. 1095. BHUDEB CHANDRA ROY *v.* BHIK SHAKAR PATTANAIK. **A.I.R. 1942 Pat. 120.**

——**S. 213**—*Aimer-Merwara—Proof of will—Necessity for probate.*

S. 213 of the Succession Act does not permit a will to be proved unless probate is taken out where the will is made by a Hindu in territories which in 1870 were under Lieutenant-Governor of Bengal. As in 1870 Ajmer-Merwara was in the North-West Provinces and was under the administration of the Lieutenant-Governor of Bengal, a will cannot be proved in the province unless probate is taken out. (*Davies.*) MANOHAR KANWAR *v.* NARAIN SINGH. **1941 A. M.L.J. 105.**

——**S. 213**—*Scope of prohibition.*

Per *Pal, J.*—S. 213 of the Succession Act is not limited in its operation only to cases where the plaintiff brings a suit as executor or legatee or even to cases where the defendant claims as executor or legatee. It extends to all cases where it becomes necessary in the suit to decide that under the will the right as an executor or legatee accrued. It equally debars a person who is required to establish the legatee's right merely as a *jus tertii* for the purpose of his defence. The prohibition, however, does not extend beyond the question of establishment of the right as executor or legatee. The will can be looked into for all other purposes. (*Akram and Pal, JJ.*) JOGENDRANATH BANERJI *v.* MAKHAN LAL BANERJI. **I.L.R. (1942) 2 Cal. 13=201 I.C. 588=15 R.C. 250=46 C.W.N. 317=75 C.L.J. 139= A.I.R. 1942 Cal. 401.**

——**S. 213**—*Title to property by inheritance—If can be defeated by unprobated will.*

Per *Akram, J.*—A claim or title of a plaintiff to any property by inheritance cannot be defeated by an unprobated will left by the person from whom the plaintiff claims to have inherited. In this country intestacy is the general rule and unless a valid disposition of the property in suit is proved, the plaintiff is entitled to succeed by inheritance. The defendant, therefore, should prove the will in order to defeat the plaintiff's claim; this he cannot do under the terms of S. 213 of Succession Act.

Per *Pal J.*—In order to defeat the claim of the plaintiff on the basis of inheritance, it would not suffice to establish that his father left a valid will and that the intended dispositions of that will covered this property. The defendant must proceed further and must establish that the disposition in favour of the others was a successful one. This would really be establishing their right as legatees under the will. And this is exactly what is prohibited by S. 213, Succession Act, so long as the will remains unclothed with a probate. (*Akram and Pal, JJ.*) JOGENDRANATH BENERJEE *v.* MAKHAN LAL BANERJEE. **I.L.R. (1942) 2 Cal. 13= 201 I.C. 588=15 R.C. 250=46 C.W.N. 317=75 C.L. J. 139=A.I.R. 1942 Cal. 401.**

SUCCESSION ACT (1925), S. 214.

——S. 214—*Applicability—Claim to restitution by party succeeding in appeal—If claim for recovery of "debt"—Succession certificate—Necessity.*

An application on the part of the successful party in appeal in the appellate Court for restitution from the unsuccessful party, if that is expressed in terms of rupees, is one for the recovery of a debt. Hence the heir of an original party cannot obtain such restitution without providing himself with the necessary succession certificate. (*King and Byers, JJ.*) CHOCKALINGAM CHETTIAR *v.* CHOCKALINGAM CHETTIAR. **55 L.W. 237=1942 M.W.N. 332=A.I.R. 1942 Mad. 445 (1) =(1942) 1 M.L.J. 467.**

——S. 214—Applicability—Hindu widow—Right under Hindu Women's Rights Act—If by inheritance—Suit on promissory note in favour of deceased husband—Succession certificate—If necessary. *See* HINDU WOMEN'S RIGHTS TO PROPERTY ACT, S. 3 (2) AND (3). **(1942) M.W.N. 703=(1942) 2 M.L.J. 668.**

——S. 214—*"Debt"—Sum due under insurance policy.*

A policy of insurance especially where the policy is for a definite sum comes within the definition of "debt" and a succession certificate can be granted with respect to it. (*Almond, J.C.*) MOHAR SINGH *v.* REVEL KAUR. **201 I.C. 341=15 R. Pesh. 21=A.I.R. 1942 Pesh. 42.**

——S. 214 (1)—*Applicability—Claiming "on succession"—Receivers appointed by court in litigation after death of person with authority to sue in their own name to realise outstandings due to estate of deceased—Suit by such receivers—Succession certificate—Necessity.*

It is only where a person claims to be entitled to the effects of a deceased person on succession that the provisions of S. 214 (1) (*a*) of the Succession Act will apply; where in a litigation arising subsequent to the death of a person, receivers are appointed by court with express authority to sue in their own names to realise outstandings due to the estate of the deceased, and such receivers sue in their own names to recover debts due under promissory notes executed in favour of the deceased, it cannot be said that the suits are by persons claiming "on succession" to be entitled to the effects of the deceased within the meaning of S. 214 (1) (*a*). It is not therefore necessary for the receivers so suing to produce succession certificates before they can get decrees passed in their favour on proving the claims. (*Manohi Kumara J.*) RAMA SWAMI IYENGAR *v.* DORAISAMI VANDAYAR. **1942 M.W.N. 661=55 L.W. 660=(1942) 2 M.L.J. 748.**

——S. 214 (b)—*Scope—Application to execute decree in favour of deceased person—Applicant not showing succession certificate—Effect. See* **1941 Dig. Cal. 1095.** KALYANI PRASAD SINGH DEO *v.* MAHADEV ROY. **197 I.C. 431=8 B.R. 224=14 R.P. 208.**

——S. 218—Discretion of Court—Two persons standing in equal degree of kindred—Court if bound to grant joint letters of administration. *See* **1941 Dig. Cal. 1096.** UDAIRAJ DHURANDHAR *v.* MOTIRAM RUKHMAJI. **196 I.C. 22=14 R.R. 223.**

——Ss. 229 and 230—*Failure to cite chief executor—Effect.*

Where in an application by one of the executors the chief executor mentioned in the will is not cited, Ss. 229 and 230 of the Succession Act are likely to make the application infructuous. Where such chief executor is not prepared to renounce his or her duties the application without such a process is not in order. (*Davies, J.*) WILLIAM MAIL LOOMBA, *In re.* **1942 A.M.L.J. 27.**

——S. 258—*Universal legatee—If he would be*

SUCCESSION ACT (1925), S. 263.

Per *Madeley, J.*—Where an universal legacy is left to more than one person, there will be shares in that legacy and their shares in the legacy might well be specified in the will. Where the share of one is confined to the movable property and a life interest in all the immovable property except two houses in which that person has full estate and the interest of the other legatee is the reversionary interest in all the rest which will vest in him after the death of the former, these do not amount to particular legacies or to one particular legacy with a residuary. It is an universal legacy of all the property to two persons and any one of them would be a universal legatee.

Per *Agarwal, J.*—Where the testator gives one house absolutely to a legatee and a life estate only in his other property and another was to get the entire property after the death of the former except the house which is given absolutely to him, the former cannot be called a universal legatee. (*Agarwal and Madeley, JJ.*) RAM RANI *v.* INDRANI. **1942 A.W.R. (C.C.) 306=1942 O.W.N. 452=1942 O.A. 364=A.I.R. 1942 Oudh 510.**

——S. 234—*Refusal to accept letters of administration—Will permitted to be proved by another—Former if can thereafter offer to accept letters of administration.*

If a person declines to accept letters of administration and any other person is admitted to prove the will, the former cannot thereafter turn round and contend that he would accept letters of administration. (*Agarwal and Madeley, JJ.*) RAM RANI *v.* INDRANI. **1942 A.W.R. (C.C.) 306=1942 O.W.N. 452=1942 O.A. 364=A.I.R. 1942 Oudh 510.**

——S. 235—*"Next-of-kin"—Meaning.*

'Next-of-kin' in S. 235 of the Succession Act means a person, or set of persons, standing nearest in blood relationship to another person. It means, in fact, the natural heir or heirs. (*Agarwal and Madeley, JJ.*) RAM RANI *v.* INDRANI. **1942 A.W.R. (C.C.) 306=1942 O.W.N. 452=1942 O.A. 364=A.I.R. 1942 Oudh 510.**

——S. 235—*Sufficient compliance with—Issue of notice to show cause why letters of administration should not be granted—Denial of validity of will, if tantamount to refusal of letters of administration.*

The issue of notices to the next of kin to show cause why letters of administration should not be granted to an applicant is a sufficient compliance with the requirements of S. 235 of the Succession Act. Where the next-of-kin deny the validity of the will it amounts to refusal to accept letters of administration. (*Agarwal and Madeley, JJ.*) RAM RANI *v.* INDRANI. **1942 A.W.R. (C.C.) 306=1942 O.W.N. 452=1942 O.A. 364=A.I.R. 1942 Oudh 510.**

——Ss. 255 and 211—*Number of people interested in estate—Application by some for probate regarding part of the estate—If can be granted.*

Where the applicants for probate along with others are made the sole executors under a will and the entire estate vests in them under the statutory provisions of S. 211 of the Succession Act, probate limited to part of the estate could not be granted to the applicants by the exercise of powers under S. 255. (*Graham Bruce and Agarwal, JJ.*) AMRIT KAR *v.* NANDAN LAL. **204 I.C. 218=1942 A.W.R. (C.C.) 326 (2)=1942 O.W.N. 480=1942 O.A. 382.**

——S. 263—*Party impleaded at previous proceedings standing by—If can re-open proceedings—Law in England and India. See* **1941 Dig. Cal. 1098.** G. V. PURKAIT *v.* U. H. PETERSON. **201 I.C. 343=15 R. C. 332=A.I.R. 1942 Cal. 382.**

SUCCESSION ACT (1925), S. 263.

——S. 263 –Revocation of probate—Application for —Consideration for Court. *See* 1941 Dig, Col. 1097. PASHUPATI SADHU KHAN *v.* JANAKI NATH MUKHERJEE. 200 I.C. 588=15 R.C. 60=A.I.R. 1942 Cal 236.

——S. 263—Scope of. *See* 1941 Dig., Col. 1097. GHULAM ALI *v.* RAHMATULLAH KHAN. 198 I.C. 243=14 R R. 188.

——S. 271—Decision under to proceed with application for probate—If appealable order. *See* SUCCESSION ACT, S. 299. 44 Bom.L R 603.

——S. 271—Discretion of High Court to refuse application—Right to observe comity of Courts—Discretion once exercised—Effect of. *See* 1941 Dig., Col. 1097. O. V. FORBES *v.* V. G. PETERSON. 201 I.C. 545=15 R C. 229=A.I.R. 1942 Cal. 283.

——S. 273—Oudh Chief Court—If "High Court"—Power of that Court to grant probate. *See* 1941 Dig., Col. 1097 O V FORBES *v.* V G PETERSON. 201 I.C. 545=15 R.C. 229=A.I.R. 1942 Cal. 283.

——S. 276—Probate of codicil—Proper Court Practice of English Court. *See* 1941 Dig., Col. 1097 O. V. FORBES *v.* V. G PETERSON. 201 I.C. 545=15 R.C. 229=A I R 1942 Cal 283.

——Ss. 276 and 57 (b)—*Probate with reference to part of the property alone—If can be granted—Part of property in Calcutta—Application for probate for that property alone, if lies.*

An application for probate according to S. 276 of the Succession Act must contain a list of all the assets sought to be devised by the will. Where a will referred to certain property in Calcutta, a probate cannot be asked for or obtained in respect of such assets alone. (*Davies.*) UMRAO MAL LODHA, *In re.* 1942 A.M.L.J. 27

——S. 278—Absence of estate and debts—Letters of administration—If can be granted *See* 1941 Dig., Col. 1098 HAJIRA KHATOON *v.* MUSTAFA HUSAIN. 17 Luck. 78.

——S. 278—*Hindu joint family property—Essential features—Letters of administration—If can be granted.*

The essential features of a joint Hindu family governed by the Mitakshara are (1) unity of ownership of joint property and (2) unity of juristic existence in dealing with third parties. The family is a sort of corporation having a continued existence. Its constitution might change by birth, adoption, marriage or death, but as regards strangers it is deemed to be a single individual a separate legal entity. While this is so as regards outsiders, as between the coparceners there is complete community of owner-ship and unity of possession. No individual member of the family, while it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share. He has an interest in the coparcenary and on his death this interest lapses to the coparcenary : it passes by survivorship to the other coparceners. He, therefore, has no power to devise it by will, nor is there any question of succession to it. In no part of the coparcenary property has he left an "estate" of his own, in respect of which letters of administration could be granted. This is the general rule. But the position is different where property purchased with the funds of the joint family and belonging to it, stands in the name of the *karta* or another member of the family in his individual name, so that while the legal estate vests in him, the beneficial interest is in the family. On the death of such person no change takes place so far as the beneficial interest is concerned. It continues to be, as it has always been, in the family. The legal estate, however, does not pass by survivorship to the other coparceners and, therefore, letters of administration may be granted to the surviving coparceners as his "heirs" to the legal estate in such property and limited to it alone. (*Tek Chand, Dalip Singh and Beckett, JJ.*) SRI RAM *v.* COLLECTOR, LAHORE. I. L.R. (1942) Lah. 717=202 I.C. 114=15 R.L. 95=44 P L R. 330=A I R 1942 Lah. 173 (F.B).

SUCCESSION ACT (1925), S. 373.

——S. 299 — *Construction—Right of appeal—If limited to orders made appealable by C.P. Code.*

S. 299 of the Succession Act should be read as meaning that every order made by a District Judge by virtue of the powers conferred upon him by the Act is subject to appeal and that the rules of procedure under which the appeal must be brought are those contained in the C. P. Code applicable to appeals. The section cannot be read as limiting the right of appeal to such orders as are made appealable by the C. P. Code. Every order made by a District Judge by virtue of the powers conferred upon him by the Act is subject to an appeal by the High Court. (*Beaumont, C.J. and Sen, J.*) FAKIRJI NAVROJI *v.* MAHERBAN FAREDOON 202 I.C. 633=15 R.B. 176=44 Bom.L R. 603=A.I.R. 1942 Bom. 276

——S 299—*"Order"—Meaning of—District Judge deciding under S. 271 to proceed with application for probate—Appeal—Maintainability.*

When a District Judge exercises his discretion under S 271 of the Succession Act, he cannot be said to be making an order under the Act so as to give a right of appeal under S. 299. He is merely deciding to proceed with the application for probate and no formal order is really made by him. In such a case under S. 271, therefore no right of appeal is granted by S. 299. (*Beaumont, C.J. and Sen, J.*) FAKIRJI NAVROJI *v.* MAHERBAN FAREDOON. 202 I.C. 633=15 R.B. 176=44 Bom. L.R. 603=A.I.R. 1942 Bom. 276.

——S. 306—*Right to sue to set aside compromise decree passed during minority—If survives to executor.*

The right of a person to sue to set aside a compromise decree passed during his minority on the ground of fraud survives to his executors under the first part of S 306 of the Succession Act. (*Derbyshire, C.J. and Edgley, J.*) RAM RANBIJOY PRASAD SINGH *v.* SAVITRI DEVI. 46 C.W N 345.

——S. 372—Application defective—Amendment—Permissibility. *See* 1941 Dig., Col. 1099. SUKUMAR DEB ROY *v.* PARBATI BALA. 198 I C. 471=14 R.C. 467.

——S 372—Application for certificate—If should comply strictly with requirements. *See* 1941 Dig., Col. 1099. SUKUMAR DEB ROY *v.* PARBATI BALA. 198 I C 471=14 R.C. 467.

——S. 373—*Duty and power of Court—Application for succession certificate—Dismissal on ground that complicated questions of fact and law arise—Legality.*

A Court to which an application is made for the grant of a succession certificate is entitled to dismiss it under S. 373 of the Succession Act if it is satisfied that there are no grounds for entertaining it. But it is not competent to dismiss it on the ground that complicated questions of law and fact would have to be gone into and the questions are far too complicated to be decided in summary proceedings. (*Mockett and Happell JJ.*) LAKSHMINARAYANA CHETTI *v.* SESHAMMA. 204 I. C. 264=1942 M.W.N. 620=55 L.W. 637=A.I.R. 1942 Mad. 709 (1)=(1942) 2 M L J 562.

——S 373—Scope of enquiry. *See* 1941 Dig., Col. 1099 SUKUMAR DEB ROY *v.* PARBATI BALA. 198 I.C. 471=14 R.C. 467.

——Ss. 373 (3) and 375—*Discretion of trial Judge regarding security—Interference.*

SUCCESSION ACT (1925), S. 373.

Where the trial Judge considering that the questions in the case were not too intricate or difficult for his determination in a summary proceeding, has not demanded security, it is a matter within his discretion to require or not to require security and hence his discretion will not be interfered with. (*Almond, J.C.*) MOHAR SINGH *v.* REVEL KAUR. **201 I.C. 341=15 R. Pesh. 21=A.I.R. 1942 Pesh. 42.**

——**S. 373 (4)**—Joint certificate—Legality. *See* 1941 Dig., Col. 1099. SUKUMAR DEB ROY *v.* PARBATI BALA. **198 I.C. 471=14 R.C. 467**

——**S. 375**—Applicant for certificate having only limited interest—Security, if should be demanded. *See* 1941 Dig., Col. 1099. SUKUMAR DEB ROY *v.* PARBATI BALA. **198 I.C. 471=14 R.C. 467.**

——**S. 379 (3)**—Failure to furnish security as directed—Refund of unexpended deposit—Right of applicant. *See* 1941 Dig., Col. 1099. PARKASH WATI *v.* PROVINCE OF PUNJAB. **I.L.R. (1942) Lah 74.**

——**S. 381**—Grant of certificate—Effect of—Certificate to two or more jointly—Death of one of them—Certificate, if becomes inoperative. *See* 1940 Dig., Col 1100. SUKUMAR DEB ROY *v.* PARBATI BALA. **198 I.C. 471=14 R.C. 467.**

SUITS VALUATION ACT (VII OF 1887), S. 8—*Scope and effect—Suit for declaration and injunction—Valuation for jurisdiction—Separate valuations for court-fee and jurisdiction—Permissibility.*

According to S. 8 of the Suits Valuation Act in a suit for declaration of title to property and consequential relief by way of injunction falling under S. 7 (iv) (*d*) of the Court-Fees Act, the valuation for jurisdiction and court-fee is the same. There can be but one valuation in such a suit and not two. The plaintiff is not entitled to put a lower valuation for court-fee and a higher valuation for purposes of jurisdiction so as to enable him to take his suit to a court of higher grade; the court cannot in such a case ignore the higher value placed upon the suit for purposes of jurisdiction. (*Davis, C. J. and Weston, J.*) RIJHUMAL LILARAM *v.* TEJUMAL. **I.L.R. (1942) Kar. 354=204 I.C. 239=A.I.R. 1943 Sind 24.**

——**Ss. 4 and 8**—Scope—Suit for partition—Plaintiff in joint possession—Valuation for jurisdiction. *See* 1941 Dig., Col. 1100. MALLAVVA *v.* JAGANNADHAMMA **197 I.C. 738=14 R.M. 388=A.I.R. 1942 Mad. 103 (1)=(1941) 2 M.L.J. 567.**

——**S. 4**—Suit to declare trust relating to certain villages, public trusts—Valuation. *See* 1941 Dig., Col. 1100. BISHAMBHAR NATH *v.* SRI PRAKASH SINGH. **17 Luck. 116**

——**S. 8**—*Valuation for jurisdiction—Finding of higher valuation by plaintiff—If* per se *justifies return of plaint.*

A mere finding of the plaintiffs having put a higher value on the subject-matter of the suit does not *per se* justify an order for the returning of the plaint. Such an order will be justified only if it is also found that the valuation is not made *bona fide* and has been made in order to effect an improper purpose. (*Mya Bu and Sharpe, JJ.*) KHEM RAJ *v.* DURGI **198 I.C. 673=14 R.R. 219=A.I.R. 1942 Rang. 10.**

——**S. 11**—Scope and effect of—Suit—Under-valuation—Objection not raised in trial Court or in appellate Court—Plea in execution that decree is without jurisdiction—If open. *See* 1941 Dig., Col. 1101. BADRI NARAIN SINGH *v.* CHANDER MAULESHWAR PRASAD **197 I.C. 361=8 B.R. 194=14 R.P. 296=A.I.R. 1942 Pat. 152.**

SURETY. *See also* CONTRACT ACT, S. 127.

SYLHET TENANCY ACT (1936), S. 45.

——*Right to recover payments made towards debt of the principal debtor—Conciliation of joint decree against principal and surety—Surety paying instalments—Liability of principal debtor.*

Where a joint decree is passed against the principal debtor and his surety and the latter obtains a settlement of the debt by applying to the Debt Conciliation Board and pays certain instalments he is entitled to recover it from the principal debtor. The latter cannot claim to be discharged from his liability because the surety comes to an agreement with the creditor. (*Pollock, J.*) MADHO *v.* SHAM RAO. **1942 N.L.J. 311.**

——Security bond—Construction—Personal liability *See* 1941 Dig., Col. 1102. KESAR CHAND *v.* UTTAM CHAND. **198 I.C. 638=14 R.L. 343=A.I.R. 1942 Lah 6.**

——Security bond to Court—Execution—Proper course. *See* 1941 Dig., Col. 1102. KESAR CHAND *v.* UTTAM CHAND. **198 I.C. 638=14 R.L. 343=A.I.R. 1942 Lah. 6.**

——Security bond to Court—Scrutiny of form—Duty of Court. *See* 1941 Dig., Col. 1103. KESAR CHAND *v.* UTTAM CHAND. **198 I.C. 638=14 R.L. 343=A.I.R. 1942 Lah. 6.**

——*Surety bond—Construction—Principles.*

A surety bond must be read as a whole. The intention of the parties must be gathered from the words, taking into consideration the language of the entire bond and adopting an interpretation which gives effect, if possible, to all the parts and does not reject any of them. (*Lobo and Tyabji, JJ.*) ASSANDAS *v.* HARDASMAL. **I.L.R. (1942) Kar. 79=15 R.S. 18=201 I.C. 750=A.I.R. 1942 Sind 134.**

SURETY BOND—*Construction—Liability of surety—When arises.*

The general rule is that every surety bond must be construed strictly on its own terms. A surety bond recited (we) "would stand surety to the extent of Rs. 1,500 and bind ourselves to pay the said sum of Rs. 1,500 in case the decree of this Court is confirmed by the appellate Court and the amount is not recovered from the defendant." It was *held* that the word 'recover' had a special meaning in law and it therefore followed that the meaning of the clause in the bond was that the decree-holders were first to recover the money from the judgment-debtor by legal process and that if they failed to recover their decretal amount from the judgment debtor they would be entitled to recover a sum not exceeding Rs. 1,500 from the sureties and that the decree-holders could not proceed to execute the decree against the sureties before exhausting the remedy against the judgment-debtor. (*Nyogi, J.*) LAXMAN *v.* GOPALRAO. **1942 N.L.J. 39.**

——Construction—Principle—Surety bond to prevent attachment before a judgment—Dismissal of claim for default and subsequent restoration—Surety, if absolved. *See* 1940 Dig., Col. 1137 PANNA LAL *v.* HAJI ABDUL KARIM. **I.L.R. (1942) Nag. 189.**

SYLHET TENANCY ACT (ASSAM ACT XI OF 1936), S. 45—*Denial of landlord's title while Landlord and Tenant Procedure Act was in force—Landlord not expressing intention to determine tenancy—Suit for ejectment after repeal of that Act—If maintainable.*

Under the Landlord and Tenant Procedure Act the mere denial of the landlord's title does not by itself put an end to the tenancy. The landlord has an option in the matter and unless he shows an intention to put an end to the tenancy, the tenancy will subsist. If the landlord does not express his intention to determine the tenancy while the Landlord and Tenant Procedure Act is in force, he cannot maintain a suit for ejectment on

TELEGRAPH ACT (1885), S. 16.

the ground of forfeiture by denying his title after the Sylhet Tenancy Act which repealed that Act comes into operation. (*Akram J.*) LIMBAR KHAN *v.* TURAB ULLA. 201 I.C. 334=15 R.C. 168=46 C.W.N. 273 =A.I.R. 1942 Cal. 356.

TELEGRAPH ACT XIII OF 1885), S. 16—*Application for compensation—Jurisdiction of District Judge—Government refusing to pay any compensation.*

S. 16 of the Telegraph Act does not refer to the sufficiency of the compensation actually paid but to the sufficiency of the compensation to be paid under S. 10. If damage is actually caused and Government proposes to pay nothing, while the other party insists that substantial damage has been done, then there is clearly a dispute with regard to the sufficiency of the compensation to be paid under S. 10, and the District Judge has jurisdiction to entertain an application for compensation by the party aggrieved. (*Tek Chand and Beckett, JJ.*) ABDUL AZIZ *v.* PUNJAB GOVERNMENT. 201 I.C. 739=15 R.L. 81=44 P.L.R. 275=A.I.R. 1942 Lah. 186.

——S. 16 (3) and (5)—*Order of District Judge on application—Revision—Power of High Court.*

The District Judge is acting as a Civil Court in dealing with applications for compensation under S. 16 (3) of the Telegraph Act, and the High Court has, therefore, power to entertain a petition for revision of an order passed by him on such an application. The High Court's powers of revision are not barred by sub-S. (5) of S. 16 of the Act. (*Tek Chand and Beckett, JJ.*) ABDUL AZIZ *v.* PUNJAB GOVERNMENT. 201 I.C. 739=15 R.L. 81=44 P.L.R. 275=A.I.R. 1942 Lah. 186.

TORT—*Conspiracy—Essentials of—Notice by members of one group to their own group asking them not to attend marriage in house of member of opposite group—Actionability—Defamation.*

A conspiracy to be actionable must be a combination of two or more persons maliciously to injure a person in his trade, business or employment, and resulting in damage to him, though the damage, if caused by a single person, may not be actionable. The plaintiff has to prove that a legal right of his was violated by reason of the concerted action of the defendants, that the defendants acted maliciously, *i.e.*, with an improper motive to injure the plaintiff, and that their act caused him damage. Where the defendants who were members of one faction of a community issued notices to the members of their faction not to respond to the invitations issued to them by the plaintiff who belonged to the opposite faction in connection with his daughter's marriage and asking them not to attend the marriage in the plaintiff's house; and the plaintiff filed a suit for damages against the defendants.

Held, that the tort of conspiracy was not made out and the suit must therefore fail; and no damages could be awarded on the ground of defamation either. (*Nagesvara Iyer and Venkataranga Iyengar, JJ.*) PISSAY *v.* P. HANUMANTHA RAO. 20 Mys L J. 131.

——Conversion—Damages — Trespasser plucking green leaves and manufacturing them into black tea and selling them. *See* 1941 Dig., Col. 1106. CARRITT MORAN & CO. *v.* MANMATHA NATH MUKHERJEE. 198 I.C. 59=14 R.C. 419.

——*Cause of action—Injury by wrongful act of another—Actual pecuniary loss—If necessary—Contract Act, S.* 43.

The rule of law relating to a claim for contribution arising out of joint promises laid down in S. 43 of the Contract Act cannot have any application to cases where the relief claimed is based on the right to a satisfaction

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for injury or liability suffered by the claimant on account of the wrongful act of another. In the latter case the injury complained of need not amount to any actual pecuniary loss to sustain a cause of action. The pecuniary loss comes into consideration only to help the determination of the measure of damages to be awarded in such a case. In cases where the elements of fraud, oppression, malice or the like are found, the law does not confine its remedy to the payment of compensation merely proportionate to any pecuniary loss actually suffered by the injured person. It can grant vindictive or exemplary damages by way of punishment to the wrongdoer. (*Akram and Pal, JJ.*) SHEIKH JARU BEPARI *v.* A. G. PETERS. 202 I.C. 181=75 C.L.J. 54=A.I.R. 1942 Cal. 493.

——*Defamation—Libel—Privilege—Suit for damages for wrongful dismissal by teacher against headmaster—Defendant filing extracts from his report to managing committee to show grounds of dismissal—Extracts defamatory of plaintiff—If absolutely privileged.*

The defendant, a headmaster, was sued for damages for wrongful dismissal by a teacher. He filed extracts from a report made by him to the school managing committee as he thought it necessary for the purpose of his defence to show the grounds upon which the plaintiff was dismissed by the Committee. The extracts were found to be defamatory of the plaintiff. The plaintiff filed a suit for damages for libel.

Held, that the occasion was one of absolute privilege as the statement was made in Court in the course and for the purpose of defence. Whether or not writs, pleadings and affidavits were governed by the law of absolute privilege would depend upon the nature of the statements in writing that were filed and the purpose for which they were filed. If they were documents considered by a party as being essential for his defence, they are covered by the doctrine of privilege. (*Burn, J.*) HANUMANTHA ROW *v.* SEETARAMAYYA. 55 L.W. 111= 1942 M.W.N. 155=A.I.R. 1942 Mad. 343=(1942) 1 M.L.J. 247.

——Defamation—Libel—Publication in newspaper—Married woman giving instruction in physical culture and dancing and running free school for poor Parsi girls—Statement that she is unfit and would ruin the future of the girls—If libel. *See* 1941 Dig., Col. 1106. MITHA RUSTOMJI MURZBAN *v.* NUSSERWANJI NOWROJI. 43 Cr.L.J. 17.

——Defamation—Libel—Right of fair comment—Limits to—Suit for damages—Proof of falsity of statement or malice—Necessity. *See* 1941 Dig., Col. 1107. MITHA RUSTOMJI MURZBAN *v.* NUSSERWANJI NOWROJI. 43 Cr.L.J. 17.

——Defamation— Libel—Suit for damages—Apology tendered in prior criminal complaint and accepted—If bar to suit for damages. *See* 1941 Dig., Col. 1107. GOVINDACHARYULU *v.* SESHAGIRI RAO. 197 I.C. 784=14 R.M. 382=(1941) 2 M.L.J. 674.

——Defamation—Privilege — Publication in newspaper—Extent of privilege—Burden of proof. *See* 1941 Dig., Col. 1108 MITHA RUSTOMJI MURZBAN *v.* NUSSERWANJI NOWROJI. 43 Cr.L.J. 17.

——Defamation—Slander—Imputation of criminal offence—If actionable *per se*—Conditions to support action—Burden of proof. *See* 1941 Dig., Col. 1108. MITHA RUSTOMJI MURZBAN *v.* NUSSERWANJI NOWROJI. 43 Cr.L.J. 17.

——*Irrigation rights—Interference — Right of suit—Diversion of waters of river through newly dug channel—Landlord not yet affected by diminution in supply of water—Injury likely to affect landlord of an*

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estate in course of time—Sufficiency to furnish cause of action.

A permanent diminution in the accustomed supply of water to which lands in an estate are entitled is not merely an injury to the tenant but is also likely to affect the ultimate interests of the landlord as well. Accordingly where there is a diversion of the waters of a river through a newly dug channel which causes such a diminution in the accustomed supply of water, the injury though it might not have yet affected the landlord is likely in course of time to operate to his prejudice and therefore furnishes a sufficient cause of action for the landlord to sue. (*Krishnaswami Aiyangar, J.*) VENKAYYA *v.* VIJAYA APPARAO. 201 I.C. 749=15 R.M. 394=55 L.W. 103=1942 M.W.N. 57=A.I.R. 1942 Mad. 352=(1942) 1 M.L.J. 116.

———Joint tort-feasors — Compromise with some—Aggrieved party, if loses remedy against all. *See* 1941 Dig., Col. 1108. HAR KRISHNA LAL *v.* QURBAN ALI. 17 Luck. 284=A.I.R. 1942 Oudh 73.

———*Joint tort-feasors—Contribution—Law as to.*

Neither the rule in *Merrywather* v. *Nixon* nor any rule which would rigorously divide up the liability into as many shares as there were persons liable, should be applied to Indian conditions where Courts do not merely administer the common law but decide in accordance with equity, justice and good conscience and where it is very desirable to exercise the power to differentiate between the various persons held jointly liable at the suit of the person injured. Where there was a partnership to cut timber in a forest and one of the partners was held liable to pay the whole damages and costs in respect of that transaction though he held only an eighth share and was hardly more blameworthy than the others in acting under a defective licence, the resulting loss should be so distributed that it falls as equally as possible upon all. (*Stone, C.J. and Bose, J.*) KHUSHALRAO *v.* BAPURAO. I.L.R. (1942) Nag. 1=200 I.C. 20=14 R.N. 307=1942 N.L.J. 1=A.I.R. 1942 Nag. 52.

———*Light and air—Obstruction to—Remedy.*

It is not necessary for the plaintiff who receives light through a window in his wall opening on a vacant ground that he should enjoy it for the prescriptive period so as to acquire a right of easement. He is entitled to an injunction against a stranger who is not the owner of the ground or one deriving title from him, restraining him from building upon that ground so as to cause obstruction to the light. (*Ranjitmal, J.*) BANECHAND *v.* GULABCHAND. 1942 M.L.R. 24 (Civ.).

———*Malicious prosecution—Issue of process to plaintiff on complaint—If necessary.*

For the purposes of a suit for damages for malicious prosecution a prosecution commences when a complaint is made, and it is not necessary, in order to maintain an action for damages for malicious prosecution, that the charge made should be acted upon by the Magistrate or that process should be issued against the plaintiff on the complaint. If it is shown that the defendant clearly set the law in motion maliciously, his act would amount to malicious prosecution and serve as the foundation of an action for damages. (*Tyabji, J.*) BADAL KHURANGI *v.* BHABOOTI MORGO. I.L.R. (1942) Kar. 45=A.I.R. 1942 Sind 141

———Malicious prosecution — Verbal complaint to village Magistrate charging person with dacoity—Dismissal without summons to person charged—Suit for damages—Maintainability. *See* 1941 Dig., Col. 1109. VATTAPPA KONE *v.* MUTHUKARUPPAN SERVAI. 198 I.C. 338=14 R.M. 430=(1941) 1 M.L.J. 200.

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———Nuisance — Municipality discharging sewage water into storm water channel—Injunction, if can be granted. *See* 1941 Dig., Col. 1110. MAZAFFAR HUSAIN *v.* ADMINISTRATOR OF THE LAHORE MUNICIPALITY. 198 I.C. 773=14 R.L. 362

———*Nuisance—Public nuisance—Action by private individual—When maintainable.*

A private individual has no right of action in respect of a public nuisance unless he can show that he has sustained some special damage over and above that inflicted upon the public at large. The necessity to prove special damage is not obviated by the private individual bringing the suit in a representative capacity under O 1, R 8, Cr. P. Code. (*Mukherjea and Sen, JJ.*) SURENDRA KUMAR BASU *v.* DISTRICT BOARD OF NADIA. I.L.R. (1942) 1 Cal. 533=201 I.C. 488=15 R.C. 212=75 C.L.J. 157=46 C.W.N. 261=A.I.R. 1942 Cal. 360.

———Nuisance—Test—Standard to be applied. *See* 1941 Dig., Col. 1111. CAWASHAH BOMANJI *v.* PRAFULLA NATH. 197 I.C. 570=14 R.N. 175.

———*Seduction of daughter—Action for—English law—Applicability.*

The English rule with reference to the tort of seduction of a daughter should be accepted as applicable to India as a rule of justice, equity and good conscience. (*Stone, C.J. and Bose, J.*) BABOO THAKUR DHOBI OF NAGPUR *v.* MST. SUBANSHI. I.L.R. (1942) Nag. 650=202 I.C. 101=15 R.N. 64=1942 N.L.J. 199=A.I.R. 1942 Nag. 99.

———Seduction of daughter—Death of father during pendency of suit for damages—Suit, if abates. *See* C. P. CODE, O. 22, R. 1. 1942 N.L.J. 199.

———*Passing off*—Trade name—Infringement—Goods if to be identical or belong to the same class. *See* 1941 Dig., Col. 1114. DHANALAKSHMI WEAVING WORKS *v.* MAHOMED ABDUL AZEEZ SAHIB. 201 I.C. 232=15 R.M. 281=A.I.R. 1942 Mad. 179=(1941) 2 M.L.J. 435.

———*Passing off—Trade name—Infringement—Passing off action—Foundation of—Deceit or fraudulent intention—If to be proved.*

The foundation of a passing off action is always deception, or possibility of deception but it is not an action in deceit. It is never the case of the plaintiff in a passing-off action that he has been himself deceived by the action of the defendant. His case is that other people, the public, have been deceived, or are likely to be deceived. But a private individual cannot sue for a wrong done to the public. The plaintiff must therefore prove that the action of the defendant has infringed some proprietary right of his own. It is not necessary to prove any fraudulent intention on the part of the defendant, though, if a fraudulent intention is proved, that usually assists the plaintiff's case. (*Beaumont, C.J. and Somjee, J.*) K. M. MULTANI *v.* PARAMOUNT TALKIES OF INDIA, LTD. 203 I.C. 632=44 Bom.L.R. 505=A.I.R. 1942 Bom. 241.

———*Passing off—Trade name—Infringement—Question for consideration and decision—Nature of issues in suit.*

Two issues must always arise in a passing off action. First, has the name or description or make up, or whatever it may be, of the wrongful user of which the plaintiff complains, come to be associated in the public mind with the goods, business or works of the plaintiff; secondly, is the defendant so describing or getting up, his goods or whatever it may be, as to be likely to mislead the public into believing that they are acquiring the plaintiff's goods, when in fact they are acquiring the defendant's goods, The foundation of a passing off action is that no

body is entitled to represent his goods as the goods of somebody else. The issues in each case have to be framed with reference to the facts of that case, but the plaintiff has always to succeed substantially on the two issues. (*Beaumont, C.J. and Somjee, J.*) K. M. MULTANI *v.* PARAMOUNT TALKIES OF INDIA, LTD. 203 I.C. 632=44 Bom.L.R. 505=A.I.R. 1942 Bom. 241.

———*Passing off—Trade name—Infringement—Two things or works having same name or title but essentially different, produced by different persons—Right of one to sue other for injunction.*

There can be no possibility of deception between two things which are essentially different, although the two things may bear the same name or title. Where both parties have, without any intention to deceive, taken the same title for their goods or works, neither of them has any right to restrain the other from using the title unless he can show that it has become associated in the minds of the public with his work and that there was any actual or any likelihood of deception by reason of the identity of the two names or titles. (*Beaumont, C.J. and Somjee, J.*) K. M. MULTANI *v.* PARAMOUNT TALKIES OF INDIA, LLD. 203 I.C. 632=44 Bom.L.R. 505=A.I.R. 1942 Bom. 241.

———Wrongful attachment—Damages—Action for—Essentials to be proved—Legal act done with malice—If gives right of action. *See* 1941 Dig., Col. 1112. NASIRUDDIN KARIM MAHOMED *v.* UMERJI ADAM & CO. I.L.R. (1941) Bom. 521.

———*Wrongful attachment—Warrant for attachment of movables in house for arrears of house tax by owner—Seizure of goods of occupier—Suit for damages—Maintainability.*

Where for non-payment of arrears of Municipal tax due in respect of a house, the owner is prosecuted and convicted, and a warrant is issued to attach the movables found in the premises concerned in accordance with statutory provisions and the warrant is executed by attachment of the movables of another person who at that time occupies the premises, the person whose movables are attached cannot maintain a suit against the Municipality or the persons executing the warrant for damages for wrongful attachment on the ground merely that the articles are his. (*Somayya, J.*) ANTHONIMUTHU PILLAI *v.* NAGANATHA AYYAR. 55 L.W. 68 =A.I.R. 1942 Mad. 311=(1942) 1 M.L.J. 267.

———Wrongful confinement or restraint—What constitutes—Liability for damages—When arises. *See* GOVERNMENT OF INDIA ACT, S. 270. (1942) 2 M. L.J. 14.

———*Wrongful seizure of goods—Liability of Official Receiver and creditor for wrongful seizure of goods at latter's instance.*

Where there has been a wrongful seizure of goods by the Official Receiver acting at the instance of a creditor and the wrongful act is not protected by any judicial order of the Insolvency Court, both the Receiver and creditor are liable for damages in a suit by the owner of the goods so seized. (*Ranganath and Hamilton, JJ.*) JHANDUMAL SHYAM LAL *v.* JANKI BALLABH TRIPATHI. 1942 A.L.W. 599.

TRADE MARK—*Infringement—Matters for consideration.*

If in an action for an alleged infringement of a registered trade mark, no evidence of confusion either actual or probable is adduced, the question whether the mark which the defendant uses infringes the plaintiff's registered trade-mark must be answered by the Court, unaided by outside evidence, after a comparison of the defendant's mark as used with the plaintiff's registered mark, not placing them side by side, but by asking itself

whether, having due regard to relevant surrounding circumstances, the defendant's mark as used is similar to the plaintiff's registered mark as it would be remembered by persons possessed of an average memory with its usual imperfections. Whether the defendant had acquired the good will of any business, and whether the defendant was properly on the register in respect of a mark which differs slightly from the mark actually in use by the defendant, are matters which are irrelevant to th question for determination. (*Lord Russell.*) COCO COLA CO. OF CANADA, LTD. *v.* PEPSI-COLA CO. OF CANADA. 15 R P.C. 23=202 I C. 203=8 B. R. 889=A.I.R. 1942 P.C. 40 (P.C.).

———Trade Mark and Trade name—Passing off. *See* TORT—PASSING OFF.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*Applicability of principles to N.-W. F. P.*

Although the Transfer of Property Act does not apply to N.-W.F.P., it has been long the custom for the Courts in that province to apply the principles laid down in it as principles of equity. (*Almond, J.C.*) FAZAL KARIM *v.* MAHOMED KARIM. 201 I.C. 165= 15 R. Pesh 15=A I.R. 1942 Pesh. 43

See also CHELA RAM *v.* GOPI CHAND. 203 I.C. 528=15 R. Pesh. 63=A.I.R. 1942 Pesh. 88.

———Scope—Contract of sale—Buyer failing to complete payment—Contract falling through—Right to get back from seller portion of price already paid—Principles applicable—Contract Act—Application of. *See* CONTRACT ACT, SS. 64, 73, 74 AND 75 I.L.R. (1941) Kar. 495.

———S. 3—*Actionable claim—Right to recover village profits.*

Actionable claim postulates a debt. A share of profits to be regarded as a debt must be liquidated sum. The right to recover profits does not become an actionable claim unless the profits are assigned. (*Niyogi, J.*) VITHAL *v* JAGANNATH. 1942 N.L.J. 30.

———Ss. 3 and 123—Future rent—If immovable property. *See* 1941 Dig., Col. 1114. BHUDEB CHANDRA ROY *v.* BHIK SHANKAR PATTANAIK. A.I.R. 1942 Pat. 120.

———S. 3—Money debt—If actionable claim. *See* 1941 Dig., Col. 1114. RAM KISHEN MOHAN LAL *v.* GURDIAL MAL SAGAR MAL. 197 I.C. 735=14 R.L. 268.

———S. 3—*Notice—Agreement for mortgage—Registration—If amounts to notice to subsequent transferee—If creates charge.*

An agreement for a mortgage does not under the Indian Law give rise either to an equitable mortgage or to a charge over the property; and such an agreement is not conpulsorily registrable. The fact that it is registered does not amount to constructive notice of the agreement within the meaning of S. 3 of the T. P. Act, to a subsequent transferee of the property. (*Broomfield and Macklin, JJ.*) HIRACHAND HIMATLAL *v.* KASHINATH THAKURJI. 204 I.C. 89=44 Bom.L.R. 727= A.I.R. 1942 Bom. 339.

———S. 6 (a) and (b)—*Applicability—Transfer in consideration of release of* spes successionis—*Invalid—Duty of party receiving benefit to make compensation—Contract Act, S.* 65.

T, a Hindu, died in 1934 leaving no issue, but two widows, a sister and a sister's son. A dispute arose among these persons as to the disposal of *T*'s estate, and it was referred to arbitration. There was an award which provided that a portion of the estate was to be conveyed by the widows to the sister and the sister's son, and that in return for this the latter should release all their rights as prospective reversioners to the other por-

T. P. ACT (1882), S. 6.

tions of the estate of *T* and that the sister's son should perform the funeral ceremonies of *T*. There was a transfer by the widows in pursuance of the award and the sister and the sister's son took possession. A few months after *T*'s death, there was a partition between the two co-widows, and one of them brought a suit in 1938 to recover possession from the sister and the sister's son of the property transferred to them under the award made by the arbitrators.

Held, (1) that the transfer was forbidden by S. 6 (*a*), T. P. Act, and S. 6 (*b*) therefore applied to the case and rendered the transfer invalid; (2) that the fact that the sister's son performed the funeral ceremonies of *T* as part of the consideration for the transfer did not save the transfer, because if any portion of the consideration was forbidden by law, the necessary result must be that the whole transfer should be set aside; (3) that S. 65 of the Contract Act applied and it was obligatory on the plaintiff to make compensation to the sister and the sister's son before she could recover possession of the property in dispute. (*King, J.*) SHENBAGAVADIVAMMAL *v.* MUPIDATHI AMMAL. **204 I.C. 184=55 L. W. 689=1942 M.W.N. 642=A.I.R. 1942 Mad. 720 =(1942) 2 M.L.J. 364.**

——**S. 6 (a)**—*Right to offerings made at place of worship—Transferability.*

It cannot be laid down as a broad proposition of law that the right to a share in the offerings made at a place of worship, or in the income of fairs or other functions held in connection therewith, is a mere "possibility" and therefore not alienable on the principle of law embodied in S. 6 (*a*) of the T. P. Act. Nor can it be said that such a transfer is, in every case, void as being opposed to public policy, as the making of offerings by persons resorting to temples and other places of worship is a matter of volition with them and no one can compel another to make offerings on a particular occasion to him and him alone. The determination of the question depends on a variety of considerations (*e.g.*) the nature of the institution, the occasion on, and the purpose for which the amount, is paid; the capacity in which it is appropriated by, or divided among, the persons concerned. A distinction must be drawn between cases in which emoluments are attached to a priestly office, and the cases in which the offerings are made to a deity and the persons who receive the same have not to render services of a personal nature as a consideration for the receipt of the offerings. The emoluments of the former kind are not, in the absence of a custom or usage to the contrary, ordinarily transferable. But when the right to receive the offerings made at a temple is independent of an obligation to render services involving qualifications of a personal nature such as officiating at the worship, then the right to receive the offerings, when made, is a valuable right and is property and is, therefore, transferable. (*Tek Chand, A.C.J. and Sale, J.*) ZAHARIA MAL *v.* PARMESHRI DAS. **203 I.C. 348= 44 P.L.R. 403=A.I.R. 1942 Lah. 284.**

——**S. 6 (a)**—Spes successionis—*Relinquishment under compromise—Validity.*

Per *Din Mohammad, J.*—However illegal and unenforceable a bare relinquishment or renunciation of the chance of a heir-apparent succeeding to an estate may be, different considerations prevail if that renunciation or relinquishment proceeds on a settlement of conflicting claims or *bona fide* disputes between the contracting parties. If, therefore, to avoid an adverse decision on the factum of his legitimacy a plaintiff enters into a compromise with the defendants and gains an immediate advantage for himself, it cannot be said that he is relinquishing a mere chance of succession. Such a compromise is valid and binding upon him. (*Dalip Singh and Din Mohammad, JJ.*) SHAH NAWAZ *v.* GHULAM MURTAZA. **201 I.C. 292=15 R.L. 43=44 P.L.R. 87 =A.I.R. 1942 Lah. 138.**

T. P. ACT (1882), S. 10.

——**S. 6 (c)**—Mere right to sue—Suit for damages for wrongful dispossession of land in breach of agreement of lease—Assignment of profit and loss of suit by plaintiff—Right of assignee to continue suit on death of plaintiff. *See* 1941 Dig, Col. 1115. RAJAMANICKAM CHETTY *v.* ABDUL HALIM SAHIB. **199 I.C. 817= 14 R.M. 633=(1941) 1 M.L.J. 22.**

——**S. 6 (dd)**—*Mortgage of maintenance allowance —Validity—Maintenance and annuity—Distinction.*

A right to monthly maintenance allowance which has not accrued due already, cannot be assigned by way of mortgage in view of the provisions of S. 6 (*dd*) of the T. P. Act. These provisions will apply whether or not there was an antecedent obligation on the grantor to maintain the grantee under the personal law of the parties. There is no doubt a distinction between a maintenance allowance and an annuity, and whether an allowance is the one or the other will depend on the facts of each case. (*Mukherjea and Roxburgh, JJ.*) ANIRUDDHA MITRA *v.* OFFICIAL RECEIVER. **I.L.R. (1942) 1 Cal. 427=201 I.C. 568=15 R.C. 238=74 C.L.J. 528=A.I.R. 1942 Cal. 241.**

——**Ss. 6 (e) and 130**—Applicability—Sale of land set aside at instance of real owner as vendor had no title —Right of vendee to recover purchase money—Assignability—If mere right to sue or actionable claim. *See* 1941 Dig., Col 1115. CHINNAPPA REDDI *v.* VENKATARAMANAPPA. **201 I.C. 258=15 R.M. 289= 1942 M.W.N. 29=A.I.R. 1942 Mad. 209=(1941) 2 M.L.J. 695.**

——**S. 6 (e)**—*Assignment of right to profits along with proprietary share—Validity.*

What can be assigned is property or right which can be regarded as property capable of being assigned. The right to recover a share of village profits is not a contractual or personal right but a right which arises from ownership of property or ownership of land and is ancillary to the right of property. Whatever doubt there might be as regards the assignment of a mere right to recover past profits no question can arise, when the right is assigned as incidental to the proprietary share itself which is transferred. Such a transferee is entitled to sue for rendition of accounts of the village profits. (*Niyogi, J.*) VITHAL *v.* JAGANNATH. **1942 N.L.J. 30.**

——**S. 8**—*Possession delivered to pre-emptor under pre-emption decree—Vendee's right to value of crops.*

Where in execution of a pre-emption decree, possession is delivered to the pre-emptor from vendees and on such date crops are still standing on the land, the crops pass with the land and the vendees are not entitled to recover any sum from the pre-emptor decree-holder. (*Almond, J.C.*) CHELA RAM *v.* GOPI CHAND. **203 I.C. 528=15 R. Pesh. 63=A.I.R. 1942 Pesh. 88.**

——**Ss 10 and 111**—*Perpetual lease—Condition against transferability—Legality.*

Where a person is given the rights of a perpetual lessee only there is nothing inconsistent with his rights as a perpetual lessee if he is given no power of transfer. A right of transfer is not a necessary incident of the legal status of a perpetual lessee. Hence a condition against non-transferability in such a perpetual lease is not illegal or void and is binding on the parties. (*Thomas, C.J. and Agarwal, J.*) BHAIRO SINGH *v.* LAL AMBIKA BAKSH SINGH. **199 I.C. 776=14 R. O. 538=1942 O.A. 168=1942 O.W.N. 225=A.I.R. 1942 Oudh 374.**

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——S. 14—*Applicability—Heritable charge created in favour of a person at a partition in Hindu joint family.*

Where at a partition among the members of a joint Hindu family a charge is created in favour of the son of Christian wife of one of the members and it is made heritable by his widow and children, S.14 of the T.P. Act has no application. If the creation of the charge was a transfer of property, that transfer took place when the partition deed was executed and was to be inherited by his widow and children Even if it be regarded as a transfer for life to that person followed by a transfer to his wife and children the latter would obviously be alive at his death or within a few months thereafter and transfer is valid. (*Allsop and Verma, JJ.*) GAJPATI RIKH *v.* MRS. MAY IDA RIKH. 203 I.C. 9=15 R.A. 195=1942 A.L.W. 411=1942 A.W.R. (H.C.) 170=A.I.R. 1942 All. 254.

——S. 14—*Covenant for pre-emption in deed of exchange—Covenant made binding on heirs of party—Validity.*

The rule against perpetuities applies to a covenant for pre-emption. Such a covenant in a deed of exchange made binding upon the heirs and legal representatives of a party offends the rule against perpetuities and is not enforcible in law. (*Mitter and Akram, JJ.*) BEPIN CHANDRA SAHA *v.* KAILESH CHANDRA MALO. 46 C. W.N. 147.

——S. 18—Burma Oil Subsidiary Provident Fund Rules—Nature of interest of member in deposits. *See* 1941 Dig., Col. 1116. R. C. DASS *v.* SECRETARY OF BURMA OIL SUBSIDIARY PROVIDENT FUND TRUST (INDIA), LTD. 198 I.C. 737=14 R.R. 220.

——S. 27—*Applicability—Void gift—Effect on subsequent gift—Succession Act, S.* 129.

The failure contemplated by S. 27 of the Transfer of Property Act and S. 129 of the Succession Act is the failure of a valid gift. Where the gift is *ab initio* void the subsequent gifts must also fail as provided by S. 16, T. P. Act, and S. 116, Succession Act. (*Chagla, J.*) ISMAIL HAJI ARAT *v.* UMAR ABDULLA. I.L.R. (1942) Bom. 441=201 I.C. 34=15 R.B. 51=44 Bom. L.R. 256=A.I.R. 1942 Bom. 155.

——S. 40—*Right of reconveyance of easement granted—Nature of covenant—If enforceable by vendee from original grantor, without assignment.*

The right of reconveyance of a right of easement granted in perpetuity is a positive covenant arising out of contract and can be completely dissociated from the land itself as a right of reconveyance in respect of land sold. There is nothing which can fasten this condition on the land itself so as to make it a covenant running with the land : it is a personal covenant independent of the land. Hence a vendee from the grantor cannot, without an assignment of the right, sue for specific performance of the condition of repurchase (*Grille and Pollock, JJ.*) ZAL RUSTAMJEE MADAN *v.* ANJUMAN MUFIDDUL ISLAM KHAMA GAON. I.L.R. (1942) Nag. 736=203 I.C. 192=15 R.N. 118=1942 N.L.J. 392=A.I.R. 1943 Nag. 4.

——S. 41—*Applicability—Mortgagee who has not made enquiries.*

Where it is found that the mortgagee had not made any enquiries he is not protected and is not entitled to benefits conferred by S. 41, T. P. Act. The fact that the mortgagors' names were entered in the khewat is not sufficient enquiry nor the fact that the Court of Wards was in possession of the property. (*Agarwal and Madeley, JJ.*) HAR NARAIN PRASAD *v.* ASHIQ HUSSAIN. 17 Luck. 636=199 I.C. 808=14 R.O. 517=1942 R.D. 326=1942 O.W.N. 127=1942 O.A. 73=1942 A.W.R. (C.C.) 95=A.I.R. 1942 Oudh 313.

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——S. 41—Applicability—Movable property—Decree for money—*Bona fide* purchaser for value from benamidar or ostensible owner—If protected. *See* 1941 Dig., Col. 1117. SWAMINATHA PILLAI *v.* KRISHNA PADAYACHI. I.L.R. (1942) Mad. 225=201 I.C. 128=15 R.M. 229=A.I.R. 1942 Mad. 28=(1941) 2 M.L.J. 601.

——S. 41—*Applicability—N.-W. Frontier Province.*

The principles underlying section are used in N.-W. F.P. as principles of equity, justice and good conscience under S. 28, Frontier Law and Justice Regulation. (*Mir Ahmad, J.*) ROSHAN LAL *v.* ARJAN DEV. 203 I.C. 300=15 R. Pesh. 59=A.I.R. 1942 Pesh. 68.

——S. 41—*Applicability—Plea based on if available to transferee from Hindu widow in suit by reversioners.*

It is not open to the alienees from a Hindu widow to rely on S. 41 of the T. P. Act as a defence to a suit by reversioners. The section is not applicable to cases of adverse possession and the consent of the limited owner can be operative only so far as she is concerned. It cannot bind the reversioners so long as the limited owner remains in possession. (*Verma and Yorke, JJ.*) ABDUL SAMAD KHAN *v.* GIRDHARI LAL. I.L.R. (1942) All. 269=200 I.C. 269=14 R.A. 423=1942 A.L.J. 179=1942 A.L.W. 161=1942 O.A. (Supp.) 145 (2)=1942 A.W.R. (H.C.) 84 (2)=A.I.R. 1942 All. 175.

——S. 41—Applicability—Transfer by ostensible owner after real owner's death—Good faith—Onus. *See* 1941 Dig., Col. 1118. CHAPALABALA DASI *v.* SARAT KUMARI DASI. 199 I.C. 755=14 R.C. 632.

——S. 41—*Benefit under—Duties to be performed by transferee seeking it.*

S. 41 of the T. P. Act protects a person who has acquired title from an ostensible owner. Neither this statutory provision nor equity can protect a transferee unless the transferee has taken reasonable care to ascertain that the transferee had power to make the transfer. A purchaser cannot be said to have acted like a reasonable man if he has taken no steps whatever to look at the registers and does not in any way ask or seek to obtain the production of the documents of title at least before the completion of sale. (*Stone, C.J.*) MOTILAL *v.* BHAGABAI. 1942 N.L.J. 353.

——S. 41—*Plea of estoppel against idol—Sustainability.*

Idols though for certain purposes can be spoken of as minors, cannot be given the special privileges which are applicable only to flesh and blood minors who will come of age later on. The Sarbarakar acts for the idol and hence a plea under S. 41, T.P. Act, of estoppel would be available against an idol. (*Gruer, J.*) SHRI RAMACHANDRASWAMI *v.* THOONABAI. 1942 N.L.J. 405.

——S. 44—*Applicability—Execution sale—Order preventing stranger-purchaser from obtaining joint possession of family dwelling house—Proper stage to apply for.*

Even if it be assumed that the principle of S. 44 of the T. P. Act may be applied to a transfer which has been effected by reason of proceedings in execution of a decree for the purpose of preventing a stranger to the family from obtaining joint possession of a family dwelling-house, the proper stage for the members of the joint family to apply for an order of this nature would be at the time when a suit is instituted by the purchaser to recover possession of the property. If they allow an *ex parte* decree to be passed against them in that suit, they will be estopped from asking subsequently for an injunction restraining the purchaser from executing that

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decree. (*Edgley and Biswas, JJ.*) RAJANI KANTA SEN *v.* SITAKUMARI. **46 C.W.N. 407.**

——S. 45—*Applicability—Existence of contract of partnership and agreement as to payments to be made.*

The provisions of S. 45, T. P. Act, are not of any assistance in a case where the rights of parties are determined by the contract of partnership and subsequent agreements as to the payments to be made in regard to the purchase. (*Bennett and Agarwal, JJ.*) THE OFFICIAL LIQUIDATOR, DINSHAW & CO. *v.* ANAND BEHARI LAL. **201 I.C. 69=15 R.O. 48=1942 O.W.N. 269=1942 A.W.R. (C.C.) 198=1942 O.A. 205=A.I.R. 1942 Oudh 327.**

——S. 45—Applicability—Involuntary transfers. *See* 1941 Dig., Col. 1118. REAZADDI BEPARI *v.* YAKUB BEPARI. **200 I.C. 37=14 R.C. 655.**

——S. 45—*Lease in favour of more persons than one—Respective shares—Presumption.*

Where a lease is executed in favour of three persons, in the absence of evidence to the contrary, the share of each must be presumed to be equal. (*Shirreff, S.M. and Sathe, J.M.*) SITLA BUX SINGH *v.* SHEO TAHAL. **1942 R.D. 562=1942 A.W.R. (Rev.) 303=1942 O.A. (Supp.) 329=1942 O.W.N. (B.R.) 445.**

——S. 50—*Applicability—One of the two lessees knowing real owner*—Bona fide *payment of rent by the other to one not the real owner.*

Where one of the two joint lessees knows the real owner of property but the other *bona fide* pays rent to another not the real owner. S. 50, T.P. Act, cannot apply because the knowledge of one of them would be deemed to be the knowledge of the other also. (*Madeley, J.*) MOHAMMAD AZIM *v.* MAHARAJA PATESHWARI PRASAD SINGH. **203 I.C. 361=15 R.O. 203=1942 O.A. 442=1942 A.W.R. (C.C.) 325 (1)=1942 O.W.N. 613=A.I.R. 1943 Oudh 105.**

——S. 52—*Applicability—Lease for agricultural purposes in course of ordinary management.*

S. 52 of the T. P. Act does not apply to leases for agricultural purposes executed in the ordinary course of management of property. (*Shirreff, J.M. and Sathe, A.M.*) GOLA *v.* OM PRAKASH. **1942 O.W.N. (B.R.) 16=1942 O.A. (Supp.) 14 (2)=1942 A.W.R. (Rev.) 14 (2)=1942 R.D. 16.**

——S. 52—*Applicability*—Lis pendens—*Subsequent purchaser—If should be party to pending suit.*

For the doctrine of *lis pendens* to apply under S. 52, T. P. Act, it is immaterial whether the subsequent purchaser against whom the doctrine is pleaded was a party to the pending suit or not. (*Middleton.*) PARSIDH SINGH *v.* MD. YAZIN. **8 B.R. 819.**

——S. 52—*Applicability—Sale in execution of decree on puisne mortgage during pendency of suit on prior mortgage.*

A sale in execution of a decree on a puisne mortgage which takes place during the pendency of the suit on the prior mortgage is affected by the rule of *lis pendens* so as to make the purchaser's right subject to the result of the prior mortgagee's suit. (*Ganga Nath and Hamilton, JJ.*) SHEORAJ SINGH *v.* RAM SARUP SINGH. **1942 A.L.W. 532.**

——S. 52—Applicability—Proceedings before Registrar of Co-operative Societies or arbitrator on reference under Co operative Societies Act. *See* 1941 Dig., Col. 1118. VENKATACHALAMIAH *v.* VENKATIAH. **200 I.C. 873=15 R.M. 166=A.I.R. 1942 Mad. 24=(1941) 2 M.L.J. 588.**

——S. 52—*Lis pendens—Applicability—Pre-emption suit.*

The principle of *lis pendens* applies in pre-emption suits. (*Almond, J.C.*) FAZAL KARIM *v.* MAHOMED KARIM. **201 I.C. 165=15 R. Pesh. 15=A.I.R. 1942 Pesh. 43.**

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——S. 52—Lis pendens—*Transfer of occupancy holding under threat of ejectment—If affected—Permission of court—Necessity.*

Both under S. 52 of the T.P. Act as well as according to the principle of *lis pendens*, it is necessary for an occupancy holder under a threat of ejectment from it in execution proceedings for arrears of rent to obtain the permission of the Court before he could transfer the holding to a third person. A transfer without such permission is null and void and can convey no title to the vendee. (*Shirreff, S. M. and Sathe, J. M.*) TIRBHUAN NATH *v.* BENI LAL. **1942 O.A. (Supp.) 159=1942 O.W.N. (B. R.) 227=1942 R. D. 293=1942 A.W.R. (Rev.) 139.**

——S. 52—*Sale by Official Receiver on Hindu father's insolvency pending partition suit by son—Refusal of injunction to stay sale—Sale, if affected by* lis penedns.

A sale by the Official Receiver on a Hindu father's insolvency pending a suit for partition by the son is not affected by *lis pendens* when as a matter of fact the application of the son for an injunction against the Receiver to stay sale has been refused. Hence the sale is one which is held with the leave of the Court and would not be void as against the son under S. 52, T.P.Act. (*Grille, C.J. and Puranik, J.*) LAXMINARAYAN *v.* DINKAR SHANKER RAO **1942 N.L.J. 599.**

——S. 52—*Sale in execution of mortgage decree—Sale held pending suit to declare decree not binding*—Lis pendens.

It is difficult to hold that a purchaser at a sale in execution of a mortgage decree held during the pendency of a suit for a declaration that that decree is not binding is hit by the doctrine of *lis pendens*. (*Akram and Pal, JJ.*) ANNAPURNA DASI *v.* SARAT CHANDRA. **46 C.W.N. 355=A.I.R. 1942 Cal. 394.**

——S. 53—Action—If falls under—Test. *See* 1941 Dig., Col. 1119. FAQIR BUX *v.* THAKUR PRASAD. **16 Luck. 832.**

——S. 53—*Applicability—Execution sale—Decree obtained by collusion and fraud practised in Court—Power of Court to set aside sale.*

Ss. 2 (*d*) and 5 of the T. P. Act prevent S. 53 operating in the case of a transfer under an order or decree of Court. But where a person obtains a transfer of property under an order of Court as the result of a gross fraud by collusively instituting a suit and obtaining a decree and purchasing the property in execution thereof, the Court has power to remedy the injustice by applying the principle of S. 53 and to set aside the sale. (*Leach, C. J. and Byers, J.*) RAMANATHAN CHETTIAR *v.* UNNAMALAI ACHI. **202 I.C. 732=15 R.M. 571=1942 M.W.N. 640=55 L.W. 422=A.I.R. 1942 Mad. 652=(1942) 2 M.L.J. 213.**

——S. 53—Avoidance of transfer—Facts to be proved. *See* 1941 Dig., Col. 1119. FAQIR BUX *v.* THAKUR PRASAD. **16 Luck. 832.**

——S. 53—*Fraudulent and fictitious transfer—Distinction.*

There is a distinction between a fictitious and fraudulent transfer. In the former case there is really no transfer at all and in the latter there is a transfer but, as it is the result of a conspiracy between the transferor and the transferee to defeat the claim of others, it can be avoided by those others if they wish to avoid it. (*Allsop and Verma, JJ.*) JAGDAMBA PANDE *v.* RAM KHELAWAN UPADHYA. **203 I.C. 81=15 R.A. 225=1942 A.L.W. 508=1942 A.W.R. (H.C.) 283=1942 A.L.J. 899=A.I.R. 1942 All. 344.**

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——**S. 53**—*Intention to defeat or delay creditors*—Onus—*Circumstances proving intention.*

The burden of making out a case under S. 53 initially lies on those who seek to attack the transfer. But when they prove facts which are sufficient to show that *prima facie* the intention of the transferor was to defeat or delay creditors, it is for the latter to meet the case and to explain the facts. Where after executing a promissory note for a large sum the executant executes a *wakf alad aulad* covering the major portion of his property and applies under S. 4 of the U.P. Encum. Est. Act and shows only two items of property not forming a part of the wakf as his which are not sufficient to meet his debts, these facts are sufficient to show that the intention of the executant of the wakf was to defeat or delay creditors. (*Allsop and Verma, JJ.*) HAR PRASAD *v.* MOHAMMAD USMAN HUSSAIN. **1942 A.W.R. (H.C.) 382=1942 A.L.W. 613=1942 A.L.J. 645= A.I.R. 1943 All. 2.**

——**S. 53**—Intent to defeat or delay creditors—Evidence of—Inclusion of fictitious debt—Inference. *See* 1941 Dig., Col. 1120. NARASIMHAMURTHI *v.* MAHARAJAH OF PITTAPUR. **200 I.C. 577=15 R.M. 91=(1941) 2 M.L.J. 99.**

——**S. 53**—*Objection as to suit not being on behalf of all creditors—Onus as to existence of other creditors.*

Where an objection is raised by the defendant that the plaintiff's suit is bad as not being brought on behalf of all creditors, the fact of existence of other creditors is a matter clearly within the special knowledge of the defendant and in such circumstances it is the duty of the defendant to produce proof of the existence of such creditors. (*Davies.*) CHAND KANWAR *v.* DOLAT RAM KUNDAN MAL. **1942 A.M.L.J. 3.**

——**S. 53**—*Scope—Fraudulent assignment of decree—Creditors of assignor impeaching same as fraudulent*—Locus standi—*Right to raise plea in defence.*

If an assignment of a decree is made by a decree-holder to defraud his own creditors, it may not be open to him to object to the assignment during his lifetime. But it does not follow that his creditors have no right to attach the decree and to allege that the assignment was not fictitious and was not binding on them. If the Court finds that the assignment was fraudulent, it would refuse to recognise the assignment of the decree at least so far as the objecting creditors are concerned. S. 53, T. P. Act, would not stand in the way of the objector in such a case. Such an objection can be pleaded in defence and it is not necessary that there should be a suit under S. 53. (*Abdur Rahman, J.*) ADEMMA *v.* SUBBAMMA. **55 L.W. 682=1942 M.W.N. 826=(1942) 2 M.L.J. 491=A.I.R. 1942 Mad. 714.**

——**S. 53**—Scope—Fraudulent transfer—Collusive transfer by debtor to creditor partly in discharge of prior debt and partly for fictitious consideration—Intent to defeat or delay creditors present—If to be set aside as a whole—Creditor if protected to the extent of consideration found true. *See* 1941 Dig., Col. 1121 NARASIMHAMURTHI *v* MAHARAJAH OF PITTAPUR. **200 I.C. 577=15 R.M. 91=(1941) 2 M.L.J. 99.**

——**S. 53 (a)**—Applicability and scope—Agreement to transfer partial interest in property. *See* 1941 Dig., Col. 1122. S. N. BANNERJI *v.* KUCHWAR LIME AND STONE CO., LTD. **21 Pat. 243=22 Pat.L.T. 1027=1942 A.L.W. 31=44 P.L.R. 51=1942 P.W. N 26=8 B.R. 261=55 L.W. 79=46 C.W.N. 374= 1942 A.L.J 149=I.L.R. (1941) Kar. (P.C.) 150= 14 R. P.C. 105=74 C.L.J. 557=197 I.C. 399=44 Bom.L.R. 324=1942 M.W.N. 326=1942 O.W.N 43 =(1942) 1 M.L.J. 1 (P.C.).**

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——**S. 53-A**—Applicability to Punjab. *See* 1941 Dig., Col. 1122. SHANKRI *v.* MILKHA SINGH. **I.L.R. (1942) Lah. 79=197 I.C. 282=14 R.L. 221.**

——**S. 53-A**—Applicability—Writing signed by transferor or on his behalf—Necessity—"Signed on his behalf"—Meaning of. *See* 1941 Dig., Col. 1123. BECHARDAS DAMODARDAS *v.* AHMEDABAD BOROUGH MUNICIPALITY. **I.L.R. (1941) Bom. 529 =198 I.C. 188=14 R.B. 273.**

——**S. 53-A**—Construction—Complete performance or complete willingness to perform by transferee—If condition precedent. *See* 1941 Dig., Col. 1123. BECHARDAS DAMODARDAS *v.* AHMEDABAD BOROUGH MUNICIPALITY. **I.L.R. (1941) Bom. 529= 198 I.C. 188=14 R.B. 273.**

——**Ss. 53-A and 107**—*Effect of S. 53-A on rights of parties to a lease not complying with provisions of S. 107—Reference to and admissibility of the instrument.*

S. 53-A cannot be invoked by a lessor under an instrument not complying with the provisions of S. 107 of the Act to establish that she possesses any right of action under the instrument, considered purely as a lease. The main provisions of S. 53-A would protect the defendant lessee in his possession of the property if he proved that the necessary conditions had been satisfied. The lessor is debarred from enforcing against the lessee any right in respect of the property, 'other than a right expressly provided by the terms of the contract'. The implication is that while the instrument *qua* lease is invalid *qua* contract it can be enforced. Hence where one party has been in possession under an instrument which is defective in form, the contract can be looked into for the purpose of determining the rights and liabilities of the parties arising out of such possession. It is permissible to admit the defective instrument in evidence for that purpose (*Bennett and Agarwal, JJ.*) QAMAR JAHAN BEGAM *v.* BANSIDHAR. **17 Luck. 530=199 I.C. 35=14 R. O. 455=1941 O. A. 1050=1941 O.W.N. 1395=1942 A. W. R. (C.C.) 42 =A.I.R. 1942 Oudh 231.**

——**S. 53-A**—Retrospective effect. *See* 1941 Dig., Col. 1123. JAGAD BHUSAN SIRCAR *v.* PANNA LAL. **199 I.C. 600=14 R.C. 592.**

——**S. 53 A**—Scope—If can be availed of by transferor for founding suit for damages for breach of contract. *See* 1941 Dig., Col. 1124. BECHARDAS DAMODARDAS *v.* AHMEDABAD BOROUGH MUNICIPALITY. **I.L.R. (1941) Bom. 529=198 I.C. 188=14 R.B. 273.**

——**S. 55**—*Contract to the contrary—Vendor and vendee—Undertaking by vendor to discharge encumbrance immediately—Default to comply with undertaking—Right of vendee to retain part of purchase-money.*

S 55 of the Transfer of Property Act expressly gives to the buyer a right to retain out of the purchase-money the amount of any encumbrance on the property existing on the date of the sale when the property is sold free from encumbrances. Where in such a case the vendor undertook to discharge the encumbrance immediately but he did not do so and thereupon the vendee retained a portion of the purchase-money for the purpose of discharging the mortgage.

Held, that the undertaking of the vendor to discharge the encumbrance was not a contract to the contrary within the meaning of S. 55 and that the vendee was entitled under the circumstance to retain a portion of the purchase-money for the purpose of discharging the encumbrance. (*Somayya, J.*) JANARI *v.* KANARU AMBALAVASI. **1942 M.W.N. 353=55 L.W. 374= A.I.R. 1942 Mad. 583=(1942) 1 M.L.J. 603.**

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——— **S. 55**—*Fraud—Sale deed—Vendor having title only to part of property and vendee obtaining possession of such part—Effect of—Remedy of vendee—Suit for refund of sale price—Competency.*

Where the sale deed in favour of the plaintiff by the defendant was not a nullity which the plaintiff could ignore and the defendant had title to at least part of the property, and the plaintiff obtained possession of at least part of the property, the only case which the plaintiff can advance is that the sale deed is voidable because of material defect in his vendor's title not disclosed by the vendor, such non-disclosure amounting to fraud under S. 55, T. P. Act. Plaintiff's remedy in such circumstances is a suit for rescission of the sale deed, and for return of the price paid under S. 38, Specific Relief Act. It is not open to him to ask for return of the price before the conveyance is rescinded. (*Davis, C. J. and Weston, J.*) ALLAHDINO BACHO *v.* UDHOOMAL. **I.L.R. (1942) Kar. 32=202 I.C. 584=15 R.S. 51=A.I.R. 1942 Sind 81.**

———**S. 55**—*Limitation—Unpaid purchase money—Lien for—Suit to enforce—Limitation—Payment made towards amount—If extends period of limitation.*

An unpaid vendor is given a lien on the property by S. 55 of the T. P. Act, and that lien continues while the vendor has an enforceable claim against his vendee in respect of the purchase consideration. The statutory period of 12 years fixed by Art. 132 of the Limitation Act for enforcement of the charge can be extended by agreement of parties such as payments towards the debt, and a suit can be brought within 12 years of the last payment made and it is not barred on the ground that more than 12 years have elapsed from the date of the sale. (*Leach, C.J. and Lakshmana Rao, J.*) SYED ABDUL HUQ SAHIB *v.* RAJ MUHAMMAD KABULI. **1942 M.W.N 631=55 L.W. 740=A.I.R. 1943 Mad. 28=(1942) 2 M.L.J. 482.**

———**S. 55 (4) (b)**—*Applicability—Vendor leaving with vendee part of consideration for payment of debts—Vendee defaulting to pay the debts—Right to enforce statutory charge—If negatived by absence of pecuniary loss to vendor—Construction of sale-deed.*

Where a sale-deed stated that out of the consideration a portion was left with the vendee for payment to the creditors of the vendor and the balance was received in cash by the vendor and that after the receipt of that amount in cash nothing remained to be paid to the vendor and that if the creditors are not paid and suits are brought against the vendor and he has to pay the debt, interest and cost, the vendee shall be liable to pay the amount so paid and that the vendor was competent to seek the remedy in Court to recover that amount, the vendee failed to pay the debts of the vendor and the creditors filed suits against the latter who in turn filed a suit against the vendee for the enforcement of the statutory charge under S. 55 (4) (*b*) of the T. P. Act, it was held that the terms of the contract between the parties ousted the application of S. 55 (4) (*b*) and that as the right to recover would only arise if and when the vendor had actually sustained pecuniary loss at the hands of creditor his suit was premature in the absence of proof of actual pecuniary loss. (*Braund and Yorke, JJ.*) SOAMBAR NATH *v.* BISHAMBHAR NATH. **1942 A. L. W. 317.**

———**S. 55 (4) (b)**—"Contract to the contrary"—Sale-deed—Land in possession of mortgagee—Vendee directed to pay off mortgagee out of sale price and to pay balance to vendee after redemption—Subsequent agreement giving up claim to balance—Charge for vendor's lien—If excluded. *See* REGISTRATION ACT, S. 17 (1) (*b*). **43 Bom.L.R. 1014.**

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———**S. 55 (5) (b)**—Vendee's right under—Vendee charged with discharge of part of encumbrance—Right to deny liability to discharge on ground of vendor not paying off balance. *See* C. P. CODE, O. 21, RR. 58 TO 63. **55 L.W. 403=(1942) 2 M.L.J 94.**

———**S. 55 (6) (b)**—Applicability to Punjab. *See* 1941 Dig., Col. 1125. SHANKRI *v.* MILKHA SINGH. **I.L.R (1942) Lah. 79=197 I.C. 282=14 R.L. 221.**

———**S. 55 (6) (b) (before amendment in 1929)**—Contract of sale cancelled and purchaser allowed to remain in possession till repayment of purchase price paid by him—Suit by subsequent transferee from seller for possession—Purchaser under cancelled sale alleging novation but not proving it—No question of statutory charge under S. 55 (6) (*b*) raised in trial Court—Appellate Court, if can entertain such question—*B's* possession, if amounts to sufficient notice. *See* 1941 Dig., Col. 1126. M. M. R. M. CHETTIAR FIRM *v.* S. R. M. S. L. CHETTIAR FIRM. **22 Pat.L.T. 1055.**

———**S. 55 (6) (d)**—*Scope and effect—Buyer's right under—Charge—If takes priority over subsequent attachment and sale in execution.*

Under S. 55 (6) (*b*) a charge is created in favour of the buyer, unless he improperly declines to accept delivery of the property, to the extent of the earnest money paid by him to the seller. This charge comes into existence at the time the earnest money is paid. If the property is thereafter attached and sold in execution, such attachment and sale cannot affect the buyer's charge and can take effect only after the payment to the buyer of his earnest money out of the sale proceds. (*Weston, J.*) SARASWATI BAI *v.* KISHINCHAND DHARANDAS. **I. L.R. (1942) Kar. 200=203 I.C. 252=15 R.S. 73=A.I.R. 1942 Sind 120.**

———**S. 58**—*English mortgage—Mortgage containing all features of English mortgage—Clause changing date of payment in certain event and providing for payment by mortgagor of costs of insurance, etc.—Suit on limitation—Limitation Act, Arts.* 132 *and* 147.

The fact that under a mortgage which fulfils all the requirements of an English mortgage under S. 58 of the T. P. Act, in a certain event the date of payment is changed and the mortgagor has agreed to pay the cost of insurance and other charges would not detract from the absolute transfer to the mortgagee, and would not make it any the less an English mortgage falling within the definition in S. 58, T. P. Act. Art. 147 and not Art. 132 of the Limitation Act governs a suit on such a mortgage. (*Leach, C.J. and Bell, J.*) RAJAGOPALA IYER *v.* RAMACHANDRA IYER **I.L.R. (1942) Mad. 851=55 L.W. 417=A.I.R. 1942 Mad. 628=(1942) 2 M.L.J. 406.**

———**S. 58**—Sale or mortgage — Determination — Reference to surrounding circumstances—Permissibility—Tests to be applied. *See* 1941 Dig., Col. 1127. MEHDI HUSAIN *v.* MAHOMED JAWAD. **16 Luck. 789.**

———**S. 58 (b) and (d)**—Usufructuary mortgage—Provision for recovery of money if possession not given—Nature of mortgage—Remedy of mortgagee when possession not given. *See* 1941 Dig., Col. 1127. RAM PADARATH SINGH *v.* NIMAR SINGH. **17 Luck. 362=14 R.O. 276=A.I.R. 1942 Oudh 172.**

———**S. 58 (c), Proviso**—Effect of. *See* 1941 Dig., Col. 1128. SHAMBHU SINGH *v* JAGDISH BAKHSH SINGH. **17 Luck. 198.**

———**S 59**—Rule as to attestation of mortgage—If applicable to registered hypothecation bond of a fund in Court. *See* 1941 Dig., Col. 1128. AVANA MANA *v.* MARIA KUTTI UMMA. **197 I.C. 259=14 R.M. 362=(1941) 2 M.L.J. 293.**

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——**S. 59-A**—Scope—If controls S. 92—Purchaser of mortgaged property at sale in execution of money decree—Payment of prior mortgage by— Right of subrogation. *See* T. P. ACT, S. 92. **44 Bom.L.R. 20.**

——**S. 60**—*Mortgagee allowing owner of part to redeem his part—Integrity of mortgage is not broken as to rest.*

Under S. 60 the integrity of a mortgage is not broken except where the mortgagee has purchased or otherwise acquired as proprietor a certain portion of the property mortgaged. Hence where the mortgagee has allowed the owner of one part of the mortgaged property to redeem his part, any separate owner of a portion of what remains cannot redeem his part on payment of its proportion of the debt. (*Sir George Rankin.*) RAM CHAND *v.* PARBHU DAYAL. **I.L.R. (1942) All. 608= 202 I. C. 265=15 R. P. C. 36=55 L. W. 602= 1942 A. L. W. 493=1942 O. A. 510=47 C W. N 1=9 B.R. 9=45 Bom.L.R. 1=1942 A.L.J. 463= 1942 A.W.R. (P.C.) 32=1942 O.W.N. 513=A.I.R. 1942 P.C. 50=(1942) 2 M.L.J. 390 (P.C.).**

——**Ss. 60 and 82**—*Partial redemption, suit for—Nature—Special right to redeem when arises—Applicability to suit for foreclosure—Price of redemption how fixed.*

A suit for partial redemption under S. 60 of the T. P. Act is a combination of a suit for redemption and one for contribution under S. 82 of the Act. Under S. 60 a person entitled to a share only of the mortgaged property cannot redeem his share only on payment of his proportionate share of the mortgage money except in the only case where the mortgagee or where there are more mortgagees than one, all of them has or have acquired in whole or in part the share of a mortgagor. This is a special privilege conferred in that limited class of case to avoid multiplicity of suits. S. 60 applies equally in suits for sale or foreclosure also. Hence the privileges which apply in a suit for redemption apply equally in a suit for foreclosure. Once a case falls within the above exception then in order to determine the price of redemption it is necessary to have recourse to the principles of S. 82 of the Act. (*Stone, C.J. and Bose, J.*) SUNDERLAL *v.* PARASH RAM. **1942 N.L.J. 289.**

——**S. 60**—Piecemeal redemption—Permissibility—Integrity of mortgage split up by redemption by one of co-mortgagors. *See* 1941 Dig., Col. 1129. PHULA SINGH *v.* HARNAMAN. **197 I.C. 626=14 R.L. 265.**

——**Ss. 60, 65 (a) and 82**—*Suit to enforce subsequent mortgage—Duty to redeem prior mortgage on whom lies—Loss of mortgaged property in respect of prior mortgage—Apportionment of liability.*

S. 65 (*e*) of the T. P. Act places the obligation of redeeming a prior mortgage on the mortgagor. It is true that a subsequent mortgagee is given an opportunity to redeem but that is a privilege of which he is not bound to avail himself. If he does, then the position is merely this. He steps into the shoes of the prior mortgagee and himself forecloses. He thus recovers what he has paid to the prior mortgagee in the shape of property freed from his own mortgage and still has the privilege of placing the whole burden of the debt due on his own subsequent mortgage on the rest of the property. There is no reason why the position should be different if he does not redeem. He is neither better nor worse off by redeeming. In both cases the property foreclosed is lost as part of the security for the subsequent mortgage. S. 65 (*e*) recognises this and so places the duty of redemption on the mortgagor. If he fails in this duty such loss as may ensue would fall on the mortgagor or those who represent him and not on the mortgagee. The mortgagee's position cannot be worsened by anything

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done by the mortgagor behind his back and subsequent to his mortgage. In such cases the whole of the debt after deducting the subsequent mortgagee's share should be spread over the remaining items of property and this share should be determined by taking the whole of the mortgaged property as existing at the date of the mortgage into consideration (*Stone, C.J. and Bose, J.*) SUNDER LAL *v.* PARASHRAM. **1942 N.L.J. 289.**

——**Ss. 67 and 68 (d)**—*Anomalous mortgage—Usufructuary mortgage for term—Covenant to pay by mortgagor—Default clause entitling mortgagee to bring property to sale in default of payment or fixed date—Rights of mortgagee—Dispossession of mortgagee before term—Suit for sale—Limitation—Cause of action—Starting point.*

Where a deed of mortgage satisfying the requirements of S. 58 (*d*) of the T. P. Act contains also a covenant by the mortgagor to repay the mortgage money or the balance remaining due at a certain date, and also contains an agreement, express or implied, that in default of payment the mortgagee shall be entitled to bring the mortgaged property to sale, then the mortgage is a combination of an usufructuary mortgage and a simple mortgage, recognised by S. 58 (*g*) of the T. P. Act as amended in 1929 and expressly recognised by S. 98 of the Act as it stood before the amendment. It is open to the mortgagee in such a case to select his remedy. If he is dispossessed, he may sue as usufructuary mortgagee under S. 68 (*c*) and therefore, in the absence of a contract for sale under S. 67. He may also as a simple mortgagee sue on the covenant to repay. The two rights are independent and the mortgagee may sue for sale though he may have given up possession, and the right to sue accrues immediately after the due date is passed. A covenant by the mortgagor to repay the mortgage money, in a deed of mortgage otherwise usufructuary, gives the mortgagee the right to sue for sale of the mortgaged property on failure of the mortgagor to make payment on the agreed date. The cause of action for a suit for sale arises on the date fixed for payment and not on the date of dispossession of the mortgagee, when such dispossession is before the date fixed for payment. (*Weston and Tyabji, JJ.*) HUNDALDAS *v.* BALUKHAN. **I.L.R. (1942) Kar. 452=A.I.R. 1943 Sind 59.**

——**Ss 67 and 68**—*Effect of covenant to repay in a usufructuary mortgage—Mortgagee if can ask for sale when there are subsequent mortgagees.*

A mere covenant to repay the mortgage money does not take what would otherwise have been a usufructuary mortgage out of that category. Where only a mere right to file a suit to recover the mortgage-money is given, the mortgagee in a suit by him is entitled only to a simple money decree and not to a decree for sale of the mortgaged property. This is particularly so when the contesting defendants are subsequent mortgagees. The mortgagee could not be allowed in his suit to change his case and claim a decree for sale on the ground that he had been deprived of his security or possession of the property. (*Allsop and Verma, JJ.*) RAM LAL *v.* GENDA. **I.L.R. (1942) All. 368=203 I C. 135=15 R.A. 229=1942 A.W.R. (H C.) 158= 1942 A.L.W. 370=1942 A. L. J. 441=A. I. R. 1942 All. 326.**

——**S. 67 (a)**—Scope of—English mortgages executed prior to 1st April, 1930—Suit on such mortgages— Limitation—Limitation Act, Arts. 132 and 147. *See* 1941 Dig., Col. 1129. SARADINDU MUKHERJEE *v.* JAHAR LALL AGARWALLA. **I.L.R. (1942) 1 Cal. 326 =201 I. C. 353=15 R. C. 174=A.I.R. 1942 Cal. 153.**

——**S. 67-A**—Applicability—Two successive mortgages in favour of same person—Amount on later

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mortgage becoming due earlier than that on first mortgage—Sale on the later subject to the earlier mortgage —Property, if can again be sold on the first mortgage. *See* 1941 Dig., Col. 1170. MUNNALAL *v.* SINGHAI KOMAL CHANDRA. **I.L.R. (1942) Nag. 172.**

——**S. 69**—Applicability—Mortgagee's power of sale without intervention of Court—If can be conferred by a mortgagor who is the manager of a joint Hindu family —Power of sale—If can be conferred on second mortgagee when first mortgagee was not given such power. *See* 1941 Dig., Col. 1130. PARAMANAND DOSS CHOTA DOSS & SONS *v.* NANNULAL KANJI. **I.L.R. (1942) Mad. 287=201 I.C. 62=15 R.M. 195=A.I.R. 1942 Mad. 232=(1941) 2 M.L.J. 923.**

——**S. 69**—Power of sale—Validity—Clause giving mortgagee power to postpone sale—If illegal—Power "to buy in or rescind or vary any contract of sale"—If bad. *See* 1941 Dig., Col. 1130. MULRAJ VIRJI *v.* NAINMAL PRATAPMAL. **I.L.R. (1942) Bom. 83=198 I.C. 646=14 R B. 334=A.I.R. 1942 Bom. 46.**

——**S. 69 (c)**—"Power of sale"—Meaning of. *See* 1941 Dig., Col. 1130. MULRAJ VIRJI *v.* NAINMAL PRATAPMAL. **I.L.R. (1942) Bom. 83=198 I.C. 646 =14 R.B. 334=A.I.R. 1942 Bom. 46.**

——**S. 69 (2) (a)**—Scope—Notice of three months—If imperative. *See* 1941 Dig., Col. 1131. BABAMIYA MOHIDEEN SHAKAR *v.* JAHANGIR DINSHAW. **I.L.R. (1941) Bom. 506=14 R. B 304=198 I.C. 474.**

——**S. 72 (3) and U. P. Encumbered Estates Act, S. 35**—Expenses of suing for possession—Recovery in proceedings under the U. P. Encumbered Estates Act. *See* 1941 Dig., Col. 1132. MAHOMED EJAZ RASOOL *v.* ALI MAHOMED. **16 Luck. 812.**

——**S. 76**—*Applicability—Mortgage with possession —Property left in possession of mortgagor as lessee under simultaneous rental agreement—Liability of mortgagee to account for uncollected rents and profits on footing of wilful default.*

A mortgagee under a mortgage with possession who does not take possession but leaves the property in the possession of the mortgagor under a rental agreement is not liable under S. 76 to render accounts on the footing of wilful default in respect of the rents which could have been but were not collected by him. Where the mortgage deed contains provisions which show that the parties contemplate the mortgagor himself being allowed to occupy the property as a lessee from the mortgagee and simultaneously with the execution of the mortgage deed a rental agreement is also executed by the mortgagor in favour of the mortgagee, undertaking to pay as rent the exact amount which is fixed as the interest on the mortgage money, and the mortgagee fails and neglects to enforce the due payment of the rent stipulated, the mortgagee cannot be deemed to have taken possession of the mortgaged property, within the meaning of S. 76. The liability to account on the footing of wilful default under S. 76 (*b*) arises only when the mortgagee takes actual possession and control over the property. The rental agreement notwithstanding, the mortgagee is deemed not to take possession of the mortgaged property so as to charge him with a liability for the uncollected rents and profits. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SIVARAJ LAL *v.* MYLAPORE H. P. FUND, LTD. **1942 M. W. N. 625=55 L.W. 678 =A.I.R. 1943 Mad. 62.**

——**S. 76**—*Applicability and scope—If confined to mortgagor and mortgagee alone.*

Quaere: Whether S. 76 regulates the rights and obligations as between the mortgagor and mortgagee only or whether it also governs the relationship between a prior and puisue incumbrancer? (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) SIVARAJ LAL *v.* MYLAPORE H. P. FUND, LTD. (1942) **M.W.N. 625=55 L.W. 678=A.I.R 1943 Mad. 62.**

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——**S. 76 (a)**—*Duty of a mortgagee of agricultural holding—Lease on uneconomic rent—If void* in toto.

A mortgagee of agricultural holding should according to S. 76 (*a*) of the T. P. Act manage the property as a person of ordinary prudence would have managed, if it was his own. Where he leases the property at an uneconomic rent, he does not act as he should act and hence the whole lease would be void and not merely that portion of his action which fixed the rent at a low figure. There is no reason to distinguish between the *factum* of the lease and the amount of rent fixed thereon. If one is not to be accepted the other also cannot be accepted. (*Shirreff, J. M. and Sathe, A. M.*) RAM KALI *v.* BHAGWAN SAHAI. **1941 O.A. (Supp.) 960=1941 A.W.R. (Rev.) 1212.**

——**S. 76 (c)**—Scope—Usufructuary mortgagee from lessee—Liability to landlord of mortgagor—Lessor's right to proceed against mortgagee for rent. *See* 1941 Dig., Col. 1132 GOVINDARAJALU NAIDU *v.* GOPALASAMI CHETTI. **199 I.C 443=14 R.M. 576=(1941) 1 M.L.J. 225.**

——**Ss. 76 (g) and 77**—*Liability to account—Contracting out of—Requisites.*

A mortgagee can be exonerated from the liability to render accounts only if he succeeds in bringing his case strictly within the provisions of S. 77, T. P. Act, and where he fails to do so, the mandatory provisions of S. 76 (*g*), T. P. Act, would operate and it would not be open to the mortgagee to contract himself out of the statutory obligation imposed by the section. In the absence of a clear condition in the deed to the effect that there shall be no accounting at the time of redemption, mere vague recitals that mortgagor shall have no right to account cannot confer any advantage upon the mortgagee in derogation of the provisions of S. 76, T.P. Act. (*Ghulam Hasan and Madeley, JJ.*) FARIDUNNISA *v.* EJAZ RASOOL KHAN. **198 I.C. 234=14 R.O. 384=1941 O.W.N. 1378=1942 A.W.R. (C.C.) 9 =1941 O.A. 1062=A.I.R. 1942 Oudh. 203.**

——**Ss. 76 (g) and (h) and 77**—*Nature of the liability under S. 76 (g) and (h)—Mortgagee if can contract himself out of it.*

Under S. 76 (*g*) and (*h*) of the T. P. Act the liability of a mortgagee in possession to render accounts and give credit to the mortgagor for all receipts after deduction of expenses is absolute and it is not open to such a mortgagee, by means of a stipulation in the mortgage deed to contract himself out of that absolute liability, unless the case falls strictly within S. 77 of the Act. (*Ghulam Hasan and Madeley, JJ.*) SARFRAZ AHMAD *v.* MANNI LAL. **203 I.C. 449=15 R.O. 212= 1942 O.W.N. 585=1942 A W.R. (C.C.) 309 (2)= 1942 O.A. 373=A.I.R. 1943 Oudh. 38.**

——**Ss. 76 (h) and 77**—Applicability and scope—Mortgagee from lessee in possession—Undertaking to appropriate rents and profits and to pay rent to superior landlord—Failure to pay—Decree for arrears of rent against mortgagor and mortgagee—Execution barred—Redemption suit—Mortgagee's liability to account for rents unpaid by him. *See* 1941 Dig., Col. 1133. PARU AMMA *v.* KELU KURUP. **198 I.C. 619=14 R.M. 443 =(1941) 1 M.L.J. 484.**

——**S. 76 (h)**—Costs of rent suits filed by mortgagee in possession—Right to recover. *See* 1941 Dig., Col. 1133. MAHOMED EJAZ RASOOL *v.* ALI MAHOMED. **16 Luck. 812.**

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——S. 77—Mortgagee in possession—Right to claim shortage in profits and interest thereon. *See* 1941 Dig., Col. 1133. MAHOMED EJAZ RASOOL *v.* ALI MAHOMED. 16 Luck. 812.

——S. 82—Applicability—Mortgagee purchasing equity of redemption in part of the property—Suit for sale against mortgagor or other person interested in other part of the property—Liability to contribute—Principle—Value of property to be taken—Material date for considering—S. 60. *See* 1941 Dig., Col. 1134. ARUNAGIRI MUDALIAR *v.* RADHAKRISHNA AYYAR. 201 I.C. 612=15 R. M. 346=A.I.R. 1942 Mad. 44 =(1941) 2 M.L.J. 520.

——S. 82—*Applicability—Subsistence of the mortgage—If condition precedent.*

It is not the law that S. 82, T. P. Act, will not apply unless the mortgage is subsisting. It applies even when the mortgage has been paid off out of only some of the properties mortgaged, and the owner or the person interested in the properties from which the mortgage has been paid off then has a right to claim contribution from the owner of other properties which were liable under the mortgage but which were not called upon to pay it off. (*Broomfield and Macklin, JJ.*) BASWANNEWA MALLESHAPPA *v.* DODGOWDA. 199 I. C. 723= 14 R.B. 379=44 Bom L.R. 15=A.I.R. 1942 Bom. 95.

——Ss. 82, 100 and 95—*Payment of mortgage money by co-mortgagor—Rights acquired.*

Per *Agarwal, J.*—A co-mortgagor by paying the mortgage money acquires a charge in regard to the amount paid by him in respect of his co-mortgagors over their shares independently of S. 95, T. P. Act. He gets the rights of the original mortgagee under S. 92 and he acquires a charge under Ss. 82 and 100 of the Act. (*Thomas, C.J., Bennett and Agarwal, JJ.*) BRIJ BHUKHAN *v.* BHAGWAN DATT. 203 I.C. 285=15 R.O. 191=1942 A.W.R. (C.C.) 319=1942 O.W.N. 672= 1942 O.A. 413=A.I.R. 1942 Oudh 449 (F.B.).

——S. 82—*Release of part does not relieve its liability to contribute.*

The release of part of the mortgaged property by the mortgagee does not take away as regards that part the liability to contribute which S. 82 imposes upon the different parts. (*Sir George Rankin.*) RAM CHAND *v.* PARBHU DAYAL. I.L.R. (1942) All. 608=202 I.C. 265=15 R.P.C. 36=55 L.W. 602=1942 A.L.W. 493 =1942 O.A. 510=47 C.W.N. 1=9 B.R. 9=45 Bom. L.R. 1=1942 A.L.J. 463=1942 A.W.R. (P.C.) 32= 1942 O.W.N. 513=A.I.R. 1942 P. C. 50=(1942) 2 M.L.J. 390 (P.C.).

——S. 82—*Release of part of mortgaged property for less than its proportionate share of mortgage debt—Effect.*

In the case of a mortgage prior to the amendment of the T. P. Act, a mortgagee cannot release part of the mortgaged property for less than its proportion of the mortgage debt and then claim to recover from the mortgagor or puisne mortgagee or purchaser, the whole of the balance of the mortgage money out of the remainder of the property. (*Iqbal Ahmad, C.J. and Dar, J.*) RAM PEARI *v.* PARAS NATHJI. 1942 A.L.W. 500.

——S 82—*Scope—Contribution—Nature of right—First mortgagee bringing to sale only part of mortgaged property—Right of second mortgagee.*

If a first mortgagee does not cause the whole of the hypotheca to be sold for satisfying his mortgage, the second mortgagee has the right to call upon the holder of the unsold portion to contribute his share of the principal debt. The right to contribution rests upon the principle that a property which is equally liable with another to pay a debt shall not be relieved of the entire burden of the debt because the creditor has been paid

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out of that other property alone. There is no distinction in principle between a case where the payment in respect of which contribution is claimed is made to avert a legal process and a case in which payment is enforced by the sale of the property itself. The liability to contribute is a liability which is imposed upon the property and therefore is not a personal liability. (*Leach, C. J., Lakshmana Rao and Krishnaswami Ayyangar, JJ.*) NARAYANAN CHETTI *v.* NALLAMMAL. 204 I.C. 17 =55 L.W. 759=A.I.R. 1942 Mad. 685=(1942) 2 M. L.J. 525 (F.B.).

——S. 92 (as amended in 1929),—*Applicability and scope—Second mortgage—Stipulation for payment of prior mortgage by mortgagee out of consideration—Mortgagor also taking cash—Subsequent mortgagee paying money into Court under S. 83 and getting possession—Right to subrogation.*

Where the mortgagor under the mortgage takes some money in cash and stipulates that the mortgagee is to pay off a prior mortgage by paying him a certain sum out of the consideration for the mortgage, and the subsequent mortgagee deposits the amount due to the prior mortgagee in Court under S. 83, T. P. Act, and the prior mortgagee accepts that amount in full satisfaction of his mortgage-debt and delivers possession of the lands to the subsequent mortgagee, the latter must be regarded as a person entitled to institute a suit for redemption under S. 91, T. P. Act, and as such clearly a person entitled to subrogation under the first paragraph of S. 92. There is no need for a registered agreement in such a case. S. 83 does not make any mention of an agent of the mortgagor or person entitled to redeem on behalf of the mortgagor. In view of the proceedings under S. 83, it cannot be held that the subsequent mortgagee depositing under S. 83 would not be entitled to subrogation under S. 92, first paragraph. (*Wadia and Sen, JJ.*) VISHNU BALKRISHNA *v.* SHANKAREPPA GURLINGAPPA. 202 I.C. 392=15 R.B. 156= 44 Bom L.R. 415=A.I.R. 1942 Bom 227

——S. 92—Applicability—Later mortgagee directed to pay off prior mortgage—Provision that lien possessed by the earlier mortgagee to be acquired by later on payment—Effect of—Right of subrogation. *See* LIMITATION ACT, S. 20. 1941 P.W.N. 667.

——S. 92—Applicability—Mortgage paid off by two persons—Person making final payment—If excludes other—Principles. *See* 1941 Dig., Col. 1136. SINNASWAMI GOUNDAN *v.* RAMA GOUNDAN. 198 I.C. 328 =14 R.M. 426=(1941) 1 M.L.J. 519.

——S. 92 (as amended in 1929)—*Applicability—Puisne mortgagee paying off prior mortgage as part of consideration for his mortgage—Right to subrogation.*

A puisne mortgagee who pays off a prior mortgage as part of the consideration for the puisne mortgage gets no right of subrogation by his payment because he is using the mortgagor's money and not his own in so paying off the prior mortgage, therefore he cannot obviously acquire any right for himself by the payment. (*Broomfield and Macklin, JJ.*) NARAYAN DIVAKARAPPA *v.* PARAMESHVARAPPA. I.L.R. (1942) Bom. 169=199 I.C. 718=14 R.B. 377=44 Bom.L.R. 20=A.I.R. 1942 Bom. 98.

——S. 92—*Applicability—Purchaser of mortgaged property at sale in execution of money decree—Payment of prior mortgagee—Right of subrogation against subsequent mortgage—T. P. Act, S. 59-A.*

An auction-purchaser under a money decree who pays off a prior mortgage on the property is entitled to subrogation against a subsequent mortgagee. Although he is a "mortgagor" by reason of S. 59-A, T. P. Act, he is not excluded from the right of subrogation under

T. P. ACT (1882), S. 92.

S. 92, T. P. Act, because he is under no covenant or personal liability to the mortgagee whose mortgage he discharges, and because the principle that the mortgagor cannot derogate from his own grant has no application to him. (*Broomfield and Macklin, JJ.*) NARAYAN DIVAKARAPPA *v.* PARAMESHVARAPPA. **I.L.R. (1942) Bom. 169=199 I.C. 718=14 R.B. 377=44 Bom.L.R. 20=A.I.R. 1942 Bom. 98.**

——**S. 92**—*Co mortgagor redeeming entire mortgage —Position of.*

The position of a co-mortgagor who redeems the entire mortgage is that of a mortgagee and not of a mere charge-holder in respect of the share of the other co-sharers. (*Bhide, J.*) KHUDA BAKHSH *v.* ATA MOHAMMAD. **201 I.C. 159=15 R.L. 33=44 P.L.R. 133=A.I.R. 1942 Lah. 135.**

——**S. 92**—*Right to subrogation—Redemption by subsequent mortgagee with funds left with him by mortgagor—Absence of registered agreement by mortgagor.*

A subsequent mortgagee who redeems a prior mortgage with money left with him for that purpose by the mortgagor is subrogated to the rights of the prior mortgagee under S. 92, T.P. Act, though the mortgagor has not by a registered agreement agreed that he shall be so subrogated. (*Bennett, Ghulam Hasan and Agarwal, JJ.*) ABDUL HAMID *v.* RAM KUMAR. **202 I.C. 146=14 R.O. 557=1942 A.W.R. (C.C.) 120=1942 O.W.N. 165=1942 O.A. 99=A.I.R. 1942 Oudh 260 (F.B.).**

——**Ss. 92, 82, 85 and 100**—*Subrogation—Nature of right acquired by—Time for the enforcement of right acquired—Remedy of reimbursement—Scope of.*

In a case of subrogation under S. 92, T. P. Act, the mortgage that is redeemed is not extinguished but is regarded as assigned to the subrogee. The period of limitation would consequently be that applicable to the original encumbrance irrespective of the date of its discharge. In other words, subrogation only operates as an assignment of the mortgage and limits the subrogee to the same remedy as was available to the mortgagee. It is in most cases rather an additional remedy than an additional right and may exist concurrently with and as a further security to the right of a simple action for reimbursement. The latter right arises not under S. 92 of the T. P. Act but under S. 82 and S. 85 read with S. 100 of that Act. (*Niyogi, J.*) BALCHAND *v.* RATANCHAND. **I.L.R. (1942) Nag. 393=201 I.C. 472=15 R.N. 48=1942 N.L.J. 267=A.I.R. 1942 Nag. 111.**

——**S. 92, third para (as amended in 1929)**—*Transferee—Right to subrogation in respect of mortgage discharged by him—Registered agreement—Necessity.*

Since the Amending Act of 1929, the Court cannot hold a transferee who has discharged an incumbrance on the property to be subrogated to the rights of the mortgagee unless an agreement in writing has been entered into between him and the transferee and such agreement has been registered, as laid down in the third paragraph of S. 92 of the amended Act. Nor can the Court defeat the very object of the amendment by giving equitable relief in the form of a charge. Equity follows the law and the Court cannot set the law at naught. (*Leach, C.J. and Byers, J.*) MUTHUSWAMI CHETTIAR *v.* RAMASWAMI SAMIAR. **204 I.C. 441=55 L.W. 714=A.I.R. 1942 Mad. 751=(1942) 2 M.L.J. 444.**

——**S. 92-A (as amended in 1929)**—*Retrospective operation.*

S. 92-A, T. P. Act, is retrospective in its operation. (*Wadia and Sen, JJ.*) VISHNU BALKRISHNA *v.* SHANKAREPPA GURLINGAPPA. **202 I.C. 392=15 R.B. 156=44 Bom.L.R. 415=A.I.R. 1942 Bom. 227.**

T. P ACT (1882), S. 101.

——**S. 100**—Charge—Essentials — Charge under decree over all properties of defendant, both movable and immovable—If void for uncertainty—Enforceability of charge. *See* 1941 Dig., Col. 1138. NARASIMHAMURTHI *v.* SATYANANDAM. **197 I.C. 441=14 R. M. 366=(1941) 2 M.L.J. 386.**

——**S. 100**—*Maintenance decree—Enforcement personally in the first instance—Permissibility.*

In the case of maintenance decree charged on property, it is not the intention that the proceeding against the property charged is to replace the ordinary rights of a decree-holder. It is indeed rather a security that a regular and annual payments should be made. Hence such a decree can be executed personally against judgment-debtor without first enforcing the charge. To hold otherwise would amount to denial of justice. (*Grille, J.*) BAPURAO *v.* GOPIKABAI. **I.L.R. (1942) Nag. 159=199 I.C. 573=14 R.N. 292=1942 N.L.J. 74=A.I.R. 1942 Nag. 58.**

——**S. 100**—Charge—Nature of—Difference between charge and simple mortgage. *See* 1941 Dig., Col. 1138. UNITED PROVINCES GOVERNMENT *v.* MANMOHAN DAS. **I.L.R. (1941) All. 691.**

——**S. 100**—Charge —Requisites —Creation—Construction of document. *See* 1940 Dig., Col. 1177. DAU BHAIROPRASAD *v.* JUGAL PRASAD. **I.L.R. (1942) Nag. 263.**

——**S. 101 (as amended in 1929)**—*Applicability—Court auction-purchaser of part of mortgaged property—Mortgagee purchasing whole mortgaged property from mortgagor for mortgage money—Effect—Right to keep alive as against Court auction-purchaser.*

S. 101 of the T. P. Act, as amended, in terms applies only when there is a subsequent mortgagee or charge-holder. The principle of that section will not apply to the Court auction purchaser of the equity of redemption. Where a mortgagee purchases the mortgaged property for the amount of the sum due upon his mortgage, and the sale deed recites that the property is handed over to him by absolute sale in payment of the debt owing to him and that there remains nothing whatever owing between him and the mortgagor regarding the transactions of the mortgage, the mortgage must be held to be extinguished, and he cannot keep it alive as against Court auction-purchaser of a part of the mortgaged property. (*Broomfield and Macklin, JJ.*) BASWANNEWA MALLESHAPPA *v.* DODGOWDA. **199 I.C. 723=14 R. B. 379=44 Bom.L.R. 15=A.I.R. 1942 Bom. 95.**

——**S. 101**—*Applicability—Merger—Person becoming owner of property by inheritance and subsequently acquiring rights of charge or incumbrance holder.*

Under the law as it stood before the amendment of S. 101 of the T. P. Act, in 1929, on a merger of rights of mortgagor and mortgagee in one person absolutely, the mortgage would be extinguished, unless that person declares expressly or by necessary implication that it shall continue to subsist, or such continuance would be for his benefit. Though in cases of merger ordinarily it is the holder of a charge or an encumbrance who acquires the equity of redemption subsequently, there may be cases where a person may have acquired the equity of redemption by inheritance or otherwise first, and subsequently came to be the holder of a charge or an incumbrance (*e.g.*) when he inherits the property from two persons, one of them being the owner and the other a charge or incumbrance holder. (*Pandrang Row and Abdur Rahman, JJ.*) RAJAH OF KALAHASTHI *v.* PARTHASARATHY RAYANIMGAR. **202 I.C.**

T. P. ACT (1882), S. 101.

697=15 R.M. 542=A.I.R. 1942 Mad. 558=(1942) 2 M.L.J. 47.

——S. 101--Applicability—Purchaser under charge decree—Mortgagee subsequent to charge decree—Relative rights of. *See* 1941 Dig., Col. 1139. NEMASAO *v.* MADHORAO GANESH. **I.L.R. (1942) Nag. 309=199 I.C. 814=14 R.N. 302=A.I.R. 1942 Nag. 33.**

——S. 101—*Construction—Owner of property becoming charge-holder—Right to enforce charge by way of suit—Keeping alive—Presumption as to—Existence of intervening incumbrances—If necessary.*

There is nothing in the language of S. 101 of the T. P. Act, as it stood before its amendment in 1929, which would entitle a person who has acquired an absolute title to the property or happens to become a charge or incumbrance holder of the property of which he was the owner to plead the charge or incumbrance only by way of defence and not enforce the same against the puisne or the mesne incumbrancer as a plaintiff by suit. The existence of another encumbrance is only one of the reasons which could lead a person acquiring an absolute title to the property or a charge or an incumbrance, as the case may be, to keep the charge or incumbrance alive and not the sole reason for its continuance. It cannot therefore be said that a mortgagee or an owner of an absolute estate can be held to have kept alive the previous charge only when there are intervening incumbrances in existence. (*Pandrang Row and Abdur Rahman, JJ.*) RAJAH OF KALAHASTHI *v.* PARTHASARATHY RAYANIMGAR. **202 I.C. 697=15 R.M. 542=A.I.R. 1942 Mad. 558=(1942) 2 M.L.J. 47.**

——S. 101—*Intention to keep alive charge—When to be declared—Reasonable time—Conveyance of security to wife benami—If declaration of intention to keep alive.*

It is not necessary for the owner of a charge or incumbrance that he must, simultaneously with his acquiring the equity of redemption by inheritance or otherwise, declare his intention to keep the charge or incumbrance alive expressly or by necessary implication in order to prevent the extinguishment of the charge or incumbrance. It would be enough for him to do so within a reasonable time. If he conveys the security to his wife benami for himself, that would be a sufficient expression of his intention to keep the charge alive. (*Pandrang Row and Abdur Rahman, JJ.*) RAJAH OF KALAHASTHI *v.* PARTHASARATHY RAYANIMGAR. **202 I.C. 697=15 R. M. 542=A. I. R. 1942 Mad. 558 =(1942) 2 M.L.J. 47.**

——S. 101—*Scope—Acquisition of qualified estate—Impartible estate under Madras Impartible Estates Act—Mortgagee acquiring mortgagor's rights—Effect—Transfer of mortgage benami—If prevents merger.*

No question of merger can arise in the case of a person who becomes entitled only to a qualified estate in the property, *e.g.*, the holder of an impartible estate after the Madras Impartible Estates Act of 1904. A mortgage can therefore be enforced against the purchaser of the equity of redemption subject to the mortgage. The device of transferring his rights by a mortgagee for his own benefit to another person as his benamidar is not open to objection and has the effect of saving a merger if he happens to acquire the mortgagor's rights in the property subsequently—although the benamidar would have to hold any money recovered on the mortgage for the benefit of the mortgagor. (*Pandrang Row and Abdur Rahman, JJ.*) RAJAH OF KALAHASTI *v.* PARTHASARATHY RAYANIMGAR.

T. P. ACT (1882), S. 107.

202 I C. 697=15 R.M. 542=A.I.R. 1942 Mad. 558=(1942) 2 M.L.J. 47.

——S. 101—*Scope and applicability of.*

The principle underlying S. 101, T. P. Act, is that when a prior encumbrancer purchases property subject to a subsequent mortgage, it must be assumed until the contrary is shown that he intended to keep his prior encumbrance alive so that he could use it as a shield against the subsequent encumbrancer should that be necessary and for his benefit. But this cannot apply where there is no subsequent encumbrance at the time when the mortgagee acquires the mortgagor's interests and becomes the full owner of the estate. The section limits itself to cases in which 'any mortgagee' or 'person having a charge upon immovable property,' or any transferee from 'such mortgagee or charge-holder' pays off the prior encumbrancer. It does not apply to cases in which the owner himself pays. If there is no outstanding encumbrance on the date of the sale, the purchaser becomes the full and complete owner of the property and any dealings with it are by him as the full owner of the property and not as a prior encumbrancer. (*Bose, J.*) LAXMINARAYAN *v.* SADANAND. **1942 N. L.J. 579.**

——S. 101 (as amended in 1929)—*Scope—Retrospective operation.*

S. 101 of the T. P. Act, as amended in 1929, cannot be applied to a suit started two years prior to the amendment. It is impossible to hold that the other sections of the Act were retrospective in character, simply because some of the sections only were started not to have any retrospective effect. Nor is the amending Act of 1929 purely declaratory. (*Pandrang Row and Abdur Rahman, JJ.*) RAJAH OF KALAHASTI *v.* PARTHASARATHY RAYANIMGAR. **202 I.C. 697=15 R.M. 542=A.I.R. 1942 Mad. 558=(1942) 2 M.L.J. 47.**

——S. 106—Lease for building purposes—If to be deemed permanent. *See* 1941 Dig., Col. 1139. BAJRANG SAHAI *v.* MULIA. **197 I.C. 276.**

——S. 106—*Tenancy created by decision of Court—If can be terminated by notice to quit.*

Where the relationship of landlord and tenant between the parties has been created not by a lease but by a decision of a Court, the tenancy cannot be legally terminated by a notice to quit under S. 106. (*Henderson, J.*) SAZAWAR KHAN *v.* SATYENDRA LAL. **201 I.C. 443=15 R.C. 194=46 C.W.N. 464=A.I.R. 1942 Cal. 406.**

——S. 106—*Tenancy in existence before Act—Reasonable notice to quit.*

If a tenancy is in existence from before the T. P. Act, the provisions of that Act do not apply to it, and the tenant is entitled only to a reasonable notice to quit. If on the analogy of the provisions of the Act six months' notice is deemed reasonable, a shortage of only three days will not render a notice to quit served on him unreasonable. (*Akram and Pal, JJ.*) HARENDRA NATH SAHA *v.* BENOYENDRA NATH SHAHA ROY. **75 C.L.J. 431.**

——S. 107 and Evidence Act (1872), S. 91—*Agreement to lease house for a year followed by delivery of possession—Subsequent execution of* Sarkhat *by lessee—Proof of lease—Admissibility of* Sarkhat.

Where a *Sarkhat* executed by the lessee alone subsequent to the creation of a lease of a house for a year by oral agreement accompanied by delivery of possession, contains all the terms of the contract between the parties then in view of S. 91 of the Evidence Act no other evidence can be given in proof of the contract between the parties. As the *Sarkhat* does not by itself constitute

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the lease, being executed by the lessee only, but only purports to be merely an agreement to hold the property on certain terms, there is nothing in S. 107, T. P. Act, which would make the registration of this document compulsory and exclude it from evidence because it is unregistered. It is admissible as showing the terms of the contract already entered into between the parties and is the only evidence admissible to prove those terms. Hence a suit could be based on it although it did not create the lease. (*Bennett, J.*) MOHAMMAD FAROOQ *v.* MASJIDI BEGAM. **200 I.C. 593=15 R.O. 21=1942 A.W.R. (C.C.) 237=1942 O.W.N. 357=1942 O.A. 258=A.I.R. 1942 Oudh 408.**

——**S. 107**—Applicability—Lease of fishery rights—Registration, necessity. *See* 1941 Dig., Col. 1140. THAKUR *v.* JAGDAMBIKA PRATAP NARAIN SINGH. **17 Luck. 205=A.I.R. 1942 Oudh 93.**

——**S. 107 and Easements Act (1882), S. 52**—*Registered kiryanama executed by lessee—If a lease or a license.*

A registered kiryanama executed by the lessee only cannot operate as lease, but he is bound by its terms unless of course he proves fraud or coercion. Nor is the document a license. It is not by the zamindar granting certain rights to other party but it is by the lessee only containing the terms on which he is holding the land. (*Baipai, J.*) GANGA SAHAI *v.* BADRUL ISLAM. **202 I.C. 678=15 R.A. 185=1942 A.L.W. 373=1942 A.L.J. 386=1942 A.W.R. (H.C.) 217=A.I.R. 1942 All. 330.**

——**S. 107**—*Scope—Lease for residential purposes—Absence of registered instrument—Allegation of permanent tenancy—Sustainability—Tenant building pucca house—Landlord if estopped from denying permanency.*

Whether a tenancy comes into existence before or after the passing of the T. P. Act, a landlord is *prima facie* entitled to the possession of his *ghair mazrua* land subject, of course, to such right (if any) as the tenant may show to have been conferred upon him by the landlord. A permanent right can only be based either upon a contract express or implied, or upon some statement of fact grounding an estoppel. So far as contract is concerned, it must be held that in the absence of a registered instrument there can be under S. 107, T. P. Act, no valid contract at all, in the case of a tenancy for residential purposes. Nor can oral evidence showing that the settlement was for residential purposes and the tenant built a *pucca* house on the land, give rise to any estoppel preventing the landlord from denying that the tenancy was permanent. A tenancy created for residential purposes only about 45 years ago (after the T. P. Act) cannot become a permanent tenancy merely because the tenant builds a *pucca* house on the land let without any protest from the landlord. Mere inaction on the part of the landlord cannot plainly take the place of the registered instrument which is essential under S. 107, T. P. Act, for the creation of any tenancy "for any term exceeding one year." The tenant's rights cannot be enlarged in defiance of S. 107, T. P. Act, merely because, having taken a settlement specifically for building purposes he proceeds to build a *pucca* house merely possibly under the impression that he has obtained a permanent tenancy. (*Harries, C.J. and Dhavle, J.*) RAM RAN BIJAYA PRASAD SINGH *v.* RAMJIWAN RAM. **200 I.C. 769=15 R.P. 11=8 B.R. 727=23 Pat.L.T. 294=A.I.R. 1942 Pat. 397.**

——**S. 108**—Applicability—Contract to the contrary—Lease for term—Lessee undertaking to surrender vacant possession on expiry of term and to remove structures erected by him—Termination of tenancy—

T. P. ACT (1882), S. 130.

Lessee vacating without removing structures—If retains interest in land or structure. *See* 1941 Dig., Col. 1141. KHIMJEE THAKARSEE *v.* PIONEER FIBRE CO., LTD. **197 I.C. 253=14 R.B. 207.**

——**S. 109**—Lessor, transferee and lessee agreeing as to amount of rent payable to transferee—Right of lessor or transferee to sue for his rent without impleading other. *See* 1941 Dig., Col. 1142. BHUDEB CHANDRA ROY *v.* BHIKSHAKAR PATTANAIK. **A.I.R. 1942 Pat. 120.**

——**S. 116**—Applicability—Lease governed by S. 107—Neither acceptance of rent nor agreement by lessor. *See* 1941 Dig., Col. 1142. THAKUR *v.* JAGDAMBIKA PRATAB NARAIN SINGH. **17 Luck. 205=A.I.R. 1942 Oudh 93**

——**S. 117**—*Applicability of Act—Determining factor—Actual use or original purpose of tenancy.*

It is not the actual use of the land but the original purpose of the tenancy which determines the question of applicability or otherwise of the T. P. Act. (*Akram and Pal, JJ.*) RAJKUMARI BAISHNABI *v.* MIRJA SAMSUDDIN. **200 I.C. 314=14 R.C. 702=46 C.W.N. 277=75 C.L.J. 29=A.I.R. 1942 Cal. 330.**

——**Ss. 122 and 123**—Gift—Validity—Essentials—Hindu Law—Deposit by husband of money in joint names of himself and his wife—If implies gift to wife—Transfer of ownership—What constitutes. *See* HINDU LAW—JOINT FAMILY—GIFT. **44 Bom.L.R. 839.**

——**S. 122**—*Unstamped deed of gift delivered to donee after execution—Deed stamped after donor's death—Validity.*

Where a deed of gift was delivered over to the donee immediately after execution, it would be sufficient acceptance of the transfer by the donee under S. 122 of the T. P. Act, although it was not duly stamped then and the stamp was paid after the death of the donor under orders of the Collector. The deed becomes effective from the very moment of its execution subject to its being stamped and registered as required by law. (*Mukherjea and Blank, JJ.*) PURNACHANDRA CHAKRABARTY *v.* KALIPADA ROY. **201 I.C. 557=15 R.C. 234=46 C.W.N. 477=A.I.R. 1942 Cal. 386.**

——**S. 130**—Applicability—Mahomedan widow—Release of dower debt—Written document—Necessity for validity. *See* 1941 Dig., Col. 1142. MAHOMED ZOBAIR *v.* BIBI SAHIDAN. **197 I.C. 241=14 R.P. 289=23 Pat.L.T. 72=8 B.R. 179=A.I.R. 1942 Pat. 210**

——**S. 130**—Applicability—Punjab. *See* 1941 Dig., Col. 1143. RAM KISHEN MOHAN LAL *v.* GURDIAL MAL SAGAR MAL. **197 I.C. 735=14 R.L. 268.**

——**S. 130**—Part-assignment of debt—Validity. *See* 1941 Dig., Col. 1143. RAM KISHEN MOHAN LAL *v.* GURDIAL MAL SAGAR MAL. **197 I.C. 735=14 R.L 268.**

——**S. 130**—*Scope and effect—Future property—Equitable charge—How created—Contract to assign future salary—Effect of.*

S. 130 of the T. P. Act applies to absolute transfers as well as to equitable charges in respect of future property. An equitable assignment of or equitable charge can only be created by a document in writing as provided by S. 130, although under the equitable rules prevailing in England there can be an assignment of property which may come into being in future. A mere contract to assign future salary does not create an equitable charge. (*Harries, C.J. and Manohar Lall, J.*) B. N. RY. EMPLOYEES' URBAN BANK, LTD. *v.* E. W. SEAGER. **201 I.C. 342=15 R.P. 47=8 B.R. 789=23 Pat L.T. 35=A.I.R. 1942 Pat. 307.**

T. P. ACT (1882), S. 130.

——S. 130, proviso—*Construction and scope—"Dealing with the debt"—Payment under orders of Court—Payment made by debtor after receipt of notice of assignment—If protected.*

A "dealing with the debt" within the meaning of S. 130 would include a dealing with the debt under an order of court. In view of the clear provisions of S. 130, it must be held that a debtor, the debt from whom has been assigned over to a third person, cannot, after notice of the assignment of the debt, pay that debt or any portion of it under the orders of a court in a case to which the assignee is not a party and in such a manner as to protect him from paying it over again to the assignee when called upon to do so. A payment by the debtor before notice is protected under the proviso to S. 130. But when notice of the assignment has been given to the debtor both by the assignor and by the assignee, a payment by the debtor, even if it happens to be under the orders of court, cannot be protected. (*Abdur Rahman and Somayya, JJ.*) BURMA SHELL OIL STORAGE AND DISTRIBUTING CO. *v.* OFFICIAL RECEIVER, TINNEVELLY. 55 L.W. 800=1942 M.W.N. 680=(1942) 2 M.L.J. 661.

TRUST—Co-trustee—Right to sue for accounts. *See* 1941 Dig., Col. 1143. NIRMAL CHANDRA *v.* JYOTI PRASAD. 197 I.C. 763=14 R C. 382.

——Creation— Words—Wish expressed by testator in will that successors taking his estate shall maintain and preserve religious institutions maintained by him and spend same amount of income from estate as he was spending—If creates trust. *See* BIHAR AGRICULTURAL INCOME-TAX ACT, S. 8 (1). 21 Pat. 488 (F.B.).

——Decree against trustee on contract on behalf of trust—Form. *See* 1941 Dig., Col. 1144. SHYAM SUNDARDAS *v.* GOURI NATH. 198 I.C. 304=14 R A. 276=A.I.R. 1942 All. 73.

——Liability of—Manager of temple—Loan by manager on promissory note—Suit against temple—Maintainability—Liability of temple. *See* 1941 Dig., Col. 1144. EKAMBARESWARASWAMI AND DHANDAYUDHAPANI SWAMY TEMPLES *v.* VEERAPPA GOUNDER. 201 I.C. 332=15 R.M. 309=A.I.R. 1942 Mad. 198=(1941) 2 M.L.J. 568.

——Power conferred by will on trustees—Construction—Power when exercisable by survivor alone. *See* 1941 Dig., Col. 1144. SOM GIRI *v.* RAM RATAN GIRI. I.L.R. (1941) All. 711=197 I.C. 696=14 R. A. 238.

——Public and private trust—Difference between—Wakf in favour of Shias or subsect of Shias—Nature of. *See* 1941 Dig., Col. 1144. HAJI MAHOMED NABI *v.* PROVINCE OF BENGAL. I.L.R. (1942) 1 Cal. 211=201 I.C. 248=15 R.C. 148=A.I.R. 1942 Cal. 343.

——*Settlement—Provision for payments of income annually—Income larger than amount reasonably required for payments—Distribution of corpus—Permissibility—Practice—Conditions requisite for Court approving distribution.*

It is a well-established practice of the Court that whenever there is a trust to make annual payments out of the income of property and the income is larger than is required for the purpose, the Court will sanction the setting aside and retention of so much of the corpus of the property as will be sufficient by its income to meet the annual payments in every contingency that is reasonably possible, and will permit the distribution of the rest of the corpus among the persons who, subject to the payment of the annual sums, are absolutely entitled to it. But this, of course, can only be done when the total amount of the sums payable out of

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the income is known, or the maximum amount that can ever be so payable can be ascertained with some degree of certainty. Where the amount that might be required in the future for the purposes of the trust is indefinite, speculative and entirely unascertainable, the Court would be acting rightly if it refuses to approve the distribution of the corpus. But the rejection of an application for such distribution would not bar a fresh application at a later date; and if, at a later date, the length of the further duration of the trust is known and can be ascertained with some approach to certainty and some reliable estimate can be made of the maximum number of persons capable of receiving the benefits of the trust, an enquiry can then be properly directed to ascertain what part of the corpus is reasonably required for the purposes specified. (*Lord Romer.*) KHAW JOO JEANG *v.* KHAW JOO CHYE. 199 I.C. 785=55 L. W. 334=8 B.R. 660=14 R.P.C. 138=A.I.R. 1942 P. C. 28 (P.C.).

——*Suit relating to trust estate—Parties—Several trustees—All, if necessary parties.*

It is a settled principle of law that several trustees form, so to say, one collective trustee and all of them should ordinarily be co plaintiffs in a suit in respect of the trust estate, and such of them as are unwilling to join as co-plaintiffs or have done some act precluding them to be plaintiffs should be made defendants. (*Mitter and Khundkar, JJ.*) AMIYA KRISHNA KHAN *v.* DEBENDRA LAL KHAN. 46 C.W.N. 865.

——*Trustee—Breach of trust—Change of name of charity without permission of Courts—If ground for removal from office.*

So far as British India is concerned, it is the law that the trustees of a charity would not be justified in changing the name of the charity without the permission of the Court. But the trustees, by merely changing the name of a charity without such permission cannot be held to be guilty of such a serious breach of trust as to justify their removal by Court. (*Beaumont, C. J. and Somjee, J.*) SHIVNARAIN SARUPCHAND *v.* BILASRAI JUHARMAL. I.L.R. (1942) Bom. 546=202 I.C. 68 =15 R.B. 126=44 Bom.L.R. 466=A.I.R. 1942 Bom. 208.

——Trustee—Joint trustee—Powers of—Loan for trust on promissory note—Joinder of all trustees in note—If essential. *See* 1941 Dig., Col. 1145. EKAMBARESWARA AND DHANDAYUDHAPANISWAMI TEMPLES *v.* ARUNACHALA GOUNDAN. 201 I.C. 227=15 R.M. 280=A.I.R. 1942 Mad. 92 (2)=(1941) 2 M.L.J. 587.

——*Trustee—Negligence—Damage resulting from—Liability for—Burden of proof—"Wilful default"—Necessity to prove.*

In a suit for damages against an ex-trustee of a Devasthanam (which was a big institution owning extensive properties in several villages and towns and derived an income of about two lakhs of Rupees annually) on the allegation that the plaintiff Devasthanam has suffered damage as a result of gross negligence of the defendant (ex-trustee) in allowing certain rents to become barred by limitation without instituting suits for their recovery, mere proof of negligence is not sufficient to make the defendant liable. It should be definitely proved that the plaintiff has suffered damage in fact as a result of the defendant's negligence. When there is neither allegation nor proof of wilful default on the part of the defendant, he cannot be made liable in the absence of any attempt to lead evidence to show that the rents due would have been recovered if suits had been instituted for their recovery within the period of limitation prescribed by law. The onus is not on the defendant to prove that no money would be recovered if suit

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had been instituted. Unless it is shown by the plaintiff Devasthanam that the decrees, if obtained, would have been realised, it cannot be found that the plaintiff has really lost any money or suffered any damage in consequence. (*Abdur Rahman and Somayya, JJ.*) MADURA, ETC., DEVASTHANAMS *v.* DORAISWAMI NAYUDU. **55 L.W. 749=1942 M.W.N. 794=A.I.R. 1943 Mad. 153=(1943) 1 M.L.J. 144.**

——*Trustees — Powers and rights of—Right of majority to appoint one as managing trustee and to prevent minority from taking part in management.*

A majority of the trustees have no right to elect one of them as the managing trustee so as to oust the minority trustees from taking part in the management of the trust. Three out of five trustees are not entitled to elect one of the three as managing trustee and seek to prevent the other two trustees from interfering with the management of the trustee so elected. Each trustee is entitled to take part in the management of the trust estate. If he voluntarily agrees to an arrangement by which each of the co-trustees is to manage either by turns or for a particular period, it may be that he is bound by the result of his act. (*Somayya, J.*) GOPALASWAMI MUDALIAR *v.* SUBRAMANYA PILLAI. **203 I.C. 179=15 R.M. 595=1942 M.W.N. 143=55 L.W. 98 =A.I.R. 1942 Mad. 397=(1942) 1 M.L.J. 272.**

——Trustee—Powers of—Special trust for performance of charity in temple—Failure of special trustee to perform—Right of general trustee to perform and sue special trustee for recovery of expenses. *See* 1941 Dig., Col. 1145. SAHASRALINGESHWARA DEVARA BHANDARAM *v.* NAGAPPA. **201 I.C. 351=15 R.M. 316= A.I.R. 1942 Mad. 39=(1941) 2 M.L.J. 636.**

——*Trustee—Suit against his legal representatives for accounts or for moneys misappropriated—Maintainability—Items in account—Onus of proof.*

The legal representative of an agent or trustee or co-trustee is not liable to render account of the estate which was in charge of his predecessor. A suit for account is accordingly not maintainable against such a person. But a suit for recovery of money misappropriated by a trustee or co-trustee or an agent will lie against his legal representative. In such a suit the decree will be against the assets of the deceased. A suit for recovery of a specific sum of money does not assume the character of a suit for account merely because in the determination of the questions in controversy accounts may have to be examined. In such a suit the defendant will be under no obligation to explain any item that may appear in the account papers, and the onus will be entirely upon the plaintiff to substantiate each and every item in the account papers on which he may rely or which he may challenge. (*Mitter and Khundkar, JJ.*) AMIYA KRISHNA KHAN *v.* DEBENDRA LAL KHAN. **46 C.W.N. 865.**

——*Validity—Lawfulness of some of objects doubtful.*

Where one of the objects of a trust is lawful and the expenses on it are fixed, and that object is not dependent upon and is separate from the other objects, the trust to that extent will be valid, although the lawfulness of the other objects is doubtful. (*Mitter and Khundkar, JJ.*) AMIYA KRISHNA KHAN *v.* DEBENDRA LAL KHAN. **46 C.W.N. 865.**

TRUSTS ACT (II OF 1882), S. 62—*Applicability—Public religious trusts.*

There is no reason why the principle in S. 62 of the Trusts Act should not be held applicable to the case of public religious trusts. It is an equitable one which would apply to the case of a trust whether public or private. Where the trustee of a public charitable trust sells trust property and for the purchase price conveys his own property to the trust, if the sale of such property is subsequently set aside on the ground of absence of valid necessity, the trustee or his alienee would be entitled to call upon the trust to surrender the benefit which the trust had by virtue of the sale.

Held, further, that a sale of trust property without valid necessity is only a voidable transaction and not void. (*Venkataramana Rao, J.*) KANAGAVELU NADAR *v.* SUBBIER. **1942 M.W.N. 193=55 L.W. 183=A.I.R. 1942 Mad. 438=(1942) 1 M.L.J. 353.**

——**S. 82**—Effect on benami transactions. *See* BENAMI. **1942 A.W.R. (H.C.) 197.**

——**S. 82**—*Indian Christians—Purchase of property by husband in wife's name—Presumption as to ownership—Doctrine of advancement—Applicability.*

Where an Indian Christian husband provides the money for the purchase of a property in the name of his wife, the property must be regarded as being his unless the evidence justifies the conclusion that he intends to make a gift to his wife. The English doctrine of advancement cannot be legitimately applied to Indian Christians, who are both Indians of the full blood. Religious belief is not a factor in the application of the doctrine and there is no reason for making an exception in the case of Indian Christians. (*Leach, C.J. and Byers, J.*) PALANI MUDALIAR *v.* NATARAJAN. **I.L.R. (1942) Mad. 844=201 I.C. 776=15 R.M. 411=55 L.W. 294=A.I.R. 1942 Mad. 503=(1942) 1 M.L.J. 528.**

——**Ss. 88 and 90**—*Applicability—Position of co-owners.*

There is ordinarily no fiduciary relation between tenants in common so as to impose an obligation on one co-owner to protect the interest of the other co-owners. Nor can S. 90 of the Trusts Act apply unless one co-owner is placed in such a relation to another by the act or consent of another, that he becomes interested for him and with him in any subject of property or business and being in that position, he, acting for himself or as representing another, gains an advantage in derogation of another's rights. 'The basic principle however depends upon whether any duty is owed by the person who obtains the advantage of making over the advantage or sharing that advantage with others'. (*Niyogi, J.*) MOHAMMAD KHAN *v.* KEDARMAL. **1942 N.L.J. 538.**

——**S. 88**—*Scope.*

A trustee is not debarred from purchasing property which had originally belonged to the trust but had become lost to the trust before he became trustee and had gone into the hands of third persons who had acquired a title to the same by adverse possession. (*Venkataramana Rao, J.*) OUSHADEESWARA SWAMI TEMPLE *v.* SAMIAPPA MUDALIAR. **201 I.C. 745=15 R.M. 397=55 L.W. 324=1942 M.W.N. 396=A.I.R. 1942 Mad. 317=(1942) 1 M.L.J. 99**

——**S. 90**—Applicability—Mortgage decree—Direction that one item should be sold first and if necessary another item, should be sold thereafter—Purchase by mortgagee of first item for low price at revenue sale—If in trust for owner of second item. *See* C. P. CODE, O. 34, R. 14. **55 L.W. 735.**

——**S. 90**—*Applicability—Right to benefit of—Conditions.*

Before the benefit of S. 90 of the Trusts Act can be demanded, it must be shown that (1) the party against whom relief is sought availed himself of his position, (2) he gained an advantage by so doing, and (3) the advantage was gained in derogation of the rights of the person interested in the property. (*Krishnaswami Ayyangar and Kunhi Raman, JJ.*) GOVINDARAJAM PILLAI *v.* ALAGAPPA CHETTIAR. **55 L.W. 735=1942 M.W.N. 828=A.I.R. 1943 Mad. 202.**

UNITED PROVINCES ABATEMENT OF RENT SUITS ACT (XIII OF 1938)—*Applicability.*

The U. P. Abatement of Rent Suits Act applies only to suits instituted after the date on which the Act came into force and not to suits pending on that date. (*Shirreff, S.M. and Sathe, J.M.*) SHREE NATH LAL *v.* RAM RAJ SINGH. 1942 R.D. 708=1942 A.W.R. (Rev.) 386=1942 O.W.N. (B.R.) 580=1942 O.A. (Supp.) 412.

UNITED PROVINCES AGRICULTURISTS' RELIEF ACT (XXVII OF 1934), S. 2 (2)—*Agriculturist—Member of joint Hindu family—Land recorded in the name of other member or members.*

The U. P. Agriculturists' Relief Act nowhere provides that in order to be an 'agriculturist' a person's name must be recorded in the revenue papers. Hence a member of a joint Hindu family can rank as an 'agriculturist' within the meaning of S. 2 (2) of the Act, though the land of the family is recorded in the revenue papers only in the name or names of other member or members of the family. (*Iqbal Ahmad, C. J., Braund and Dar, JJ.*) SHRI NATH *v.* PURAN MAL. I.L.R. (1942) All. 45=198 I.C. 690=14 R.A. 299=1942 A.L.J. 55=1941 O.A. (Supp.) 925 (1)=1941 A.W.R. (Rev.) 1175 (2)=A.I.R. 1942 All. 19 (F.B.).

——**S. 2 (2)**—*Applicability—Person having land outside United Provinces.*

S. 2 (2) of the U.P. Agriculturists' Relief Act read as a whole seems to indicate that the land held must be in the United Provinces. This section cannot relate to other provinces much less to foreign countries. (*Madeley, J.*) ALTAF AHMAD *v.* RASHID-UDDIN. 204 I. C. 337=1943 R.D. 105=1942 O.A. 591=1942 O.W. N. 707=A.I.R. 1943 Oudh 90.

——**S. 2 (2) proviso (1), Expl. VII and S. 33**—*Scope and applicability of Expl. VII—Restrictions as to the limit of land revenue, etc., if applies to suits under S. 33.*

Expl. VII to S. 2 (2) of the U. P. Agricultural Relief Act only explains the provisions of the main section. There is nothing in it to suggest that it was intended to apply to applications governed by Chs. IV and V of the Act. It is subject to proviso (1) to the section so far as applications specially exempted under it are concerned. Hence the restrictions which are specified in Cls. (*a*) to (*h*) of S. 2 do not apply to suits under S. 33 which happen to fall under Ch. V and they have to be ignored in deciding whether the plaintiff is an 'agriculturist' for the purposes of the Act (*Iqbal Ahmad, C.J. and Dar, J.*) SANWAL DAS MEHROTRA *v.* KRISHNA DUTT DUBE. 1942 A.L.W. 298.

——**Ss. 2 (5) and 5**—*Application for fixation of instalments regarding decree of Revenue Courts—Forum.*

According to S. 2 (5) of the U.P. Agriculturists Relief Act 'Court' means a Civil Court. It follows therefore that the Court to which an application should be made by a judgment-debtor for fixation of instalments under S. 5 of the Act, must be a Civil Court, even though the decree which is sought to be amended by the grant of instalments is a decree of the Revenue Courts. The word 'Court' used in S. 5 of the Act does not include a Revenue Court. (*Ghulam Hasan and Madeley, JJ.*) UMRAO PRASAD *v.* MOHAMMAD BAKHSH. 199 I.C. 383=14 R.O. 482=1942 O.A. 39=1942 A.W.R. (C. C.) 61=1942 R.D. 159=1942 O.W.N. 53=A.I.R. 1942 Oudh 289.

——**S. 2 (10)**—Loan—Transaction renewing old loan, if one. *See* U. P. AGRICULTURISTS RELIEF ACT, SS. 30 (1) AND 2 (10) (*a*). 1942 A.L.J. 3=A.I. R. 1942 All. 50 (F.B.).

U. P. AGRIC. REL. ACT (1934), S. 12.

——**Ss. 4 and 5**—*Application under S. 5 in respect of decree after the Act—Power to correct interest awarded in excess of that allowed by S. 4.*

Where an application is made by an agriculturist for converting a decree, passed after the U.P. Agriculturists' Relief Act came into force, under S. 5 of the Act into an instalment decree, if it appears to the Court that the future interest awarded under the decree offends against S. 4, it is open to the Court at the application of the agriculturist to set right the excessive interest in the decree. (*Iqbal Ahmad, C.J., Braund and Dar, JJ.*) SHRI NATH *v.* PURAN MAL. I.L.R. (1942) All. 45=198 I.C. 690=14 R.A. 299=1942 A.L.J. 55=1941 O.A. (Supp.) 925 (1)=1941 A.W.R. (Rev.) 1175 (2) =A.I.R. 1942 All. 19 (F.B.).

——**S. 5**—'Court'—If includes Revenue Court. *See* U. P. AGRICULTURISTS RELIEF ACT, SS. 2 (5) AND 5. 1942 O.W.N. 53.

——**S. 5**—*Right to apply under—If affected by failure to ask for instalments under S. 3 in the suit itself*

The power given to the Court by S. 5 (1) of the U. P. Agriculturist's Relief Act is not controlled by any limit of time and hence the omission of an agriculturist defendant to ask for instatments under S. 3 at the time of passing of the decree in the suit itself does not disentitle him to apply for conversion of the decree into an instalment decree in accordance with the provisions of S. 5 (1) of the Act. (*Iqbal Ahmad, C.J., Braund and Dar, JJ.*) SHRI NATH *v.* PURAN MAL. I.L.R. (1942) All. 45=198 I.C. 690=14 R.A. 299=1942 All. L.J. 55=1941 O.A. (Supp.) 925 (1)=1941 A. W.R. (Rev.) 1175 (2)=A.I.R. 1942 All. 19 (F.B.).

——**S. 7**—Person claiming benefit of—Facts to be proved. *See* 1941 Dig., Col. 1148. HET RAM *v.* SUBHAG CHAND. 16 Luck. 727

——**S. 7 (a)**—*'Actually and voluntarily resides'—Possession of ancestral house in one place—Actual residence at place of Government service.*

Where a Government servant actually resides at the place of his service, he cannot be deemed to be 'actually and voluntarily' residing within the meaning of S. 7 (*a*) of the U. P. Agriculturists' Relief Act in another place by reason of the fact that he has ancestral house in the latter place. (*Ganga Nath, J.*) KISHAN LAL *v.* RAM SINGH. I.L.R. (1942) All. 155=199 I.C. 672=14 R. All. 396=1942 O.A. (Supp.) 91=1942 R.D. 171= 1942 A.L.J 51=1942 A.L.W. 43=1942 A.W.R. (H.C.) 41=1942 O.W.N. 60=A.I.R. 1942 All. 139.

——**Ss. 10 and 12**—Mortgage money paid by two persons—Intention of parties—Application to redeem against one person alone—Forum. *See* 1941 Dig., Col. 1149. MAHABIR *v.* RAM LAL. A.I.R. 1942 Oudh 76.

——**S. 12**—*Applicability—Suit to declare land free from encumbrance—Nature of suit—Jurisdiction of Civil Court.*

A suit by a proprietor to declare that his land is free from encumbrances does not amount to a suit for redemption of a mortgage within the meaning of S. 12, U.P. Agriculturists' Relief Act and as such is cognizable by a Civil Court. (*Braund, J.*) LATU *v.* MAHA LAXMI BAI. I.L.R. (1942) All. 129=199 I.C. 748= 14 R.A. 400=1941 A.W.R (Rev.) 1141=1941 O.A. (Supp.) 922=1941 A.L.J. 713=A.I.R. 1942 All. 130.

——**Ss. 12 and 23 and C. P. Code (1908), S. 115**—*Application under S. 12—Decision by Assistant Collector and by District Judge on appeal—Revision to chief Court, if lies.*

Where an Assistant Collector decides an application under S. 12 of the Agriculturists' Relief Act and the appeal is decided by the District Judge a revision lies

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to the chief Court from the decision of the District Judge. (*Thomas, C.J., Ghulam Hasan and Agarwal, JJ.*) RAM AUTAR MISIR *v.* MAHABIR SHUKUL. **202 I.C. 493=15 R.O. 130=1942 O.W.N. 549=1942 A.W.R. (C.C.) 325 (2)=1942 O.A. 444=A.I.R. 1942 Oudh 458 (F.B.).**

——**Ss. 12 and 27 and C.P. Code, O. 34, R. 9**—*Application under S. 12—Scope and applicability of O. 34, R. 9 to—Decree in respect of amount overpaid if can be passed in favour of mortgagor.*

S. 27 of the U. P. Agriculturists' Relief Act makes the provisions of C. P. Code in regard to suits applicable to applications under S. 12 of the Act. That would make the whole of O. 34, C. P. Code, applicable. Hence where it is found on accounting that there has been an overpayment a decree can be passed in favour of the mortgagor. There is no reason why R. 9 of O. 34 should not be applied to an inquiry which is analogous to an inquiry under R. 7 as well as to an inquiry which is actually under R. 7. (*Ghulam Hasan and Madeley, JJ.*) RAJA RAM *v.* MUSHTAQ HUSAIN. **200 I.C. 614 =15 R.O. 27=1942 R.D 537=1942 A.W.R. (C.C.) 216=1942 O.W.N. 345=1942 O.A. 237=A.I.R. 1942 Oudh 391 (2).**

——**S. 12**—*Court-fee—Appeal against order on application under.*

On an appeal against an order on an application under S. 12 of the U. P. Agriculturists' Relief Act *ad valorem* Court-fee has to be paid. (*Bennett, J.*) CHHOTEY SINGH *v.* SURAT SINGH. **200 I.C. 223=14 R.O. 576 =1942 O.W.N. 338=1942 A.W.R. (C.C.) 226=1942 O.A. 247=A.I.R. 1942 Oudh 385.**

——**S. 23**—Competency of revision. *See* 1941 Dig., Col. 1149. AMJAD HUSAIN *v.* RAISUNNISA. **16 Luck. 778.**

——**S. 30**—*Applicability—Mortgage by agriculturist—Sale of property in execution of money decree, subject to encumbrance—Non-agriculturist purchaser selling it to another non-agriculturist—Money reserved with vendee for payment of the encumbrance—Partial payment by vendee and mortgage for balance in favour of the original mortgagee—Suit on that mortgage—Claim for reduction of interest—Maintainability.*

A non-agriculturist bought in execution of a money decree against an agriculturist mortgagor the mortgaged property subject to encumbrances and sold it to another non-agriculturist and reserved with the vendee funds sufficient to pay off the encumbrance on the property. The vendee made a partial payment to the mortgagee and executed a mortgage in his favour for the balance. In a suit on this mortgage the mortgagor vendee claimed reduction of interest under S. 30, U. P. Agriculturists' Relief Act. It was held that the suit was not based on the original mortgage by the 'agriculturist' or on one in renewal of it, and that the mortgage which was the basis of the suit was a new mortgage by a non-agriculturist and for the recovery of loan entirely different from that incurred by the original agriculturist mortgagee. It was further held that the fact that the original mortgagor was an agriculturist did not affect the question and the defendant was not entitled to claim reduction of interest under S. 30, U. P Agriculturists' Relief Act. (*Allsop and Varma, JJ.*) SHIAM LAL *v.* BASHIR KHAN. **I. L.R. (1942) All. 351=201 I.C .628=15 R.A. 68= 1942 A.L.J. 243=1942 O.W.N. 294=1942 A.W.R. (H.C.) 107=1942 O.A. (Supp.) 220=1942 A.L.W. 210=A.I.R. 1942 All. 200.**

——**Ss. 30 (1) and 2 (10) (a)**—*Loan—Transaction renewing old loan, if one for the purposes of the Act.*

Where an earlier transaction of loan is renewed, the new transaction is itself a loan for the purposes of the U. P Agriculturists' Relief Act. (Per *F. B. Iqbal Ahmad, C. J.*, dissenting: *Braund, J.*, not agreeing).

Per *Iqbal Ahmad, C.J.*—The word 'loan' in S. 30 must refer to the amount that was actually advanced by the creditor and it cannot include the interest that accrued due on the sum 'actually lent'. It cannot be said that the words 'loan' and 'interest' in S. 30 have been used in a sense other than that defined in the Act. (*Iqbal Ahmad, C.J., Bajpai, Braund, Hamilton and Dar, JJ.*) PRATAP SINGH *v.* GULZARI LAL. **I.L.R. (1942) All. 185=199 I.C. 57=14 R.A. 322=1942 A. L.W. 111=1942 O.A. (Supp) 111=1942 A.W.R. (H.C.) 11=1942 A.L.J. 3=A.I.R. 1942 All. 50 (F.B.).**

——**S. 30 (2)**—*Applicability—Decrees passed after the coming into force of the Act.*

Sub-Cl. (2) of S. 30 of the U.P. Agriculturists' Relief Act is applicable only to decrees passed on the date that the Act came into force and not to decrees passed thereafter. (*Iqbal Ahmad, C.J., Braund and Dar, JJ.*) SHRI NATH *v.* PURAN MAL. **I.L.R. (1942) All. 45=198 I.C. 690=14 R.A. 299=1942 A.L.J. 55 =1941 O.A. (Supp.) 925 (1)=1941 A.W.R. (Rev.) 1175 (2)=A.I.R. 1942 All. 19 (F.B.).**

——**S. 33 and Court Fees Act, S. 7 (iv) (b)**—*Appeal against adjudication in suit under S. 33—Court-fee payable.*

An adjudication in a suit under S. 33 of the U. P. Agriculturists' Relief Act amounts to a decree and hence in appeal against it the appellants must pay *ad valorem* court-fee. This is so irrespective of whether the defendant in the suit has or has not applied for and obtained a decree under sub-S. (2) to S. 33. (*Ghulam Hasan, J.*) BHARATH *v.* DURGA DAYAL. **1943 R.D. 110=1942 O.W.N. 789=1942 O.A. 630.**

——**S. 33**—*Basis of accounting under—Loan renewed from time to time.*

The account to be taken under S. 33 of the U. P. Agriculturists' Relief Act is to be on the basis of the loan which is outstanding on the date of the suit though the loan which is outstanding was made in lieu of an earlier loan and not on the basis of the loan originally advanced and which has been paid up notionally by a renewed loan. (*Iqbal Ahmad, C.J. and Dar, J.*) SANWAL DAS MEHROTRA *v.* KRISHNA DUTT DUBE. **1942 A.L.W. 208.**

——**S. 33**—*Suit for accounts by heirs of agriculturist—Maintainability—Conditions.*

A suit by the heirs of an agriculturist debtor for accounts under S. 33 of the U. P. Agriculturists' Relief Act is maintainable provided that the debtor himself was an agriculturist on the date of the loan and the plaintiffs in the suit are agriculturists on the date of the suit. (*Iqbal Ahmad, C. J.*) FARKHANDA BEGUM *v.* HASNAIN. **199 I.C. 17=14 R.A. 321=1941 A.L.J. 752=1942 O.W.N. 52=1942 R.D. 74=1941 A.W.R. (Rev.) 1192=A.I.R. 1942 All. 103.**

——**S. 33**—Suit under—Restrictions as to the limit of land revenue, etc., if applies to. *See* U. P. AGRICULTURISTS' RELIEF ACT, S. 2 (2), PROVISO (1), EXPL. VII OF S. 33. **1942 A.L.W. 298.**

——**S. 33 (2)**—*Suit under S. 33—Nature of—If altered by the amending Act—Court-fee payable.*

A suit under S. 33 of the Agriculturists' Relief Act is a suit for accounts and not a declaratory suit. The Amending Act of 1937 has not in any way altered the nature of the suit. It is still a suit for account and for purposes of Court fee it is governed by S. 7 (iv) (*f*) of the Court-Fees Act. The *ad valorem* Court fee is payable also in appeal whether the defendant has or has not applied for and obtained a decree under sub-S.

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(2) of S. 33 of the Act. (*Bennett and Madeley, JJ.*) MUNNOO SINGH *v.* RAMLAL. 17 Luck. 502=198 I.C. 40=14 R.O. 372=1941 O A. 1059=1941 O.W N. 1355=1942 A.W.R. (C.C.) 99=A.I.R.1942 Oudh 209.

——S. 34, Expln.—*Conditions for availability of benefit of.*

If a plaintiff wants to have the benefit of the Expln. to S. 34 of the U. P Agriculturists' Relief Act, he must bring himself strictly within the words of the explanation. The explanation requires that such a person should not only have kept his account, but also submitted the yearly statement of account, in the form and manner prescribed by Cls. (*a*) and (*b*) of S. 32 (1) of the Act. Where a person has not submitted the statement of account for one of the years for which he was bound under the law to submit it, he cannot be allowed the benefit of the explanation. (*Verma, J.*) MOHAMMAD ASHFAQ HUSAIN *v.* MUNSHI LAL. 1943 R.D. 108=1942 A. L.W. 655.

——Ss. 36 and 34—*Loans advanced both before and after commencement of Act—Failure to submit statement of account—Right to proportionate costs.*

Where the loans advanced cover a period both before and after the commencement of the Agriculturists' Relief Act and the creditor fails to submit statement of accounts as required by the Act, he would not be entitled to costs even in respect of loans advanced prior to the Act. (*Verma, J.*) MOHAMMAD ASHFAQ HUSAIN *v.* MUNSHI LAL. 1943 R.D. 108=1942 A L.W. 655.

——Sch. I—*Servant of village community—Meaning.*

"A 'servant of the village community' within the meaning of Sch. I of the U.P. Agriculturists' Relief Act is a person who is not paid separately for the individual work he does, but receives periodical remuneration from the community whether at the time of the harvest or otherwise." (*Madeley, J.*) ALTAF AHMAD *v.* RASHIDUDDIN. 204 I.C. 337=1943 R.D. 105=1942 O. A. 591=1942 O.W.N. 707=A.I.R. 1943 Oudh 90.

UNITED PROVINCES BOARD'S CIRCULAR 2-I, R. 13—*Interpretation.*

R. 13 of the Board's Circular 2 I which says that the assets of the holding are the valuation made of it by the settlement officer for the purpose of assessment an recorded in the assessment statement only means that the valuation to be accepted as the assets on which the rent is calculated is the settlement officer's valuation on circle rates and not that the valuation which additiona settlement commissioner should have taken was the assets. (*Shirreff, S. M.*) RAM KISHUN PATHAK *v.* PRAG SINGH. 1942 A.W.R. (Rev.) 410 (2)=1942 O.A. (Supp.) 436 (2)=1942 O W.N. (B R.) 535 (1).

UNITED PROVINCES CIVIL (JUDICIAL) SERVICE RULES (1933), R. 10—'Selection grade'—Inclusion—If can be claimed as a matter of right. *See* GOVERNMENT OF INDIA ACT, S. 96-B (2), CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, R. 49 (*ii*) AND U. P. CIVIL (JUDICIAL) SERVICE RULES, R. 10. 1942 A.W.R. (H.C.) 363.

UNITED PROVINCES COURT OF WARDS ACT (IV OF 1912), S. 19 (1) and Limitation Act (1908), S. 19—*Relative province of Collector and Court of Wards—Schedule of debts signed by Collector—Collector if acts as an agent duly authorised in this behalf within the meaning of S. 19, Limitation Act.*

Under the U. P. Court of Wards Act, the estate of a ward is under the superintendence of the Court of Wards, and of the Court of Wards alone and it is the Court of Wards on whom plenary powers of management have been conferred. The Court of Wards may exercise all or any of these powers through the Commissioners or Collectors or it may delegate its powers to them after obtaining the sanction of the Local Government. Hence, the Collector when he does any of the things which he is required by S. 19 of the Court of Wards Act to do cannot be considered to be 'an agent duly authorised in this behalf' within the meaning of S. 19, Limitation Act. When he prepares the schedule of debts for submission to the Court of Wards and signs them he is not 'an agent duly authorised in this behalf' as contemplated by Expl. II to S. 19, Limitation Act. (*Allsop and Verma, JJ.*) THE COLLECTOR OF BULANDSHAHR *v.* SAGARMAL. I.L.R. (1942) All. 680 =203 I C. 310=1943 A.L.W. 123=1942 A.L.J. 469 =A.I.R. 1942 All. 379.

——S. 37—If bars claim under S. 68, Contract Act *See* CONTRACT ACT, S. 68 AND COURT OF WARDS ACT, S. 37. 1942 O.W.N. 560=1942 O.A. 507.

UNITED PROVINCES DEBT REDEMPTION ACT (XIII OF 1940), S. 2 (9)—*Landlord—Mortgagee, if included in term.*

Under S. 2 (9) of the United Provinces Debt Redemption Act the 'landlord' does not include a mortgagee and it follows that mortgagee rights are not part of landlord's proprietary rights in land (*Shirreff, S. M. and Sathe, J.M.*) TAQI HUSAIN *v.* ORI LAL. 1942 O.W.N. (B.R.) 158=1942 O.A. (Supp.) 127=1942 R.D. 224=1942 A.W.R. (Rev.) 110.

——S. 2 (9)—*'Loan'—If includes a renewed loan.*

Where an earlier transaction of loan is renewed, the new transaction itself is a 'loan' for the purposes of S. 2 (9) of the U.P. Debt Redemption Act because the renewed loan is a transaction which in substance amounts to an advance within the meaning of the definition in S. 2 (6) of the Act. (*Iqbal Ahmad, C. J., Bajpai and Dar, JJ.*) KETKI KUNWAR *v.* RAM SAROOP. 203 I.C. 303=1942 A.L.J. 578=1942 A.W.R. (H.C.) 340=1942 A.L.W. 559=A.I.R. 1942 All. 390 (F.B.).

——Ss. 2 (9) and 8—*Meaning and effect of S. 2 (9).*

The meaning and effect of S. 2 (9) of the U. P. Debt Redemption Act is that in cases where advance is recoverable both from the person and the property of an agriculturist in order to take benefit of S. 8 of the Act it must be shown that the claimant was an agriculturist both at the time when the advance was made recoverable and when the advance was made. But in the case of a workman or in a case where the advance is recoverable only from the property of an agriculturist or workman, it is not necessary that the advance should have been also made to a workman or to an agriculturist. (*Iqbal Ahmad, C. J., Bajpai and Dar, JJ.*) KETKI KUNWAR *v.* RAM SAROOP. 203 I.C. 303=1942 A.L.J. 578=1942 A.W.R. (H.C.) 340=1942 A.L W. 559 =A.I.R. 1942 All. 390 (F.B.).

——Ss. 2 (9) and 8—*Exemption from the operation of Act—Conditions entitling.*

The U. P. Debt Redemption Act clearly pre supposes that a Bank in order to be exempt from the provisions of the Act must be a scheduled Bank not only at the time of the passing of the decree but at the time of actual advance of the loan. (*Thomas, C.J., Ghulam Hasan, J.*) TEJ KRISHNA GANJOOR *v.* OUDH COMMERCIAL BANK, LTD. 202 I.C. 599=15 R.O. 187=1942 O.W.N. 544=1942 A.W.R. (C.C.) 330 (2)=1942 O.A. 457=A.I.R. 1942 Oudh 483.

——S. 2 (9) and (17)—Loan—Conditions necessary—Act when can apply. *See* 1941 Dig., Col. 1154, TAJAMMUL HUSAIN KHAN *v.* AMIRUDDIN. 17 Luck.

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297=197 I.C. 471=14 R.O. 314=A.I.R. 942 Oudh 189.

——S. 2 (13) and (18)—*Definitions under—Scope of.*

The definition of 'proprietor' and 'tenant' in Cls. (13) and (18) of S. 2 of the United Provinces Debt Redemption Act are not exhaustive.

Per *Sathe, J.M.*—Although the definition of 'proprietor' and 'tenant' in the Act are exhaustive they are certainly exclusive of each other and a person included in the definition of 'tenant' cannot also be a 'proprietor' at the same time and in respect of the same rights. An under-proprietor is a tenant and so cannot be a proprietor. (*Shirreff, S.M. and Sathe, J.M.*) TAQI HUSAIN *v.* ORI LAL. **1942 O.W.N. (B.R.) 158= 1942 O.A. (Supp.) 127=1942 R.D. 224=1942 A.W.R. (Rev.) 110.**

——S. 3—*Scope—Applicability to proceedings under Encumbered Estates Act.*

S. 3 of the U. P. Debt Redemption Act is concerned with explanations for the purpose of that Act. S. 3 (*c*) does not apply to proceedings under the U. P. Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J.M.*) SHYAMA KUMAR SINGH *v.* GANGASARAN. **1942 O. W.N. (B.R.) 655=1942 O.A (Supp.) 462=1942 A. W.R. (Rev.) 436.**

—— Ss. 4 (3) and 8—*Joint scope and effect.*

Ss. 4 and 8 of the U. P. Debt Redemption Act are for the mutual benefit of the parties. If a judgment-debtor gets the benefit of reduction of interest under S. 8 by amendment of the decree the decree-holder also gets the benefit of being entitled to execute his decree against the land, agricultural produce or person of an agriculturist. There is nothing in Ss. 4 and 8 to restrict their application to a certain class of decrees. (*Ganga Nath, J.*) BISHAMBAR NATH *v.* RADHE SHIAM SETH. **I.L.R. (1942) All. 491=202 I.C. 22= 15 R.A. 93=1942 A.L.J. 328=1942 A.W.R. (H.C.) 169=1942 A.L.W. 364=A.I.R. 1942 All. 252.**

——S. 4 (3), Proviso—*Scope and applicability—Decree-holder whose execution application has been disposed of prior to the Act, if entitled to make declaration under sub-S. (3) of S. 4—Effect of such declaration.*

The words of proviso to sub S. (3) to S. 4 of the Act clearly show that the execution application, referred to therein, must be pending at the time or made after the Act came into force. Hence a decree-holder whose application for execution is made and disposed of prior to the Act coming into force, is entitled to make the declaration referred to in sub-sec. (3). When such a declaration is made the applicants under the Act are not entitled to amendment of the decree against him under Ss. 8 and 9 of the Act. (*Ganga Nath, J.*) BABU NANDAN LAL *v.* PARSOTTAM SAHU. **I.L.R. (1942) All. 119=202 I.C. 18=15 R.A. 92=1942 R.D. 309= 1942 A.L.J. 178=1942 A.W.R. (H.C.) 84 (1)=1942 A.L.W. 143=1942 O.A. (Supp.) 148 (1)=1942 O. W.N. 122=A.I.R. 1942 All. 261 (1).**

——S. 4 (3), Third Proviso—*Meaning of expression 'already applied for execution' — Interpretation of statutes—Plain words*

The words 'has already applied for execution' in the third proviso to sub-S. (3) of S. 4 of the U. P. Debt Redemption Act have reference not only to applications for execution made after the passing of the Act but also to applications for execution made before the Act came into force. To adopt the view that the words have reference only to applications made after the Act, would be to introduce words to the effect 'after the passing of the Act' in the third proviso—words which are not there. When the words used by the legislature in a statute are clear it is not permissible for the Courts to depart from the ordinary and plain meaning of the words used on the mere supposition that the intention of the legislature was otherwise than indicated by the plain and ordinary interpretation of the words used. The words 'has already applied' in the third proviso are words of general import and are not controlled by any restrictive provision. It, therefore, follows that the third proviso applies to all those cases in which the decree holder had put his decree in execution by one of the modes referred to in sub-S. (3) whether before or after the passing of the Act. (*Iqbal Ahmad, C.J., Dar and Plowden, JJ.*) MOHAMMAD ABDUL RAZZAK *v.* PARVATI DEVI. **203 I.C. 328=1942 A.L.J. 554=1942 R.D. 735=1942 A. W.R. (H.C.) 319=1942 A.L.W. 542=1942 O.W.N. (B.R.) 607=A.I.R. 1942 All. 394 (F.B.).**

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——S. 8—*Construction—Liable to pay the amount due under a decree, if restricted to cases of personal liability.*

The words 'liable to pay the amount due under a decree' used in S. 8 of the U. P. Debt Redemption Act are sufficiently wide to include the liability which is on person and property both jointly or on person or property alone singly. There may be decrees against agriculturists who are minors which cannot be personally enforced against them. There may be decrees against agriculturists in which their property alone is liable to sale. In both these cases and in all similar cases agriculturists are liable to pay the amount of the decree though the liability is not personal. (*Iqbal Ahmad, C.J., Bajpai and Dar, JJ.*) KETKI KUNWAR *v.* RAM SAROOP. **203 I.C. 303=1942 A.L.J. 578=1942 A.W.R. (H. C.) 340=1942 A.L.W. 559=A.I.R. 1942 All. 390 (F.B.).**

——S. 8 and C. P. Code, S. 47—*Dismissal of application under—Appealability.*

Generally speaking, an application by an agriculturist debtor under S. 8 of the U. P. Debt Redemption Act raises a question relating to execution, discharge or satisfaction of a decree, and if it is decided by the executing Court the judgment of that Court is a decree and hence is open to appeal. (*Iqbal Ahmad, C.J., Bajpai and Dar, JJ.*) KETKI KUNWAR *v.* RAM SAROOP. **203 I.C. 303=1942 A.L.J. 578=1942 A.W.R. (H.C.) 340= 1942 A.L.W. 559=A.I.R. 1942 All. 390 (F.B.).**

——S. 17—*Extent of protection—Common application under Encumbered Estates Act by Mahomedan co-heirs—Right of each to separate protection.*

Mahomedan heirs who have succeeded to the property and to the debts incurred by their common ancestor and are permitted by S. 49 of the Encumbered Estates Act to file one common application under the Act, are each of them entitled to separate protection under S. 17 of the U. P. Debt Redemption Act. (*Shirreff S.M.*) ASA RAM *v.* SHAFIULNISHA. **1942 O.A. (Supp.) 257 (2)=1942 A.W.R. (Rev.) 231 (2) =1942 O.W.N. (B.R.) 375=1942 R.D. 464.**

——Ss. 17 and 19—*Extent of protection available—Birth of a new member subsequent to decree of Special Judge.*

The share of each member of a joint Hindu family should be given protection to the extent of Rs. 25 local rates. Though there is an addition of a new member by birth subsequent to the decree, even as regards that share, also protection is admissible. (*Shirreff, S.M.*) NATHU RAM *v.* SUGAR SINGH. **1942 R.D. 349= 1942 A.W.R. (Rev.) 201 (1)=1942 O.A. (Supp.) 227 (1)=1942 O.W.N. (B.R.) 260.**

——Ss. 17 and 19—*Extent of protection—Grove on protected land.*

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Where certain groves are shown in the list of property liable to attachment and sale accompanying the decree sent by the Special Judge for execution, the debtor applicant's land only is protected under S. 17 of the U. P. Debt Redemption Act, but the groveholder's interest in the groves is liable to sale. (*Shirreff, S. M. and Sathe, J.M.*) BADRI PRASAD *v.* SHEO BARAN. **1942 O.A. (Supp) 393 (1)= 1942 A.W.R. (Rev.) 367 (1) =1942 O.W.N. (B.R.) 496 (1).**

——**S. 17**—*Extent of protection—Members of joint Hindu families.*

Every member of a joint Hindu family must be deemed to be an agriculturist and entitled to protection under S. 17 of the Debt Redemption Act provided he satisfies the condition that the local rate payable by him does not exceed Rs. 25 per annum. (*Shirreff, S.M.*) JAGANNATH PRASAD *v.* BALDEO PRASAD. **1942 O. W.N. (B.R.) 559=1942 A.W.R (Rev.) 409 (1)= 1942 O.A. (Supp.) 435 (1).**

——**Ss. 17 and 19**—*Joint application by members of joint Hindu family under Encumbered Estates Act—Extent of land to be protected—Working out, procedure.*

Where a number of persons forming a joint Hindu family apply under S. 4 of the Encumbered Estates Act, then by virtue of Ss. 17 and 19 of the United Provinces Debt Redemption Act, each one of applicants is entitled to have land assessed to the local rate of Rs. 25 protected for each of such person's share. As the share of each person is not ascertained before partition, the Court in such cases should ascertain the share to which each of the applicants would have been entitled in the joint family if the partition had taken place on the date of the application under S. 4 of the Encumbered Estates Act. If this share together with any other landed property which he may own in his own right is liable to pay a local rate not exceeding Rs. 25 then the whole of his property will be protected. If it exceeds Rs. 25 then only so much of the property will be protected as will be liable to a rate of Rs. 25. (*Sathe, J.M.*) BANSIDHAR *v.* LAXMI NARAIN. **1942 O.A. (Supp.) 132=1942 R. D. 253= 1942 O.W.N. (B.R.) 187=1942 A.W.R. (Rev.) 115.**

——**Ss. 17 and 19**—*Members of joint Hindu family —Extent of protection.*

Where the proportionate local rate payable by each of the five applicants who are members of a joint Hindu family is less than Rs. 25, each of them is entitled to protection of the whole of his share of the property. (*Shirreff, S.M.*) RAMDAS *v.* RUPAN PRASAD. **1942 O.W.N. (B.R.) 493=1942 A.W.R. (Rev.) 367 (2)= 1942 O.A. (Supp) 393 (2).**

——**S. 17**—*Protection under—Availability to under-proprietor in Oudh.*

An under-proprietor in Oudh paying less than Rs. 25 as local rate is entitled to the protection under S. 17 of the U. P. Debt Redemption Act. (*Shirreff, S.M. and Sathe, J.M.*) TAQI HUSSAIN *v.* ORI LAL. **1942 O.W.N. (B.R.) 158=1942 O.A. (Supp.) 127=1942 R D. 224=1942 A.W.R. (Rev.) 110.**

——**Ss. 17 and 19**—*Protection under—Nature of privilege and its extent—Death of one of two brothers, applicants under S. 4, Encumbered Estates Act—Survivor succeeding to the share—Extent of protection available.*

The question of protection is one which must be decided in accordance with the status of the person and property to be protected at the time of the decision. It is a personal privilege and not one conferred on land irrespective of the question who its owner is and its extent is determined by the number of owners. Hence when one of two brothers who applied under S. 4, Encumbered Estates Act, dies and the survivor succeeds to his share he is entitled to protection only to the extent of a local rate of Rs. 25 and cannot in addition claim protection in respect of the share inherited by him. (*Shirreff, S.M. and Sathe, J.M.*) RAM BUX SINGH *v.* THAKUR. **1942 O.A. (Supp.) 362=1942 A.W.R. (Rev.) 336=1942 O.W.N. (B.R.) 560.**

——**S. 17**—*Right to claim protection under—Contracting out of—What may not amount to.*

A stray remark in an application by the debtor applicants objecting to the sale of their residential house and furniture that their debts may be liquidated by the transfer of their proprietary rights in land cannot bind the debtor applicants so as to bar them from claiming protection which is legally due to them under S. 17 of the U. P. Debt Redemption Act. Though a party can contract himself out of his legal rights, the above application cannot be called a contract by any means. (*Sathe, J.M.*) MEWA RAM *v.* SWARUP LAL. **1942 O.A. (Supp.) 472 (2)=1942 O.W.N. (B.R.) 715 =1942 A.W.R. (Rev.) 446 (2).**

——**Ss. 17, 19 and 13 (4)**—*Right to protection—Applicant under E.E. Act paying income-tax.*

As S. 13 (4) of the U. P. Debt Redemption Act lays down that for the purposes of Ss. 16 to 19 of that Act the expression 'Agriculturist' shall be interpreted as if the first proviso to sub-S. (3) of S. 2 were omitted, it would follow that an applicant under Encumbered Estates Act would be entitled to protection under Ss. 17, and 19 of the Debt Redemption Act even though he may be assessed to income-tax. (*Shirreff, S. M. and Sathe, J. M.*) JAI PRASAD *v.* KHUSHI RAM. **1942 O.A. (Supp.) 504 (1)=1942 A.W.R. (Rev.) 478 (1) =1942 R.D. 951 (1)=1942 O.W.N. (B.R.) 769 (1).**

——**Ss. 17 and 3 (d)**—*Right to protection under—Test—Condition to be satisfied by member of joint Hindu family.*

If a member of a joint Hindu family wants to get the protection under S. 17, U.P. Debt Redemption Act, in the Encumbered Estates Act proceedings, all that he has to satisfy in order to come within the definition of 'Agriculturist' is that he must be the proprietor of a mahal or of a share in a mahal or portion of a mahal or a tenant. The explanation in Cl. (*d*) of S. 3 of the U. P. Debt Redemption Act is an explanation only for the purposes of that Act. For the purposes of the encumbered estates all that has to be seen is whether the land of an agriculturist is land which would be protected from sale under S. 17 of the Debt Redemption Act. (*Shirreff, S. M. and Sathe, J. M.*) KALI PRASAD *v.* GOPINATH. **1942 O. W.N. (B.R.) 624=1942 A.W.R. (Rev.) 399 (2)= 1942 O.A. (Supp.) 425 (2).**

——**Ss. 17 and 19**—*Right to protection under—Under-proprietor.*

An under-proprietor is entitled to the protection given by Ss. 17 and 19 of the United Provinces Debt Redemption Act. (*Shirreff, S.M. and Sathe, J.M.*) SHEOPAL SINGH *v* GANGA PRASAD. **1942 O.A. (Supp) 392 (1)=1942 A.W.R. (Rev.) 366 (1)=1942 O.W.N. (B. R.) 495 (2).**

——**S. 17 (1) (a)**—*Possible future local rate—If can be taken into account to decide, if land is protected.*

In order to decide whether a land is protected or not it is the present local rate payable that has to be taken into consideration and not the land revenue as it will be in future. Hence where the present local rate does not exceed Rs. 25 the fact that it may exceed that amount later on as the assessment is progressive cannot affect the question. (*Shirreff, S. M. and Sathe, J. M.*) MRS. H. E. GREGORY *v.* SRI KRISHAN. **1942 A.W.R. (Rev.) 330=1942 O.A. (Supp.) 356=1942 O.W.N. (B.R.) 554.**

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——— **S. 19 and United Provinces Tenancy Act, Ss. 3 (5) and 33**—*Debtor applicant's gardens on protected land—Liability to sale.*

The debtor applicant's gardens as distinct from proprietary rights cannot be sold or transferred even though they have been included in the list of property forwarded by the special Judge. Since the land is protected it cannot be sold. Nor can the right to maintain garden and appropriate the produce thereof as distinct from proprietary rights be sold, for these rights constitute tenancy rights and cannot be sold under S. 33 of the U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) KANHYALAL *v.* KANHYALAL. **1942 A.W.R. (Rev.) 235=1942 O.A. (Supp.) 261=1942 R.D. 281 =1942 O.W.N. (B.R.) 215.**

———**S. 19**—*Extent of protection.*

Any land which was not already protected under the definition of 'protected land' given in S. 2 (*e*) of the U. P. Encumbered Estates Act cannot become so against banks' decrees by the operation of S. 19 of the U. P. Debt Redemption Act. (*Shirreff, S.M. and Sathe, J.M.*) UNAO COMMERCIAL BANK *v.* GAJODHAR SINGH. **1942 R.D. 407=1942 O.A. (Supp.) 196 (2) =1942 O.W.N. (B.R.) 318=1942 A.W.R. (Rev.) 176 (2).**

———**S. 19**—*Extent of protection—Original applicant succeeded by one already having property.*

Where an applicant under the U.P.Enc. Est. Act who is entitled to protection in respect of his whole property is succeeded by one who is already possessed of other property, for the purpose of deciding the question of protection, only the property which has been inherited from the deceased applicant should be taken into consideration. (*Shirreff, S.M. and Sathe, J.M.*) SURAJ BAKSH SINGH *v.* CHANDIKA PRASAD. **1942 O.A. (Supp.) 349 (2)=1942 A.L.J. (Supp.) 49=1942 O. W.N. (B.R.) 545=1942 A.W.R. (Rev.) 323 (2).**

———**S. 19**—*Extent of protection—Several debtor applicants.*

Each of the several debtor applicants is entitled to protection with respect to property on which the local rate does not exceed Rs. 25. (*Shirreff, S.M.*) GOKUL PRASAD *v.* GANGA CHARAN. **1942 A.W.R. (Rev.) 184=1942 O.A. (Supp.) 204=1942 O.W.N. (B.R.) 339=1942 R.D. 428.**

———**S. 19**—*Right to protection—Basis.*

The question whether certain debtors are agriculturists and entitled to protection under the Debt Redemption Act must be decided only with reference to the Debt Redemption Act and the rules thereunder and not with reference to S. 49 of the U. P. Encumbered Estates Act. (*Shirreff, S. M.*) GYAN SINGH *v.* SHER SINGH. **1942 R.D. 351 (1)=1942 O.W.N. (B.R.) 262 (1)=1942 A.W.R. (Rev.) 249=1942 O.A. (Supp.) 275.**

———**Ss. 19 and 17**—*Right to protection—Nature and extent—Provision of law relating to the determination of.*

Under S. 19 of the Debt Redemption Act the question whether the land would be protected or not has to be determined by S. 17 of the Debt Redemption Act, but the extent and nature of the protection does not depend on the provisions of that Act, but it has to be determined in view of the definition of protected land in S. 2 (*e*) of Encumbered Estates Act by a reference to the provisions of the Oudh Settled Estates Act or part II of the U. P. Estates Act. (*Sathe, J. M.*) SOBRAN SINGH *v.* NAITERPAL SINGH. **1942 O.A. (Supp.) 473 (1)= 1942 O.W.N. (B.R.) 705=1942 A.W.R. (Rev.) 447 (1).**

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——— **S. 19**—*Right to protection of land involved in Encumbered Estates Act—Proceedings—Decree if should be in respect of 'loan' as defined in Debt Redemption Act.*

When extending protection under S. 19 of the U. P. Debt Redemption Act to land involved in proceedings under Encumbered Estates Act, it is not necessary to see whether the decree is in respect of a 'loan' as defined in the Debt Redemption Act. (*Sathe, J.M.*) SRI NARAIN *v.* S. SIDDIQUE HUSAIN. **1942 O.A. (Supp.) 448= 1942 A.W.R. (Rev.) 422=1942 O.W.N. (B.R.) 665.**

———**S. 19**—*Right to protection under—Property bought with encumbrance.*

The fact that property has come to the debtor with a prior encumbrance is no bar against the declaration of that property as protected under S. 19 of the U. P. Debt Redemption Act read with S. 2 (*c*) of Enc. Est. Act (*Shireff, S. M. and Sathe, J. M.*) MRS. H. E. GREGORY *v.* SRI KRISHAN. **1942 A.W.R. (Rev.) 330= 1942 O.A. (Supp.) 356=1942 O.W.N. (B.R.) 554.**

———**S. 19**—*Scope and applicability.*

The reference in S. 19 of the U. P. Debt Redemption Act to the provisions of S. 17 appears to be intended as a guidance for the purpose of ascertaining the extent of land to which the protection will apply. It would be straining the meaning to insist that it should apply only in the case of decrees on loans which fulfil the definition of loan in the Debt Redemption Act. Hence, there is no bar to property of which the debtor is only a transferee of mortgagor's rights being declared to be protected. (*Shirreff, S.M.*) RAM LAL *v.* SUGHAR SINGH. **1942 R.D. 370=1942 O.A. (Supp.) 174= 1942 O.W.N. (B.R.) 281=1942 A.W.R. (Rev.) 154.**

———**S. 19**—*Scope and applicability.*

The reference in S. 19 of the Debt Redemption Act to the provisions of S. 17 of that Act is intended as a guidance for the purpose of ascertaining the extent of land to which the protection will apply. It would be straining the meaning to insist that it should apply only in the case of decrees on loans which fulfil the definition of loan in the Debt Redemption Act. (*Shirreff, S.M.*) GOKUL PRASAD *v.* GANGA CHARAN. **1942 O.A. (Supp.) 204=1942 O.W.N. (B.R.) 339=1942 A.W .R. (Rev.) 184=1942 R.D. 428.**

———**S. 22**—*Land protected from sale—Grove not tenant's grove—Effect—Scattered trees, if liable to be sold.*

The fact that the land is protected would make no difference even if the grove is not a tenant's grove for it is not the land which will be sold but the grove holder's rights. Still less can protection of land affect the liability of scattered trees to sale. (*Shirreff, S.M. and Sathe, J.M.*) TAQI HUSAIN *v.* ORI LAL. **1942 O.W.N. (B.R.) 158=1942 O.A. (Supp.) 127=1942 R D. 224=1942 A.W R. (Rev.) 110.**

———**S. 22**—*Scope and applicability of—Sale of grove without transfer of land—If possible.*

Per *Shirreff S. M.*—S. 22 of the U. P. Debt Redemption Act relates to decrees to which that Act applies. The fact that land which would be protected under S. 17 of the Debt Redemption Act is deemed to be protected under the Encumbered Estates Act does not make a decree under the latter Act a decree to which the Debt Redemption Act applies. Even if it did the proviso under S. 22 of the Debt Redemption Act makes it clear that a decree can be executed by the sale of the interest of a grove-holder even if the land is not transferred. The land on which a grove-holder's trees stand is not his land in the case of tenant's groves. If they are zamindari groves, there is nothing in the fact that the land is protected to prevent the transfer of the grove. Although a proprietor who owns a grove is not a grove-

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holder within the meaning of the U. P. Tenancy Act, the grove can certainly be transferred, without the land, just as a grove-holder's grove can be transferred without the land. (*Shirreff, S.M. and Sathe, J.M.*) KANHYALAL *v.* KANHYALAL. **1942 A.W.R. (Rev.) 235=1942 O.A. (Supp.) 261=1942 R. D. 281=1942 O.W. N. (B.R.) 215.**

——**S. 22**—*Scope of—Liability of interest of grove-holder to sale apart from land.*

S. 22 of the U.P. Debt Redemption Act makes it quite clear that the interest of a grove-holder is a thing which can be sold apart from the land on which the trees stand. (*Harper, S.M. and Shirreff, J.M.*) KEDAR NATH *v.* TULSA KUNWAR. **1941 R.D. 1129=1941 O.A. (Supp.) 935=1941 A.W.R. (Rev.) 1166.**

——**S. 24**—*Applicability of C. P. Code—Refusal to amend decree under S. 8, if falls within S. 47, C. P. Code.*

All the provisions of the C. P. Code, except to the extent that they are inconsistent with the provisions of the U. P. Debt Redemption Act are made by S. 24 of the latter Act applicable to all proceedings under the Act. Where amendment of the decree under S. 8 of the Act is sought for it is asking for a reduction of the decretal amount and it is clearly a matter relating to execution or discharge of the decree under S. 47, C. P. Code, and an order refusing such amendment is appealable. (*Iqbal Ahmad, C.J., Dar and Plowden, JJ.*) MOHAMMAD ABDUL RAZZAK *v.* PARVATI DEVI. **203 I.C. 328=1942 A.L.J. 554=1942 R.D. 735=1942 A.W.R. (H. C.) 319=1942 A.L.W. 542=1942 O.W.N. (B.R.) 607=A.I.R. 1942 All. 394 (F.B.).**

UNITED PROVINCES DISTRICT BOARDS ACT (X OF 1922), Ss. 91 and 98—*Scope—If imposes any obligation to repair roads—Liability of District Board for accidents due to neglect of repair—Applicability of English Law on the subject.*

Neither under S. 91 or under S. 98 of the U. P. District Boards Act, singly or taken together, is there any obligation laid down upon the District Board to make repairs of the road. In the absence of any such obligation there is no cause of action to a passer-by on the road in case he meets with an accident on account of the neglect of repair by the District Board authorities. The question whether the doctrine of English Law which holds that a statutory body is not liable for non-repair of a highway does or does not fully apply to India was left undecided. (*Bajpai and Dar, JJ.*) DISTRICT BOARD, BUDAUN v. SRI NAWAS. **204 I.C. 395=1942 A.L.W. 652=1942 A.L.J. 619=1942 A.W.R. (H.C.) 346=A.I.R. 1943 All. 10 (2).**

——**S. 174 (2) (k)**—*'Offensive trade'—Meaning—Burning bricks, if one.*

The word 'offensive' in S. 174 (2), Item (*k*) of the U. P. District Boards Act, has got no technical meaning assigned to it in any legal enactment and it is not possible to say that this word must be interpreted in that particular technical sense. Resort must therefore be had to the ordinary dictionary meaning of the word. The setting up of a brick-kiln or the preparing of bricks is a business which is liable or calculated to cause annoyance to the residents of the neighbourhood and it is therefore an offensive trade within the meaning of item (*k*) of sub-S. (2) of S. 174. (*Mulla, J.*) SAT NARAIN *v.* EMPEROR. **204 I.C. 129=1942 A. Cr.C. 191=44 Cr.L.J. 141=1942 A.W.R. (H.C.) 310=1942 A.L.W. 557=1942 A. L. J. 568=A I. R. 1942 All. 440.**

UNITED PROVINCES ENCUMBERED ESTATES ACT (XXV OF 1934)—Decree under, against debtor alone—Liability joint and several with another—

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Decree against other if barred in regular civil proceedings—Proper decree to be passed. *See* 1941 Dig., Col. 1154. KALKA PRASAD *v.* SARJU PRASAD. **1941 A. L.J. 756=199 I.C. 302=14 R.A. 361=A.I.R. 1942 All. 90 (2).**

——Proceedings under—Nature of. *See* 1941 Dig., Col. 1155. LACHMI NARAIN *v.* MUSADDI LAL. **17 Luck. 327=197 I.C. 247=14 R.O. 287=A I.R. 1942 Oudh 155.**

——*Proceedings under—Nature of—Procedure to be followed.*

Proceedings under the U. P. Encumbered Estates Act are judicial proceedings and hence Courts should proceed judicially in such matters and refrain from passing orders without giving due notice of the date of hearing to the parties. (*Sathe, J. M.*) DRAUPADI KUER *v.* DURGA BAKSH SINGH. **1942 R.D. 526 (2) =1942 O.W.N. (B.R.) 436 (2)=1942 A.W.R. (Rev.) 292 (1)=1942 O.A. (Supp.) 3 8 (1).**

—— **Ss. 2 (a), 14 (4) and 15**—*Claims which lie within cognizance of Revenue Court—If can be inquired into by special Judge.*

The object of U. P. Encumbered Estates Act appears to be to liquidate the debts, both private and public whether decreed or undecreed, of the landlord. There is no doubt that there is no specific provision to the effect that the claims which ordinarily lie within the cognizance of the Revenue Court can be investigated and enquired into by the special Judge under the U. P. Encumbered Estates Act. S. 14 (4) of the Act, however lays down clearly that the special Judge is to have and exercise all the powers of the Court in which a suit for recovery of the money due would lie, in other words, he has to exercise the powers of a Revenue Court in a suit instituted for the recovery of the money due either on account of profits or rent or on any other account. (*Ghulam Hasan and Madeley, JJ.*) NAGESHWAR PRASAD *v.* BALBHADDAR SINGH. **199 I.C. 344=14 R.O. 493=1942 A.W.R. (C C.) 62=1942 O.A. 40=1942 R.D. 161=1942 O.W.N. 55=A.I.R. 1942 Oudh 290.**

——**S. 2 (a)**—Debt—Costs. *See* 1941 Dig., Col. 1155. HARI SARAN DAS *v.* HAR KISHAN DAS. **16 Luck. 784=14 R.O. 361=197 I.C. 812.**

——**S. 2 (a)**—*Debt—Decree for past and future maintenance.*

A decree for past and future maintenance is for a certain amount and so it cannot be said that such a liability is for unliquidated damages The definition of debt is very wide and includes any pecuniary liability. Hence such a decree is a 'debt' within the meaning of the U. P. Encumbered Estates Act. (*Agarwal and Madeley, JJ.*) CHANDRA BHUSHAN *v.* MST. PUTTA DEVI. **17 Luck. 586=199 I.C. 597=14 R.O. 500=1942 R.D. 152=1942 O.A. 41=1942 O.W N. 76=1942 A.W.R. (C.C.) 63=A.I.R. 1942 Oudh 352.**

——**Ss. 2 (e) and 25**—*'Protected land' mortgage of—Conditions to which it is subject.*

Though there can be a mortgage of protected land, it would be liable to the condition that it will not last beyond the lifetime of the debtor applicants as well as to the conditions laid down in S. 25 of the Encumbered Estates Act. (*Sathe, J. M.*). SOBRAN SINGH *v.* NAITERPAL SINGH. **1942 O.A. (Supp.) 473 (1)=1942 O.W.N. (B.R.) 705=1942 A.W.R. (Rev.) 447 (1).**

—— **Ss. 2 (g) and 4**—*Joint application—If all should be landlords under S. 2 (g)—If some are not, procedure to be followed.*

Where more than one person combine to put in an application under S. 4 of the U. P. Encumbered Estates Act, each of them must have a qualification for landlord

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according to S.2 (*g*) of the Act unless they can show that they form one unit of a joint Hindu family. Where one of the joint applicants does not satisfy the requirements of being a landlord under the Act and they do not form one unit of a joint Hindu family, the whole application need not be dismissed but the formal defect can be amended by virtue of the U. P. Encumbered Estates Amendment Act of 1939, by the deletion of such a person's name from the list of applicants. (*Shirreff, J.M. and Sathe, A.M.*) ISHRI PRASAD *v.* MURTAZA KHAN. **1941 O.A. (Supp.) 941 = 1941 A.W.R. (Rev.) 1172.**

——**S. 2-J, Cl. (4)**—*'Profits occasionally received'—What is included in.*

The income from Dhak, neem, batul and other trees and thatching, grass, straw, etc., come under 'profits occasionally received' or otherwise known conveniently as *sayar*. (*Shirreff. S.M. and Sathe, J.M.*) DEO PRAKASH *v.* NONIHAL SINGH. **1942 O.W.N. (B.R.) 101 = 1942 A.W.R (Rev.) 97 (2) = 1942 O.A. (Supp.) 110 (2) = 1942 R.D. 133.**

——**S. 2-J, Cl. 5**—*Timber trees—If includes mango trees.*

Mango trees would come under 'timber trees' in Cl. (5) of S. 2-J of the U. P. Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J.M.*) DEO PRAKASH *v.* NONIHAL SINGH. **1942 O.W.N. (B.R.) 101 = 1942 A.W.R. (Rev.) 97 (2) = 1942 O. A. (Supp.) 110 (2) = 1942 R.D. 133.**

——**S. 2 (k)**—*Post slump profits—Calculation—Mandatory nature of provision of law.*

S. 2 (*k*) of the U.P. Encumbered Estates Act clearly states that the post slump profits shall be calculated with reference to the year immediately preceding that in which the calculations are made. The section is mandatory and does not allow for any exceptions to be made in the circumstances of particular cases. (*Sathe, J. M.*) INDER SINGH *v.* AJODHYA PRASAD. **1942 O. A. (Supp.) 469 (2) = 1942 O.W.N. (B.R.) 713 = 1942 A.W.R. (Rev.) 443 (2).**

——**S. 2 (k)**—*'Post slump profits'—Income from guava plantation, from Patawar, if should be included in.*

Income from guava plantation, from patawar and from scattered trees should be included as post slump profits. (*Shirreff, S.M. and Sathe, J.M.*) SITAREY *v.* TAZIMAN BEGUM. **1942 O.W.N. (B.R.) 179 = 1942 R.D. 245 = 1942 A.W.R. (Rev.) 162 (1) = 1942 O.A. (Supp.) 182 (1).**

——**S. 4**—*Application under—Invalidation for defects—Limits.*

The Board would refuse to invalidate applications under S. 4 of the U. P. Encumbered Estates Act if the stage of decrees being passed under S. 14 had been reached by the special Judge (*Harper, S.M. and Shirreff, J.M.*) ANGNE *v.* WILAYAT HUSAIN. **1942 O.W.N. (B. R.) 41 = 1942 A. W. R. (Rev.) 45 (2) = 1942 O.A (Supp.) 45 (2) = 1942 R.D. 57.**

——**S. 4**—*Application under—Legality of, if can be questioned after forwarding of decree under S. 19 for execution.*

Where a decree has been passed and it has been forwarded under S. 19 of the U. P. Encumbered Estates Act to the S. D O. for execution, an objection as to the legality of the original application under S. 4 cannot be entertained. (*Sathe, J. M.*) SHANKAR KALWAR *v.* KALIA AHIRAN. **1942 R.D. 733 = 1942 O.A. (Supp.) 406 = 1942 O.W.N. (B.R.) 605 = 1942 A.W.R. (Rev.) 380 = 1942 A.L.J. (Supp.) 57.**

——**S. 4**—*Application under—Maintainability—One of the debts being prior encumbrance on property bought.*

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The fact that one of the debts owed by the debtor applicants came to them as a prior encumbrance on the property bought by them is not enough to throw out the application as a whole. (*Sathe, J.M.*) BABU RAM *v.* GAYA PRASAD. **1942 O A. (Supp.) 492 (2) = 1942 O.W.N. (B.R.) 717 = 1942 A.W.R. (Rev.) 466 (2).**

——**S. 4**—*Competency to apply under—Purchaser of heavily encumbered property with full knowledge.*

Where a person knowingly purchases heavily encumbered property he is not entitled to apply under S. 4 of the U. P. Encumbered Estates Act in respect of debts which came along with the property. (*Shirreff, S.M. and Sathe, J.M.*) BALKRISHNA *v.* TULSA BAI. **1942 O.A. (Supp.) 81 (1) = 1942 A.W.R. (Rev.) 75 (1) = 1942 O.W.N. (B.R.) 132 (1) = 1942 R.D. 198 (1).**

——**Ss. 4 to 6**—*Declaration as to exclusion of debts and properties—Competency of Collector or Assistant Collector to make before case sent to Special Judge.*

An Assistant Collector or Collector dealing with the case at the stages prescribed by Ss. 4 to 6 of the United Provinces Encumbered Estates Act is not empowered to give any declaration which will bind the Special Judge as to what debts or property should be excluded from the purview of the proceedings before him and what should be included. No general declaration can be given by the S. D. O. or by this Court which will guide the subsequent proceedings throughout their course. (*Shirreff, S.M. and Sathe, J.M.*) BAHADUR SINGH *v.* RADHEY SHYAM. **1942 O.W.N. (B.R.) 683 = 1942 O.A. (Supp.) 378 = 1942 A.W.R. (Rev.) 352.**

——**S. 4**—*Defective application—Dismissal—Application for amendment—Subsequent suit and decree regarding one of the debts—If a ground to refuse amendment.*

Where on the dismissal of an application under S. 4, U. P. Encumbered Estates Act, as defective, the debtor applies for its amendment and a day thereafter one of the creditors files a suit on his debt and it is decreed after the application of the Debt Redemption Act, the filing of the suit and decree thereon cannot be urged as a ground for refusing the amendment sought. (*Sathe, A.M.*) DEBI SAHAI *v.* JHANDA SINGH. **1941 O.A. (Supp.) 932 = 1941 A.W.R. (Rev.) 1163.**

——**Ss. 4, 7 (3) and 44 (2)**—*Granting of lease by debtor between dismissal of application and its revival—Revival if operates retrospectively to invalidate lease—Debtor if can claim restoration of property.*

A lease granted by a debtor applicant under S. 4, Encumbered Estates Act, in the interval between the dismissal of his application for non-payment of publication charges and its subsequent revival is not invalid. The revival of the application cannot operate retrospectively to invalidate it. Hence the debtor cannot after the proceedings are sent to the Collector under S. 19 apply for restoration of possession over such property and he or she must abide by whatever transaction he or she entered into during the period when he or she was under no disability. (*Shirreff, S.M. and Sathe, J. M.*) QAZI MOHAMMAD IBNE HASAN *v.* MST. RABIA BEGUM. **1942 O.A. (Supp.) 498 (1) = 1942 A.W.R. (Rev.) 472 (1) = 1942 O.W.N. (B.R.) 730.**

——**S. 4 and Amending Act (1939), S. 20-A (1)**—*Effect of S. 20-A (1) of the Amending Act—Sale of some of debtor's property after dismissal of defective application and prior to amendment application—If a ground for refusing amendment.*

S. 20-A (1) of the U. P. Encumbered Estates Amending Act of 1939 makes it mandatory on an S. D. O. to amend applications which have been dismissed solely on the ground of some formal defect. Where

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an application for amendment in pursuance of the Amending Act is made it should not be refused on the ground that the debtor had sold some of the property to a creditor after the date of the dismissal of the original application and before the date of the application for amendment. The effect of such a sale is a matter which would have to be considered by the special Judge when he hears the amended application. (*Shirreff, J.M. and Sathe, A.M.*) PIRTHI SINGH *v* CHHAJJU MAL. 1941 R.D. 1130=1941 O.A. (Supp.) 937=1941 A.W R. (Rev.) 1168.

———S. 4—*Joint application—Competency—Only one of the debts, a common debt—Joinder of improper applicants—Procedure to be followed.*

Where all the debts of both the applicants are not joint and the only common link between them is one debt which they owe jointly, the existence of that single common debt is not a sufficient justification for filing a joint application. Where two debtors have joined in a common application against the provisions of law, it is unnecessary to dismiss the whole application on that ground in view of amendments made to Encumbered Estates Act permitting applications to be corrected for formal defects. The name of one may be deleted. (*Shirreff, J.M. and Sathe, A.M.*) RAM SARAN DASS *v.* LUTF ALI KHAN. 1942 O.A. (Supp.) 30=1942 A.W.R. (Rev.) 30=1942 A.L.J. (Supp.) 25.

———S. 4—Joint application—If all should be landlords—If some are not, procedure to be followed. *See* U. P. ENCUMBERED ESTATES ACT, SS. 2 (*g*) AND 4. 1941 A.W.R. (Rev.) 1172.

———S. 4—*Joint application under—When maintainable—Debts contracted jointly by fathers of applicants—Joint application, if defective.*

A joint application can be filed under S. 4 of the U.P. Encumbered Estates Act in two cases with certainty and also possibly in a third case. The first two cases are (1) when the applicants are members of a joint Hindu family and (2) when the applicants are heirs of a deceased debtor. The third possible case is when all the debts of the applicants are joint. Where the debts were contracted jointly by the fathers of the applicants the case would fall under class (2) and a joint application is maintainable. (*Shirreff, S.M. and Sathe, J. M.*) BISHWANATH *v.* GAYARAM SAHU. 1942 O.A. (Supp.) 217=1942 O.W.N. (B.R.) 325=1942 R.D. 414=1942 A.W.R. (Rev.) 197.

———S. 4—*Joint application under—When valid.*

A joint application by two persons would be in order only if the applicants are members of a joint Hindu family and each of them pays as local rate a sum of not less than Re. 1. (*Shirreff, S.M. and Sathe, J.M.*) GORAKH TIWARI *v.* JURA TIWARI. 1942 O.W.N. (B.R.) 337=1942 R.D. 426=1942 A.W.R. (Rev) 263 (2)=1942 O.A. (Supp.) 289 (2).

———Ss. 4 and 6—*Objection as to maintainability of application under S. 4 after case sent to Special Judge—Procedure—Denial of stay by Special Judge owing to belated nature of application—If justified.*

Though an application under S. 4 has been sent to the Special Judge, an objection as to the maintainability of the application can be raised before the Collector and at the same time a request may be made to the Special Judge to stay proceedings before him. Where the objection is one which is vital and goes to the very root of the case the fact that the application is made at a very late stage would not be a ground for the Special Judge to refuse to stay the proceedings when the objections had been preferred to the Collector. (*Ghulam Hasan, J.*) BABU RAM *v.* ANANT SINGH. 204 I.C. 304=1943 R.D. 100=1942 O W.N. 781=1942 O.A. 609=A.I.R. 1943 Oudh 134.

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———S. 4 and C. P. Code, O. 1, R. 10—*Power to add necessary parties.*

The Assistant Collector has power under O. 1, R. 10, C. P. Code, to add the necessary parties to an application under S. 4. (*Harper, S.M. and Shirreff, J. M.*) LAL NARSINGH PRATAP BAHADUR SINGH *v.* JAGANNATH 1941 A.W.R. (Rev.) 1121 (2)=1941 O.A. (Supp.) 902 (2).

———S. 4 and Ch. V—*Purchaser of encumbered property applying and obtaining reduction in the amount of encumbrance—Vendee, if can interpose and claim benefit of that reduction.*

Where an applicant under S. 4 of the U. P. Encumbered Estates Act who had purchased property subject to encumbrances obtains a reduction in the amount of the encumbrance, his vendor cannot seek to interpose in the liquidation proceedings and claim the benefit of that reduction. (*Sathe, J.M.*) BANKATESHWAR RAMAN BAHADUR PAL SING *v.* LAL RAJ RAJESHWARI PRASAD SINGH. 1942 O.A (Supp.) 444 (1)=1942 A.W. R. (Rev.) 418 (1)=1942 O.W.N. (B.R.) 651.

———S 4—*Right to apply—Disqualified persons—Persons mentioned in section, if illustrative.*

S. 4 of the U. P. Encumbered Estates Act is only permissive and illustrative and does not limit the right of filing an application on behalf of a disqualified person only to the three classes of persons mentioned therein. If a legal or a natural guardian of a minor refuses to act on his behalf either through negligence or deliberate hostility the minor cannot be precluded from filing an application through another person more interested in him than his guardian. (*Shirreff, S.M. and Sathe, J.M.*) BISHWANATH *v.* GAYARAM SAHU. 1942 O. A. (Supp.) 217=1942 O.W N. (B R.) 325=1942 R. D. 414=1942 A W.R. (Rev.) 97.

———S. 4—*Right to apply under—Debts acquired along with property.*

Before a landlord is entitled to apply under S. 4, Encumbered Estates Act it must be shown that the debts with which he is encumbered are his own debts and not those of another person acquired by him along with the property. (*Shirreff, J.M. and Sathe, A.M.*) RAM SARAN DAS *v.* LUTF ALI KHAN. 1942 O.A. (Supp.) 30=1942 A W.R. (Rev.) 30=1942 A.L.J. (Supp.) 25.

———S. 4—*Right to apply under—Entry in Khewat—Sufficiency.*

Where a property is recorded in the Khewat in the name of certain persons so long as that entry remains unrebutted, they are entitled to apply under S. 4, U. P. Encumbered Estates Act. (*Harper, S.M. and Shirreff, J.M.*) RAM SHANKAR *v.* JIT BAHADUR SINGH. 1942 O.A. (Supp.) 284=1942 A.W.R. (Rev.) 258.

———S. 4—*Right to apply under—Person in whose name property is recorded in the* Khewat.

Where in the *Khewat* property is recorded in the name of a person as long as that entry remains unrebutted, that person is entitled to apply under S. 4 of the U. P. Encumbered Estates Act in respect of that property. (*Harper, S. M. and Shirreff, J.M.*) JIT BAHADUR SINGH *v.* RAM SHANKAR. 1942 O.W.N. (B.R.) 305=1942 R.D. 394.

———S. 4—*Right to apply under—Temporary ceasing of liability, if can affect.*

Where the liability of a debtor is his own creation, he should not be barred from filing an application simply because for an interval his liability ceased partially or completely. (*Shirreff, J.M. and Sathe, A.M.*) RAM SARAN DASS *v.* LUTF ALI KHAN. 1942

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O.A. (Supp.) 30=1942 A.W.R. (Rev.) 30=1942 A. L.J. (Supp.) 25.

——Ss. 4 (1), Provisos (2) and (3) and 49—*Joint application by persons not members of joint Hindu family—Maintainability—Inherited and personal debts included.*

Under S. 4 even if the heirs of a deceased debtor are not members of a joint Hindu family they can apply in respect of the debts of their ancestor—*vide* provisos 2 and 3 under S. 4 (1). Under S. 49 (2) it will be entertainable in respect of their private debts also, if they have included the whole of their property in their application. (*Shirreff, J. M. and Sathe, A.M.*) BALMAKUND *v.* BUDHU SINGH. **1941 R.D 1120=1941 O.A. (Supp.) 954=1941 A.W.R. (Rev.) 1206.**

——Ss. 4 (1), Proviso (5) and 49—*Joint application by heirs of deceased debtor—Permissibility.*

It is clear from both proviso (5) to sub-Cl. (1) of S. 4 of the U. P. Encumbered Estates Act and S. 49 that the Act contemplates that one joint application can be filed by some or all the heirs of a deceased debtor landlord. (*Shirreff, J.M. and Sathe, A.M.*) ISHRI PRASAD *v.* MURTAZA KHAN. **1941 O.A. (Supp.) 941=1941 A. W.R. (Rev) 1172.**

——S. 4 (5)—*Amendment—Absence of* bona fides *in the applicant—If can be ordered.*

Where there is an absence of *bona fides* on the part of the applicant in the matter of exclusion of some originally from the application and their inclusion subsequently by way of amendment, the amendment should not be allowed. (*Shirreff, S.M.*) SIS KUNWAR *v.* RAM LAL. **1942 O.A. (Supp.) 115 (1)=1942 A W. R. (Rev) 99 (1)=1942 R.D. 453=1942 O.W.N. (B.R.) 364.**

——S. 6—Order under, passed on a holiday—If a nullity. *See* 1941 Dig., Col. 1157. KAILASH KUNWAR *v.* RAGHUBAR DAYAL. **17 Luck. 232=A.I.R. 1942 Oudh 87.**

——S. 6—Order under—Quashing by Board in revision—Appeal to Privy Council—Competency. *See* C. P. CODE, S. 109 (*c*) AND U. P. ENCUMBERED ESTATES ACT, S. 6. **1942 O.A. (Supp.) 134 (2).**

——S. 7—Applicability—Non-applicant's property. *See* U.P. ENCUMBERED ESTATES ACT, SS. 9 (5) AND 7. **1942 A.W.R (C.C.) 68.**

——S. 7 and U. P. Regulation of Sales Act (1934), S. 5—*Proceedings for sale before Collector—If affected by S. 7—Necessity of sale-deed after order under S. 5 of the U. P. Regulation of Sales Act to complete sale.*

Where the execution of a decree is sent to the Collector because agricultural land has to be attached and sold, though the Collector may not be regarded as a Court, the proceedings before him must be taken to be proceedings pending in the Civil Court in respect of the particular decree and hence would come under the operation of S. 7 of the U. P. Encumbered Estates Act which enjoins the stay of proceedings in Civil Court. The Collector acts under the directions of the Civil Court and if he cannot be regarded as an execution Court, then execution cannot remain in abeyance and proceedings must be taken to remain in execution in Civil Court. Where after the passing of an order S. 5 of the Regulation of Sales Act and before the sale deed was actually executed and registered an application was made by the debtors under the U. P. Encumbered Estates Act it was held that an order passed under S. 5 had necessarily to be completed by a sale deed and till the sale-deed was executed and registered the property remained in the landlord and if before that sale S. 7, U. P. Encumbered Estates Act, came into play, the proceedings had to be stayed and the sale could not be effected. (*Baipai and Dar, JJ.*) RAM CHANDRA RAI *v.* CHANDI PRASAD DUBEY. **I.L.R. (1942) All. 373=201 I.C. 523=15 R. A. 63=1942 A.W.R. (H.C.) 128 (2)=1942 A.L.J. 436 =1942 O. A. (Supp.) 530 (2)=1942 R. D. 330=1942 A.L.W. 185=A.I.R 1942 All. 224.**

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——S. 7—*Bar under—Sale under Regulation of Sales Act after order under S. 6—Validity—Remedy.*

The bar contained in S. 7 of the U. P. Encumbered Estates Act is such as to deprive the execution officer under the Regulation of Sales Act of all further jurisdiction after the passing of an order under S. 6 of the Act, during the pendency of proceedings under the Act. Hence any order of sale passed after that is *ultra vires* and a civil suit would lie to set it aside as being a nullity. But if the order passed under S. 6 is subsequently set aside by the Board then the question of sale being without jurisdiction will not arise. (*Bennett and Ghulam Hasan, JJ.*) HAR CHARAN LAL *v.* SUKHA NAND. **17 Luck. 597=199 I.C. 116=14 R O. 469=1942 R. D. 154=1942 O.A. 46=1942 O W N. 78=1942 A.W. R (C.C.) 68=A.I.R. 1942 Oudh 248.**

——Ss. 7, 27 and 28—*Compromise involving transfer of property to creditor—Absence of sanction—Binding nature.*

A transfer of property can take place under the U. P. Encumbered Estates Act only in two ways, *viz.*, (1) with the sanction of the Collector under S 7 and (2) by the transfer of property under S. 27 and S. 28 during liquidation proceedings. Hence a compromise relating to the transfer of certain proprietary rights to the creditor in satisfaction of their decrees, when it has not been sanctioned and when liquidation proceedings had not started is not binding on the parties. (*Sathe, J. M.*) DUKHCHAR SINGH *v.* BANKE SINGH. **1942 O.A. (Supp.) 131=1942 R.D. 230=1942 O.W.N. (B.R.) 164=1942 A.W.R. (Rev.) 114.**

——S. 7—*Execution for costs awarded both before and after application under S. 4—What could be stayed.*

Where execution is both for costs decreed prior to application under S. 4 of the U. P. Encumbered Estates Act and for costs decreed on appeal subsequent to the application, it is only execution in respect of the former that could alone be stayed under S. 7 of the Act. (*Bennett and Agarwal, JJ.*) BIRENDRA BIKRAM SINGH *v.* BAJRANG BAHADUR SINGH. **1942 A.W.R. (C.C.) 338=1942 O.A. 495=1942 O.W.N. 648=A.I. R. 1943 Oudh 136.**

——S. 7—*Joint debt—Some of the debtors applying under the Act—Suit against the others—Effect of S. 7 (1) on such suits—Proper order to pass.*

Where the debt is a joint debt of applicants and non-applicants S. 7 (1) of the U. P. Encumbered Estates Act clearly bars the continuation of separate proceedings in the regular Courts when proceedings in respect of any debt to which the landlord is subject are already before a special Judge under the Act, the bar remaining effective in the case of non-applicants until their separate liability has been determined. Where the later proceeding is started after the passing of an order under S. 6 of the Act it must under Cl. (*b*) of S. 7 (1) be deemed to be a proceeding pending at the date of that order and could only be stayed and not dismissed. (*Bennett and Ghulam Hasan, JJ.*) SHYAM LAL *v.* MUSTAFA HUSAIN. **201 I.C. 203=15 R.O. 65=1942 A.W.R. (C.C.) 261=1942 O.A. 289=1942 O.W.N. 383=A.I.R. 1942 Oudh 413.**

——Ss. 7 and 9 (5)—*Joint judgment debtors—Application by one in respect of his other debts—Decreeholder if can proceed against others.*

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Where there are several judgment-debtors and one of them applies under the U.P. Encumbered Estates Act in respect of his other debts, the decree-holder cannot take out execution against the other judgment-debtors ignoring the provisions of S. 9 (5). It is incumbent on him to prefer his claim when one of the judgment-debtors applies under the Act and get the liability of applicant and non-applicants respectively determined by the special Judge. (*Bennett, J.*) JAGDISH PRASAD *v.* PRAN KUNWAR. **17 Luck. 623=198 I.C. 845=14 R.O. 447=1942 A.W.R. (C.C.) 82=1942 R.D. 179=1942 O.A. 60=1942 O.W.N. 104=A.I.R. 1942 Oudh 254.**

——**S. 7**—Proceedings referred to, in—Mere pronouncement of judgment, if included in. *See* 1941 Dig., Col. 1158. KAILASH KUNWAR *v.* RAGHUBAR DAYAL. **17 Luck. 232=A.I.R. 1942 Oudh 87.**

——**S. 7**—Proceeding—Suit under S. 33 of the Agriculturists' Relief Act, if a proceeding within the meaning of S. 7. *See* 1941 Dig., Col. 1158. KAILASH KUNWAR *v.* RAGHUBAR DAYAL. **17 Luck. 232=A.I.R. 1942 Oudh 87.**

——**S. 7**—*Transfer not sanctioned by Collector—Incorporation in compromise decree—Enforceability.*

Where a proposed transfer embodied in a compromise decree before the special Judge has not received the sanction of the Collector under S. 7 (3) of the U. P. Encumbered Estates Act, no rights and liabilities are created between the parties by such a compromise and hence an application for transfer in pursuance of it cannot be ordered. (*Shirreff, S. M. and Sathe, J. M.*) RAM NARAIN SINGH *v.* SHER BAHADUR SINGH. **1942 O.A. (Supp.) 476 (2)=1942 O.W.N. (B.R.) 757=1942 A.W.R. (Rev.) 450 (2).**

——**Ss. 7 (b) and 14 (7)**—*Suit by usufructuary mortgagee against mortgagor tenant for arrears of rent—Maintainability.*

There is no provision in the U. P. Encumbered Estates Act which takes away the right of an usufructuary mortgagee from claiming arrears of rent from his tenant even if that tenant happens to be the mortgagor himself. S. 7 (*b*) of the Act does not bar the institution of an arrear of rent suit in respect of an agricultural holding. Hence a suit by the usufructuary mortgagee for rent of an agricultural holding against the mortgagor tenant is quite in order and is bound to succeed irrespective of the provisions of S. 14 (7) of the Act. (*Shirreff, J.M. and Sathe, A.M.*) RAM LAL *v.* PARAS RAM. **1941 R.D. 1123=1941 O.A (Supp.) 945 (2)=1941 A W.R. (Rev.) 1194 (2).**

——**S. 7 (1) (a)**—*Pending execution proceedings—How affected by rejection of decree-holder's claim by the Special Judge.*

Where the judgment-debtors apply under S. 4 of the Encumbered Estates Act during the pendency of the proceedings in execution of the decree obtained against them and the decree-holder's claim is rejected by the Special Judge then by virtue of the operation of S. 7 (1) (*a*) the process issued in the execution proceedings become null and void against the applicants. (*Agarwal, J.*) MOHAMMAD AHMAD ALI KHAN *v.* SHEO SHANKAR SINGH. **202 I.C. 111=15 R.O. 117=1942 A. W.R. (C.C.) 302=1942 O.W.N. 463=1942 O.A. 356 =A.I.R. 1942 Oudh 482.**

——**S. 7 (1) (a)**—Proceedings referred to in—If includes proceedings pending at the instance of the landlord. *See* 1941 Dig., Col. 1159. KAILASH KUNWAR *v.* RAGHUBAR DAYAL. **17 Luck. 232=A.I.R. 1942 Oudh 87.**

——**S. 7 (1) (a) and Transfer of Property Act, S. 53**—*Suit under S. 53, Transfer Property Act, by creditor if in respect of a 'debt' under S. 7 (1) (a) of the U. P. Encumbered Estates Act—Transferee putting claim in application by transferor under the Act—Suit under S. 53, if can go on—Proper procedure.*

A suit by a creditor under S. 53, T. P. Act, in respect of a transfer by an applicant under the U.P. Encumbered Estates Act is not a proceeding in respect of a 'debt' within the meaning of S. 7 (1) (*a*) of the latter Act. Where the transferee puts in his claim in respect of the transfer in proceedings under the U. P. Encumbered Estates Act, then special Judge alone has the sole power to adjudicate upon such a claim. Proceedings before the special Judge cannot be affected by any decision in the civil suit. Hence the proceedings in the suit under S. 53 should be stayed while the proceedings under the U. P. Encumbered Estates Act are going on. There is no necessity to dismiss it altogether. (*Bennett and Agarwal, JJ.*) RADHEY LAL *v.* MOHAMMAD MOHIUDDIN KHAN. **198 I.C. 757=14 R.O. 432=1942 R.D. 185=1942 A.W.R. (C.C.) 85=1942 O.A. 63=1942 O.W.N. 110=A.I.R. 1942 Oudh 252.**

——**S. 7 (1) (b), (2) and (3)**—Relative scope of. *See* 1941 Dig., Col. 1159. HARI SARAN DAS *v.* HAR KISHAN DAS. **16 Luck. 784=197 I.C. 812=14 R. O. 361.**

——**S. 7 (1) (b)**—*Scope of—If extends also to suits, etc., by landlord.*

S. 7 (1)(*b*) of the U.P. Encumbered Estates Act is not limited in its operation to suits, proceedings, etc., to be instituted against the landlord, but applies to suits, proceedings, etc., to be instituted by the landlord also. (*Iqbal Ahmad, C.J., Braund and Dar, JJ.*) LAL GIRJESH BAHADUR PAL *v.* BHAGWATI PRASAD. **I.L. R. (1942) All. 174=200 I. C. 115=14 R. A. 412=1942 A. L. W. 3=1942 R. D. 59=1942 A.L.J. 173=1941 O. A. (Supp.) 955=1941 A.W.R. (Rev.) 1203. =A.I.R. 1942 All. 153 (F.B.).**

——**Ss. 7 (2) and 26**—*Sale in satisfaction of debts—Permissibility—Proper procedure prior to and after liquidation award is made.*

Sales of individual villages in part satisfaction of the debts due to a creditor are not permitted before the liquidation award is made. Even after the liquidation award is made properties are transferred not according to the terms arrived at between the parties but on the basis of the transfer values fixed by the Collector under S. 26 of the Act. (*Shirreff, S.M. and Sathe, J.M.*) SURAJ NARAIN *v.* LAKSHMI CHAND. **1942 O.W.N. (B.R.) 139=1942 A.W.R. (Rev.) 89=1942 O.A. (Supp.) 102=1942 R.D. 205.**

——**S. 7 (3)**—*Applicability—Decree awarding damages for trespass—Execution, if barred.*

Where after the passing of an order under S. 6 of the U. P. Encumbered Estates Act a decree is obtained against the applicant for ejectment and damages in respect of trespass on the lands of another zamindar, the decree is not the basis of any private debt but itself creates the private debt in the form of damages and hence its execution is not barred by S. 7 (3) of the Act. (*Shirreff, S.M. and Sathe, J.M.*) RAM KISHEN *v.* ABDUL SAMAD. **1942 O.A. (Supp.) 70=1942 O.W. N. (B.R.) 95=1942 A.W.R. (Rev.) 64=1942 R.D. 127=1942 A.L.J. (Supp.) 18.**

——**Ss. 7 (3) and 22**—*Application for private sale—Time limit for filing.*

There is nothing either in the Act or in the rules which limits the period for filing an application for private sale under S. 7 (3) to the two months mentioned in S. 22. R. 30 does not lay down any such restriction. It can be filed at any stage of the proceedings and it can be sanctioned if it is shown that the proposed sale is to

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the benefit of all parties. (*Shirreff, S.M. and Sathe, J.M.*) KALKA PRASAD *v.* MST. DULAIYA. **1942 O.A. (Supp.) 74=1942 O.W.N. (B.R.) 106=1942 A.W.R. (Rev.) 68=1942 R.D. 138=1942 A.L.J. (Supp.) 22.**

——**S. 7 (3) and Rr. 84 and 85**—*Auction—Propriety—Private negotiation—Conditions to be observed.*

An auction is not a recognised mode of transfer under the Encumbered Estates Act. A sale by private negotiation is permissible only with the consent of all parties concerned. Hence neither the debtor could be compelled to sell the property against his wishes to the principal creditor nor could he be permitted to sell to a stranger if it is opposed by the creditors.

Per *Shirreff, J. M.*—R. 85 contemplates transfers under S. 7 (3) of the Act taking place even after liquidation scheme has been completed. (*Shirreff, S M. and Sathe, J.M.*) KALKA PRASAD *v.* MST. DULAIYA. **1942 O.A. (Supp.) 74=1942 O W.N (B R.) 106=1942 A.W.R. (Rev.) 68=1942 R.D. 138=1942 A. L.J. (Supp.) 22.**

——**S. 7 (3)**—*Collector's powers under—If can himself sell or direct sale to particular individual.*

Under S. 7 (3) of the U.P. Encumbered Estates Act the Collector is only competent to give sanction to an application by the debtor to sell his property by private negotiation. He can neither sell the property himself nor direct it to be sold to any particular individual. (*Sathe, J. M.*) KISHORI LAL *v.* MANAGER, COURT OF WARDS, PERSOTAM NARAIN ESTATE. **1942 O.A. (Supp.) 502=1942 O.W.N. (B.R.) 739=1942 A.W. R. (Rev.) 476.**

——**Ss. 8 and 11**—*Applicant if bound to show under S. 8, only property standing in his name in the khewat—Claim by objector to certain property shown under S. 8—Procedure to be followed.*

There is no provision in the U. P. Encumbered Estates Act that only that property can be considered to be of the applicant over which his name stands. Under S. 8 he is under a statutory obligation to disclose all his property. There is no restriction that he has to mention only that property over which his name stands in the khewats. Where an objector under S. 11 claims certain property mentioned by the applicant under S. 8 to be his, the fact that the property does not stand in the khewat in the name of the applicant does not preclude him from establishing his title to the property and the Judge must in such case adjudicate the question of title on the merits by examining the rights of both parties and by receiving such oral and documentary evidence in support of that title as they may wish to produce. (*Agarwal and Madely, JJ.*) RAM KISHORE *v.* SAKHAWAT ABID. **202 I.C. 730=15 R.O. 142=1942 O. W.N. 555=1942 A.W.R. (C.C.) 340 (2)=1942 O.A. 472=A.I.R. 1942 Oudh 498.**

——**Ss. 8 (1) and 24 (3)**—*Debtor's property outside United Provinces—Realisation—Power—Procedure.*

The two cases of property contemplated by Cls. (*b*) and (*c*) of S. 8 (1) are exclusive of each other and exhaust all the property of the debtor applicant. The debtor applicant's zamindari situated outside United Provinces falls in the second category of property mentioned in S. 8 (1) (*c*) and must be dealt with by the Collector under S. 24. Under S. 24 (3) he will have the power of realising its value in the capacity of a decree-holder and he must do so before proceeding to deal with the debtor applicant's property situated in the United Provinces. (*Shirreff, J.M. and Sathe, A.M.*) ABBAS HUSAIN *v.* RAM SAROOP. **1941 O.A. (Supp.) 914=1941 A.W.R. (Rev.) 1133.**

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——**Ss. 8 (1) and 24**—*Right to cash* Nankar—*Nature of—If proprietary right in land falling under Ss. 8 (1) and 24.*

Since the owner of a right to cash *nankar* has an interest in the mahal concerned as the right is a charge on the land and since the rights are of the nature of under-proprietary rights, the right to cash *nankar* must be classified, as property of the nature of proprietary rights in land as contemplated in Ss. 8 and 24 of the Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J. M.*) BHAGWANDIN *v.* SARJU. **1942 O.A. (Supp.) 481 (2)=1942 O.W.N. (B.R.) 718=1942 A.W.R. (Rev.) 455 (2).**

——**Ss. 9 and 11**—*Combined claims under, preferred prior to publication of notice—Entertainability.*

Where a claim of the nature contemplated by S. 11 of the U. P. Encumbered Estates Act is made, the fact that the claimant combined this with the claim as a creditor under S. 9 and preferred it before the publication of notice does not invalidate it and it can be entertained and adjudicated upon (*Bennett and Agarwal, JJ.*) JHAM SINGH *v.* SURAJ BAKSH SINGH. **200 I.C. 325=15 R.O. 15=1942 R.D. 533=1942 O.W.N. 355=1942 A.W R. (C.C.) 228=1942 O.A. 249=A I. R. 1942 Oudh 389.**

——**Ss. 9 and 45**—*Dismissal of appeal against order that receiver should be appointed—Appeal against order appointing a receiver—Competency.*

Per *Sathe, J.M.*—Where an appeal against an order that a receiver should be appointed is dismissed and a fresh appeal is preferred on the actual appointment of a receiver, the decision to appoint a receiver having become final cannot be questioned and it is only the propriety of the appointment of the particular person appointed that could be gone into.

Shirreff, S.M.—If the circumstances had changed there could be no objection to reopening the question as to whether a receiver should be appointed at all. (*Shirreff S.M. and Sathe, J.M.*) NARAIN SINGH *v.* RAM NARAIN SINGH. **1942 R.D. 227=1942 O.W.N. (B.R.) 161=1942 A.W.R. (Rev.) 164 (2)=1942 O. A. (Supp.) 184 (2).**

——**S. 9 (3) (after amendment)**—*Utmost limit for receiving claims.*

The utmost limit to which claims can be received is now provided for in S. 9 (3) of Encumbered Estates Act as amended in 1939 and if they are not made within that time, namely, 30th November, 1939 or before the special Judge sends up his decrees to the Collector, whichever is later, they cannot be thereafter entertained. (*Agarwal and Madeley, JJ.*) BHAGWATI PRASAD SINGH *v.* CHANDRA BHAL. **204 I.C. 381=1942 O.A. 592=1942 O.W.N. 720=A.I.R. 1943 Oudh 82.**

——**Ss. 9 (5) and 7**—*'Joint debt'—Joint and several, if included—Execution against non applicant's property also, if barred by S. 7 in case of joint debts.*

The word 'Joint debt' in sub-S. (5) of S. 9, Encumbered Estates Act, includes debts which are both joint and several. The provision in S. 7 of the Act that after the passing of an order under S. 6 all execution processes shall become null and void, applies not only to execution proceedings against the property of the applicants but applies equally to the property of the non-applicants. (*Bennett and Ghulam Hasan, JJ.*) HAR CHARAN LAL *v.* SUKHA NAND. **17 Luck. 597=199 I.C. 116=14 R.O. 469=1942 R.D. 154=1942 O.A. 46=1942 O. W.N. 78=1942 A.W.R. (C. C.) 68=A. I. R. 1942 Oudh 248.**

——**S. 9 (5)**—*Scope and effect of—Discharge of creditor's claim under S. 13 on failure to file claim in time—Remedy of creditor.*

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The effect of S. 9 (5) (*a*) is that the only right which the decree-holder has after an application under S. 4 of United Provinces Encumbered Estates Act has been made by any of his judgment-debtors is to get only such amount as may be determined by the Special Judge to be due by the non-applicant debtors. Where a decree-holder's claim is discharged under S. 13 on his failure to file his claim within time, he could proceed against his non-applicant debtor only for the amount which the Special Judge may have determined to be due by him. He could not proceed against the objector in respect of any amount without getting the amount due by him ascertained by the Special Judge. (*Agarwal, J.*) MOHAMMAD AHMAD ALI KHAN *v.* SHEO SHANKAR SINGH. 202 I.C. 111=15 R.O. 117=1942 A.W.R. (C.C.) 302=1942 O.W.N. 463=1942 O.A. 356=A.I.R. 1942 Oudh 482.

——S. 9 (5) (a)—Apportionment of liability—Powers of Court—Debt or decree imposing joint and several liability—Joint debt—Meaning. *See* 1941 Dig., Col 1162. PUNJAB NATIONAL BANK, LTD. *v.* VISHVA NATH KHANNA. I.L.R. (1941) All. 796.

——S. 9-A—*Receiver—Removal—Sufficient grounds.*

Where a Court finds that a receiver (1) is himself heavily indebted and has applied under Encumbered Estates Act; (2) did not submit accounts in time; (3) made very poor collection; and (4) is not disinterested or trustworthy, there are sufficient grounds for the removal of such a receiver. (*Shirreff, J.M.*) BABU SINGH *v.* JANG BAHADUR SINGH. 1941 O.A. (Supp.) 961 (1) =1941 A.W.R. (Rev.) 1213 (1).

——S. 9-B—*Receiver—Liability to account—Sum not received during period of receivership.*

A Receiver cannot be held responsible to account in respect of sums which did not accrue during the period of the receivership. (*Shirreff, S.M. and Sathe, J.M.*) BUDHU SINGH *v.* BASANT RAI. 1942 O.A. (Supp.) 494 (1)=1942 O.W.N. (B.R.) 728=1942 A.W.R. (Rev.) 468 (1).

——S. 9-B (3)—*Powers of Sub-Divisional Officer under—Modification of Special Judge's order as to attachment of debtor's salary.*

Under S. 9-B (3) of the U. P. Encumbered Estates Act the Sub Divisional Officer is not empowered to vary the special Judge's order attaching the debtor applicant's salary. (*Shirreff, S. M. and Sathe, J. M.*) HAMID ALI *v.* BENARES BANK. 1942 O.W.N. (B.R.) 290 (1)=1942 O.A. (Supp.) 196 (1)=1942 R.D. 379 (1)=1942 A.W.R. (Rev.) 176 (1).

——S. 9-C—*Application under*—Locus standi.

A person who is not a party to the proceedings under the U. P. Encumbered Estates Act cannot apply under S. 9-C of the Act for the appointment of a receiver. (*Shirreff, J.M. and Sathe, A.M.*) JOTI PRASAD *v.* KANAHIYA LAL. 1941 R. D. 1119=1941 O. A. (Supp.) 943=1941 A.W.R. (Rev.) 1174.

——S. 9-C—*Mismanagement contemplated in.*

The mismanagement contemplated in S. 9-C of the U. P. Encumbered Estates Act is not mismanagement or extravagance prior to the filing of the application under S. 4 of the Act but mismanagement after the filing of the application which is calculated to deteriorate the value of the property thus causing injury to the interest of the creditors. (*Shirreff, J.M. and Sathe, A. M.*) AGHA SYED MAHOMMAD SHAFI *v.* PEARY LAL. 1942 O.W.N. (B.R.) 33 (2)=1942 R.D. 49 (2)=1942 A.W.R. (Rev.) 166 (3)=1942 O.A. (Supp.) 186 (3).

——S. 9-C—*Receiver — Appointment —Grounds—Serious deterioration in capital value not established.*

Where no serious deterioration in capital value is established, the application for the appointment of a receiver to property under S. 9-C of the U. P. Encumbered Estates Act may be rejected. (*Shirreff, S.M.*) MANMOHAN LAL *v* HEERA KOER.. 1942 A.W.R. (Rev.) 252 (1)=1942 O.A. (Supp.) 278 (1)=1942 R. D. 286 (1)=1942 O.W.N. (B.R.) 220 (1).

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——S. 9-D—*Debtor receiver—Security—Necessity.*

Where the debtor himself is appointed the receiver it is unnecessary and also unreasonable to demand a security. (*Shirreff, S. M. and Sathe, J. M.*) SURAJ BUX SINGH *v.* GAYA PRASAD. 1942 O.A. (Supp.) 257 (1)=1942 A.W.R. (Rev.) 231 (1)=1942 O.W.N. (B.R.) 372=1942 R.D. 461.

——S. 9-D—*Dismissal of application for appointment of receiver, on merits—Fresh application, if barred.*

There is nothing in the U. P. Encumbered Estates Act which would prevent a second application for appointment of receiver being considered even after a first application has been dismissed on merits. Circumstances may change necessitating the appointment of a receiver. (*Shirreff, S.M.*) LALTA PRASAD *v.* RADHEY SHIAM. 1942 O.W.N. (B.R.) 202 (1)=1942 R.D. 268 (1)=1942 A.W.R. (Rev.) 170 (1)=1942 O.A. (Supp.) 190 (1).

——S. 9-D—*Money in hands of receiver appointed under—How to be treated—Removal of receiver and appointment of debtor as receiver—If can be paid such money.*

When a receiver is duly appointed under S. 9-D of the Encumbered Estates Act, the money in his hands has to be treated by the Collector as a payment by the applicant in accordance with the provisions of S. 23. When such a receiver is removed and the debtor himself appointed receiver, such money cannot be directed to be paid over to him. (*Harper, S.M. and Shirreff, J.M.*) RAM KRISHNA *v* SARTAJ KUAR. 1942 A.W.R. (Rev.) 77 (1)=1942 O.A. (Supp.) 83 (1)=1942 O. W.N. (B.R.) 52=1942 R.D. 84.

——S. 9-D—*Receiver— Appointment— Grounds—Small difference between decretal amount and transfer value.*

Where the difference between the decretal amount and transfer value of the debtor's property is only Rs. 9,000 in a case where the property is worth Rs. 10,000, it is not enough to justify the appointment of the receiver. (*Sathe, J.M.*) MASIHUDDIN AHMAD *v.* WAHAJUDDIN HYDER. 1942 R.D. 238=1942 O.A. (Supp.) 108 (2)=1942 O W.N. (B.R.) 172=1942 A.W.R. (Rev.) 95 (2).

——S. 9-D—*Receiver— Appointment— Grounds—Sufficiency—Failure of debtor to pay anything towards liquidation of debt—Value of property less than decretal amount.*

The fact that the debtor has not paid anything towards liquidation of the debt is no ground for appointment of a receiver for the debtors is not required under the law to pay anything to the creditors before the liquidation award is declared. The value of the property being less than the decretal amount would also be not a ground unless the difference is very great. (*Shirreff, S. M. and Sathe, J.M.*) RAJ KISHORE SINGH *v.* JAGDANAND RAI. 1942 A.W.R. (Rev.) 251 (1)=1942 O. A. (Supp.) 277 (1)=1942 O.W.N. (B.R.) 168 (2) =1942 R D. 234 (2).

——S. 9-D—*Receiver—Appointment of debtor—Propriety—Value less than debts.*

Though the fact of the value of the property being less than the decretal amount is no justification by itself for the appointment of a receiver, yet when in such case the debtor himself is appointed receiver, in view of the particular circumstances of a case, it would not be inter-

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fered with by the Board. (*Sathe, A.M.*) GHULAM SAFDAR KHAN *v.* JATAN SARUP. **1942 O A. (Supp.) 44 (2) = 1942 O.W.N. (B.R.) 37 = 1942 A.W.R. (Rev.) 44 (2) = 1942 R.D. 53.**

——**S. 9-D**—*Receiver—Appointment—Proper stage—Decree by special Judge not passed—Appointment, if premature.*

Under S. 9 D of the U. P. Encumbered Estates Act the Collector may appoint a receiver of any property possession of which has been or might be delivered under the provisions of S. 35 of the Act. The latter section does not come into play until after the decrees awarded by the special Judge have been sent to the Collector under the provisions of S. 19. Before the decrees have been passed, it is too early to say whether any property might be delivered under S. 35 and hence the appointment of a receiver at that stage is premature. (*Harper, S.M. and Shirreff, J.M.*) BRIJ RANI *v.* ABDUL KARIM KHAN. **1942 O.W.N. (B.R.) 26 = 1942 R.D. 42 = 1942 A.W.R. (Rev.) 144 = 1942 O.A (Supp) 164.**

——**S. 9 D**—*Receiver—Grounds for appointment—Great portion of debtor's property being protected under Debt Redemption Act—Proper person—Debtor when disqualified.*

The fact that a great part of the debtor's property will be protected under the Debt Redemption Act is a valid reason for the appointment of a receiver. In such cases the receiver should be the debtor himself unless there are reasons to the contrary—(*e.g.*) that he has been fined in guardian proceedings for failing to deposit certain ornaments of the minors and that it still remains unpaid. (*Harper, S.M. and Shirreff, J.M.*) AMJAD ALI *v.* ZULFIQAR ALI. **1942 O.W.N. (B.R.) 51 = 1942 R.D. 83 = 1942 A.W.R. (Rev.) 133 (1) = 1942 O.A. (Supp.) 153 (1).**

——**S. 9-D**—*Receiver—Grounds of appointment—Existence of liabilities for periodical payment.*

The existence of liability to make periodical payments out of the mortgaged property is not a ground for the appointment of a receiver when those liabilities would lie on the creditors who created them and not on the debtors. (*Shirreff, S.M. and Sathe, J.M.*) ALI HAMMAD *v.* PARBATI. **1942 O W.N. (B.R.) 128 = 1942 A W.R. (Rev.) 88 (2) = 1942 O.A. (Supp.) 101 (2) = 1942 R.D. 167.**

——**S. 9-D**—*Receiver—Valuation for purposes of enquiry in regard to appointment of—Use of tahsil valuation statements not on the file—Propriety.*

Where for the purpose of an enquiry into the necessity for the appointment of a receiver, the Court utilises figures taken from the tahsil valuation statements which are not on file, and appoints a receiver it is liable to be set aside and the application sent back to the lower Court for being heard after giving an opportunity to both sides to see the tahsil valuation statements and make their own objections thereto. (*Shirreff, J.M. and Sathe, A.M.*) EKRAM HUSAIN KHAN *v.* PHOOL KUER. **1941 O.A. (Supp.) 963 (1) = 1941 A.W.R. (Rev.) 1215 (1).**

——**S. 9-D**—*Receiver—Who should be appointed—Creditor, if a proper person—Property consisting of* sir *plots.*

It is most undesirable to appoint one of the creditors as receiver, for that would be perpetuating the old state of affairs and thus practically defeating the provisions of S. 35 of the U. P. Encumbered Estates Act. Where the property consists of *sir* land it is desirable that it should be cultivated by the former *sir* holders themselves (*i.e.*) the debtor applicants instead of being let out to tenants. (*Shirreff, S. M. and Sathe, J. M.*)

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BALDEO RAI *v.* BHABHUTI NARAIN RAI. **1942 A. W.R. (Rev.) 253 (2) = 1942 O.A. (Supp.) 279 (2) = 1942 R.D. 346 = 1942 O.W.N. (B.R) 257.**

——**Ss. 11 and 45 and Oudh Courts Act, S. 12 (2)**—*Appeal against disallowance of claim under S. 11 allowed by Special Judge—Effect of not impleading all creditors—If can be impleaded under O. 41, R. 20 after limitation.*

For an appeal under S. 12 (2) of the Oudh Courts Act against the disallowance of a claim under S. 11, United Provinces Encumbered Estates Act, allowed by a Special Judge, it is necessary to implead all the creditors as parties. If they are not made parties within the period of limitation for the appeal, the appeal cannot proceed. The creditors could not be added under O. 41, R. 20, C. P. Code, after the expiry of the period of limitation. (*Agarwal and Madeley, JJ.*) NAGESHWAR PRASAD *v.* CHANDRAJ BAHADUR. **1942 O.W.N. 465 = 1942 O.A. 360 = 1942 A.W.R. (C.C.) 305 = A.I.R. 1943 Oudh 78.**

——**Ss. 11 and 45**—*Appeal against dismissal of claim under S. 11—Omission to make some of the decree-holders parties—If a fatal defect—Proper procedure as to addition of parties.*

Where in an appeal against dismissal of a claim under S. 11 of the U. P. Encumbered Estates Act some of the decree-holders who had obtained decrees under the Act against the applicant have not been impleaded it is a fatal defect and the appeal must fail. Before notice is published under S. 11, it would be known what persons have preferred claims in respect of debts against the landlord and if all such persons are impleaded it would follow that if all those who eventually obtain decrees will have been impleaded in the appeal such a course may be adopted. (*Bennett and Madeley, JJ.*) JITENDRA SINGH *v.* ALLIANCE BANK OF SIMLA. **198 I C. 775 = 14 R.O. 438 = 1941 O.W.N. 1381 = 1942 A.W.R. (C. C.) 39 = 1942 R.D. 27 = 1941 O.A. 1074 = A.I.R. 1942 Oudh 199.**

——**S. 11**—*Claim under based on preliminary decree—If can be accepted.*

A respondent is entitled to rest his claim to a share in the property on a preliminary decree for partition obtained by him. The mere fact that the declaratory decree has not fructified into a final decree is immaterial (*Bennett and Agarwal, JJ.*) JHAM SINGH *v.* SURAJ BAKSH SINGH. **200 I.C. 325 = 15 R.O. 15 = 1942 R.D. 533 = 1942 O.W.N. 355 = 1942 A.W.R. (C.C.) 228 = 1942 O A. 249 = A.I.R. 1942 Oudh 389.**

——**Ss. 11 and 12**—*Relative scope of.*

The provisions of S. 11 of the Encumbered Estates Act are not controlled in any way by those of S. 12 of the Act. Under S. 11 the special Judge has to determine claims by third parties to property alleged to belong to applicant. It is immaterial on what those claims are founded. Under S. 12 action is taken by the special Judge at the instance of a creditor to cancel transfers made by the landlord between certain dates antecedent to the proceedings under the Act with a view to deprive the creditors of their rights under the Act. (*Bennett and Agarwal JJ*) RADHEY LAL *v.* MOHAMMAD MOHIUDDIN KHAN. **198 I.C. 757 = 14 R O. 432 = 1942 O.A. 63 = 1942 O.W.N. 110 = 1942 A.W.R. (C. C.) 85 = 1942 R.D. 185 = A.I.R. 1942 Oudh 252.**

——**S. 11**—*Scope of claim to be preferred under—Person interested in property to be sold under the notified decree, if can apply.*

Under S. 11 of the U. P. Encumbered Estates Act a claim can be preferred only to the property mentioned in the notice. Where a person was only interested in the property to be sold under a decree mentioned in the

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notice, he cannot raise any objection before the Special Judge that the property was not to be sold because he was also interested. Such an objection would not be entertainable by the Special Judge. Hence he is not barred from seeking his remedy by a separate suit. (*Thomas, C.J. and Agarwal, J.*) SHEO PRASAD *v.* MST. PARKASH RANI. 204 I.C. 444=1942 A.W.R. (C.C.) 355=1942 A.L.J. 766=1942 O.A. 567.

——S. 11 (2)—*Objection under made before publication of notice—If proper and entertainable.*

The provisions of S. 11 (2) of the U. P. Encumbered Estates Act does not in any way debar the Court from entertaining and adjudicating upon a claim filed before the publication of the notice, if in fact the claim amounts to a claim under sub-S. (2) of S. 11. (*Ghulam Hasan and Agarwal, JJ.*) BISHWANATH SINGH *v.* SHIVARATAN. 203 I.C. 231=15 R.O. 168=1942 A. W.R. (C.C.) 342 (2)=1942 O.W.N. 611=1942 O.A. 500=A.I.R. 1943 Oudh 33.

——S. 12 and T. P Act, S. 53—*Resort to S. 53, T. P. Act—Permissibility.*

In a case where S. 12 of the U.P. Encumbered Estates Act is not applicable there is nothing in the Encumbered Estates Act to prevent the creditor from challenging the transfer under the provisions S, 53, T. P. Act. (*Allsop and Verma, JJ.*) HAR PRASAD *v.* MOHAMMAD USMAN HUSAIN 1942 A.W.R. (H C.) 332=1942 A. L.W. 613=1942 A.L.J. 645=A I R 1943 All. 2.

——S. 13—*Claim that could be deemed to have been discharged under.*

Under S. 13 of the U. P. Encumbered Estates Act it is only the claims that could be made under the Act that can be considered to have been discharged (*Agarwal and Madeley, JJ.*) PIAREY LAL *v.* MAHADEO PRASAD. 199 I.C. 698=14 R.O. 514=1942 R. D. 320=1942 A W.R (C C) 109=1942 O.W.N. 157 =1942 O.A. 88=A.I.R. 1942 Oudh 311.

——Ss. 13 and 35—*Mortgagee's claim discharged under S.* 13—Locus standi *to oppose delivery under S.* 35.

A mortgagee whose claim has been discharged under S. 13 of the Encumbered Estates Act cannot be in a better position than a mortgagee whose claim has been admitted and hence he cannot resist delivery under S. 35 in assertion of his mortgagee rights. (*Harper, S.M. and Shirreff, J.M.*) MONIR AHMAD *v.* KARIM KHAN. 1942 O.W.N (B.R.) 42 (2)=1942 A.W.R. (Rev) 45 (1)=1942 O.A. (Supp.) 45 (1)=1942 R.D. 58 (2).

——S. 14—Amendment regarding *pendente lite* interest—If retrospective. *See* 1941 Dig., Col 1168 MAHOMED EJAZ RASOOL *v.* ALI MAHOMED. 16 Luck. 812.

——S 14—*Decree against debtor held to be time barred—Right to object to execution of such decree—* Locus standi *of creditor in whose favour decree has been passed by special Judge.*

Where execution is being taken in respect of a decree against a debtor applicant under S. 4 of the U. P. Encumbered Estates Act which has been found by the special Judge to be time barred, a creditor of the debtor has a right to object to the execution being carried out, even though the debtor may not object. As the whole property of the debtor is liable to be sold for liquidation of decrees which had been decreed against the debtor, it is to the interest of any of such creditors to see that no part of the debtor's property is sold in execution of a decree which is barred by time. (*Shirreff, J.M. and Sathe, A.M.*) CHATURBHUJ *v.* GANGA RAM. 1941 O.A. (Supp.) 930=1941 A.W.R. (Rev) 1161.

——S. 14 (before amendment)—Inquiry into claim—Nature of—Other claimants, if can be made

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parties—C. P. Code, O. 1, R. 10 (2)—Applicability. *See* 1941 Dig., Col. 1168. KANIZ ZAHRA BEGAM *v.* TEJ NARAIN. 17 Luck. 94=197 I.C. 864=14 R.O. 369.

——Ss. 14 and 15—Inquiry under—Decree and findings in earlier proceedings under S. 33—Agriculturists' Relief Act—Binding nature—Duty of Special Judge—Re-opening the whole matter—Revision. *See* 1941 Dig., Col. 1168. AYUB ALI SHAH *v.* KALICHARAN. I.L.R. (1941) All. 771 =197 I.C. 810=14 R.A. 246.

——S. 14—*Special Judge after decree, if becomes* functus officio—*Amalgamation of decrees—If permitted.*

It is not right to state that the special Judge becomes '*functus officio*' after passing the decrees. No doubt under the Encumbered Estates Act the execution of decrees under Ch. V of the Act has to be done by the collector and the special Judge has no concern with it. But still any amendment or alteration in the decree itself which may be necessary has to be done by the special Judge and to that extent he certainly remained seized with the case. The law does not permit amalgamation of decrees to be made by a special Judge. (*Sathe, J. M.*) LALIT NARAYAN DUBEY *v* KHYALI RAM 1942 A.W.R. (Rev.) 58=1942 O.A. (Supp.) 64=1942 R. D. 105=1942 O.W.N. (B.R.) 73.

——S. 14 (1) and C. P. Code, S. 151—*Duty of Court to give notice under S.* 14, *Encumbered Estates Act—Absence of such notice—Creditor, if bound to make enquiries as to date of hearing—*Ex parte *decree in his absence—Applicability of S.* 151, *C. P. Code.*

Under sub-S. (1) of S. 14 of the U. P. Encumbered Estates Act, the special Judge is bound to give notice to all claimants of the date fixed for enquiring into the claims. In the absence of such notice, it is not incumbent on the creditors, to make private enquiries as to such date. A creditor is entitled to presume that a notice under S. 14 (1) would be sent to him. When in the absence of such a notice a decree is passed *ex parte* in the absence of a creditor, it is a fit case for rehearing by the application of S. 151, C. P. Code. The proposition that a Court should not make use of the provisions of S. 151, C. P. Code, where another remedy is available is not one of invariable applicability. (*Bennett and Ghulam Hasan, JJ.*) CHANDER SEKHAR *v* SHANKAR. 17 Luck. 673=202 1 C. 101=14 R.O. 547= 1942 A.W.R (C C.) 137=1942 O.A. 116=1942 R.D. 310=1942 O.W.N. 182=A.I R. 1942 Oudh 343.

——S. 14 (4)—*Inclusion of interest in principal—Onus.*

It is for the applicants to prove that the promissory note in question included any interest in respect of a prior promissory note. (*Agarwal and Madeley, JJ.*) SARWAR SULTAN BEGAM *v.* SHEIKH ABDUI HALIM. 200 I.C. 164=14 R.O. 574=1942 O.A. 124=1942 O. W.N 202=1942 A.W.R (C.C.) 145=A.I.R. 1942 Oudh 332.

——S. 14 (4)—*Powers of a Special Judge under—Debtor's claim for damages against mortgagee for loss caused by breach of contract of mortgage—Entertainability.*

In determining the amount due to a creditor from the landlord debtor the Special Judge is invested with all the powers of the Court in which a suit for the recovery of the money due would lie. A claim for damages put forward by a debtor against the mortgagee for loss caused by breach of a term in the contract of mortgage must be determined before it is possible to ascertain how much money is ultimately due to the creditor. Hence there is no justification for a Special Judge refusing to entertain such a claim before him. (*Ghulam Hasan and Agarwal, JJ.*) ALIYA BEGAM *v.* MOHINI BIBI.

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204 I.C. 227=1942 O.W.N. 664=1942 A.W.R. (C.C.) 339 (1)=1942 O.A. 461=A.I.R. 1943 Oudh 17.

——S. 14 (4), (5) and (6)—*Operation of 'Principal'—Construction.*

The provisions of sub-Ss. (4), (5) and (6) of S. 14, Encumbered Estates Act operate solely to limit the amount of interest which may be allowed under sub-S. (4), the construction to be placed on the word 'principal' for other purposes in examining and determining the claims under this section being unaffected thereby. (*Bennett, Ghulam Hasan and Agarwal, JJ.*) KRISHNA MURARI *v.* DRIGBIJAI SINGH. **199 I.C. 586=14 R. O. 495=1942 A.W.R. (C.C.) 101=1942 O.W.N. 148 =1942 O.A. 80=1942 R.D. 311=A.I.R. 1942 Oudh 275 (F.B.)**

——S. 14 (4) (a), (5) and (6)—*Construction and scope of—Later mortgage in lieu of principal and interest due on an earlier mortgage—Mode of calculation of interest.*

The provisions of sub-Ss. (5) and (6) of S. 14 of the U. P. Encumbered Estates Act operate solely to limit the amount of interest which may be allowed under sub S. (4) of the section the construction to be placed on the word 'principal' for other purposes in examining and determining claims under this section being unaffected thereby. The view that in construing the words 'the amount of interest held to be due on the date of the application' in Cl. (*a*) of sub-S. (4) regard should be had to all interest which had accrued on the original transaction, the principal being thus limited to the amount stated in the original mortgage (in a case where the later mortgage is in lieu of principal and interest due on an earlier one) is not warranted by the language used either in this sub section or in sub-Ss. (5) and (6). (*Bennett and Ghulam Hasan, JJ.*) RAJENDRA BAHADUR SINGH *v.* DALIP SINGH. **200 I.C. 448=1942 O.A. 250=1942 A.W.R. (C.C.) 229 =1942 R.D. 541=15 R.O. 1=1942 O.W.N. 328=A. I.R. 1942 Oudh 381.**

——S. 14 (6)—*Calculation of principal—Things to be excluded—Decree of Court if affected.*

The things which have to be excluded for ascertaining the principal according to S. 14 (6) of the Encumbered Estates Act are 'statement or settlement of accounts or' 'any contract made in the course of the transactions.' They all refer to things which must be act of parties. Hence decrees of Court are not affected by Cl. (6) of S. 14 and so cannot be sought to be reopened for this purpose. (*Bajpai and Dar, JJ.*) HIRA SINGH *v.* BISHAMBHAR NATH. **203 I.C. 597=1942 A.L.J. 585 =1942 A.W.R. (H.C.) 328=1942 A. L.W. 548=A. I.R. 1942 All 438.**

——S. 14 (7)—Pendente lite *interest—Claimant's right to.*

There is no reason why the claimant should not get *pendente lite* interest if he wants to have it. The mere fact that he did not claim interest on the amount lent does not debar him from claiming interest. (*Agarwal and Madeley, JJ.*) SARWAR SULTAN BEGAM *v.* SHEIK ABDUL HALIM. **200 I.C. 164=14 R.O 574 =1942 O A. 124=1942 O.W N. 202=1942 A.W.R. (C C.) 145=A.I.R. 1942 Oudh 332.**

——S. 14 (7)—Pendente lite *interest—Right to—Creditor in possession.*

Where the creditors were in possession of the property, they are not entitled to *pendente lite* interest and a Special Judge is not justified in awarding it. (*Ghulam Hasan and Agarwal, JJ.*) ALIYA BEGAM *v.* MOHINI BIBI. **204 I.C. 227=1942 O.W.N. 664=1942 A.W. R. (C.C.) 339 (1)=1942 O.A. 461=A.I.R. 1943 Oudh 17.**

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——Ss. 15 and 14—*Amount due to mortgagee declared on prior suit under S. 33, Agriculturists' Relief Act—Subsequent proceedings under Encumbered Estates Act—Prior decree, binding nature of.*

Where in a suit brought under S. 33, U. P. Agriculturists' Relief Act the amount due on a mortgage has been declared and subsequently proceedings are started under U. P. Encumbered Estates Act, then the decree in the prior proceedings becomes binding on the mortgagee and he would be entitled to get only the amount declared already as due to him. (*Agarwal and Madeley, JJ.*) MAHOMED MUQEEM KHAN *v.* RAM DASS. **1942 O. A. 474= 1942 A.W.R. (C.C.) 340 (3)=1942 O.W.N. 617=A.I.R. 1942 Oudh 492.**

——S. 15—*Objection to compromise decree on which claim is based—If can be gone into in Encumbered Estates proceedings—S. 15, if bars such objection.*

Where a claim is made on the basis of a compromise decree passed against the applicant under S. 4 of the Encumbered Estates Act who was a minor at the time of the decree, it is open to the applicant to raise an objection before the special Judge that the compromise decree was not binding on him in as much as leave of the Court as required by O. 32, R. 7, C.P.Code, was not obtained. S.15 of the Encumbered Estates Act does not operate as a bar at all to the question being gone into because there are no findings in such a compromise decree which alone are binding on the special Judge. (*Bennett and Madeley, JJ.*) MOHD. WAHID MIRZA BEG *v.* AMIR MIRZA BEG. **204 I.C. 374=1942 R.D. 94=1942 O. W.N. 791=1942 O.A. 624.**

——S. 18—*Scope and effect of—If confers a right of appeal by itself.*

S. 18 of the U.P. Enumcbered Estates Act only provides for the effect of a decree if it is not set aside. It does not by itself give any right of appeal or revison. (*Agarwal and Madeley JJ.*) DEBI BAKHSH SINGH *v.* RAM DEI. **203 I.C. 641=1942 O.W.N. 738=1942 O.A. 598=A.I.R. 1943 Oudh 132.**

——Ss. 19 (2) 24, 25 and 26—*Powers of Sub-Divisional Officer to sell—If limited to properties included in list sent by special Judge under S. 19 (2).*

The powers of the Sub-Divisional Officer to sell, attach, mortgage or transfer in any other way under Ch. 5 of the Encumbered Estates Act are confined to property included by the special Judge in the ist sent by him under S. 19 (2) of the Act. Where a property is not so included in such list it is not liable to be proceeded with in those proceedings. (*Sathe, J. M.*) DHANPAT RAI *v.* KALI BUX SINGH. **1942 A.W.R. (Rev.) 227 (2)=1942 O.A. (Supp.) 253 (2)=1942 O.W.N. (B.R.) 369 (1)=1942 R.D. 458 (1).**

——S. 20-A—*Mandatory nature of—Amendment, if can be ordered even after sale of property in question under Regulation of Sales Act.*

Under S. 20-A of the Encumbered Estates Act as inserted by the Amendment Act it is mandatory on a Court to allow an amendment if the latter was dismissed for some defect in accordance with sub-S. (5) of S. 4. The fact that the property of the debtor has in the meanwhile been sold to the creditor cannot affect the question. It will be time enough for the creditor to raise it before the special Judge when the case goes to him. (*Sathe, A.M.*) UTTAM SINGH *v.* HAR BAKSH SINGH. **1941 A.W.R. (Rev.) 1120=1941 O.A. (Supp.) 924.**

——S. 20-A (iv)—*Redetermination—Right to claim—Prior express claim for inclusion of interest as principal and its rejection, if necessary—Presumption where no reason is given for its exclusion.*

It is very doubtful whether Cl. (*iv*) of S. 20-A of the U. P. Encumbered Estates Act was intended by the

legislature to mean that its provisions could not be invoked unless a claim for the inclusion of interest as principal has been made and rejected for one of the reasons given in it. Where the reason for such exclusion is not expressly stated the Court is entitled to presume that it was one of the reasons given in Cl. (*iv*). (*Bennett and Ghulam Hasan, JJ.*) RAJENDRA BAHADUR SINGH *v.* DALIP SINGH. 200 I C. 448= 1942 O.A. 250= 1942 A.W R (C C.) 229=1942 R.D. 541=1942 O.W.N. 328=15 R.O. 1=A.I.R. 1942 Oudh 381.

——Ss. 22 and 24—*Deposit in cash—Time limit of two months—If a period of limitation—Deposit even after order for sale under S* 24, *if can be made.*

It is open to the debtor applicants to pay up in cash whatever they can for the liquidation of their debts at any time up to the declaration of the final award. The period of 2 months prescribed by S. 22 of the Encumbered Estates Act is not a legal limitation after the expiry of which the right of the debtor applicants to pay up in cash is lost for ever. It is a minimum limit prescribed in favour of the debtor and not a maximum limit which cannot be exceeded. An application for depositing cash is entertainable even after an order for sale under S. 24 of the Act has been made and had become final. (*Shirreff, S.M. and Sathe J M.*) MOTILAL *v.* BISHAN SARUP. 1942 O A. (Supp.) 505=1942 O. W.N. (B R.) 747=1942 A.W.R. (Rev.) 479.

——S. 22—*Extension of time allowed by—Powers of Court.*

There is no provision either in the U. P. Encumbered Estates Act or the rules made thereunder specifically permitting the Court to extend the period of two months allowed by S. 22 of the Act. But the Court has always inherent power to grant extensions of time (*Sathe, J. M.*) KASHI NATH *v* MADAN GOPAL KHANNA. 1942 O.W.N. (B.R.) 156=1942 O.A. (Supp.) 126=1942 R.D. 222=1942 A W.R. (Rev.) 109.

——S. 24—*Cattle shed—If should be released from sale.*

A cattle shed is a necessary adjunct to a residential house for people living in villages and therefore it is reasonable that it should also be released along with the residential house from sale under S. 24 of the U. P. Encumbered Estates Act. (*Shirreff, S M. and Sathe, J.M.*) HOTI LAL *v.* PIRBHU LAL. 1942 O.W.N. (B. R.) 1 (1)=1942 O A. (Supp.) 18 (1)=1942 A.W R. (Rev.) 18 (1)=1942 R.D. 1 (1).

——S. 24—*Duty of S. D. O. in ordering sale of houses—Specific directions—Necessity.*

It is incumbent on the S. D. O. to specify in his orders under S. 24, Encumbered Estates Act, clearly which of the houses included in the list of property sent by the special Judge are in his opinion residential houses and should be exempted from sale. This is not a matter which can be left to the clerk or the Kurk amin. Further if the family of the debtor is very big, more than one house can be exempted. Hence specific directions should be given by the S. D O. in his order. (*Shirreff, S M. and Sathe, J.M.*) JAGARNATH RAM *v.* DIN MOHAMMED MIAN. 1942 O.A. (Supp) 296 =1942 R.D. 570=1942 A.W.R. (Rev.) 270=1942 O.W.N. (B.R.) 453.

——S. 24—*Estimate of value of house to be sold—Absence of agreement as to—Proper way of stating it in the proclamation.*

Any estimate of the value of a house to be sold under S. 24 of the U. P. Enc. Estates Act, must necessarily be vague. When there is a wide difference between the valuation of the amin and that of the party, the proper procedure would be for the sale proclamation to include both the amin's estimate as well as the party's estimate. (*Shirreff, S M. and Sathe, J.M.*) SHANTI PRASAD SETH *v.* BRIJ BEHARI LAL. 1942 R.D. 287=1942 O W N. (B.R) 221=1942 A.W.R. (Rev) 255 (1)= 1942 O.A. (Supp.) 281 (1).

——S. 24—*Exemption from sale—Absence of* mardana *rooms in residential house not proved—Chaupal not shown to be adjacent, if can be exempted.*

Where there was no evidence to show that there were no *mardana* rooms in the residential house of the debtor. it was *held* that a chaupal which was not shown to be adjacent to the residential house could not be exempted from sale. (*Sathe, J.M.*) KALICHARAN *v.* CHIRONJILAL. 1942 O.W.N. (B.R.) 742=1942 O.A. (Supp.) 488 (1).

——S. 24 and C. P. Code (1908), S. 60 (1) (b)—*Exemption from sale—Boiling pans of a sugar refiner.*

The boiling pans of a sugar refiner are the tools of his trade and must be exempted from sale under S. 60 (1) (*b*), C. P. Code and hence cannot be sold under S. 24. U. P. Encumbered Estates if the debtor belongs to that trade. (*Sathe, J.M. and Ross, A.M.*) NEWASI LAL *v.* MST. KATORI. 1942 O.A. (Supp) 496 (2)=1942 O. W.N. (B.R) 743=1942 A.W.R. (Rev.) 470 (2).

——S. 24—*Exemption from sale—Nashishtgah adjoining residential house.*

A Nashishtgah adjoining the residential house of a debtor which was an essential requirement according to the status of the debtor concerned was *held* to be entitled to exemption from sale under S. 24 of the Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J.M.*) SHANKER SINGH *v.* THE MAHENDRAPAL SINGH. 1942 O.A. (Supp.) 495=1942 O.W.N. (B R.) 722= 1942 A.W.R. (Rev) 469.

——S. 24—*Exemption from sale of right to irrigate from well—Availability.*

Well is immovable property being a fixture attached to the earth and the right to irrigate from it cannot be separated and sold as property other than proprietary rights in land. (*Sathe, J.M. and Ross, A.M.*) DANA KUER *v.* PYRE LAL. 1942 O.A. (Supp.) 471 (2)= 1942 O.W.N. (B.R.) 716 (1)=1942 A.W.R. (Rev.) 445 (2).

——S. 24—*Exemption from sale of trees on debtor's tenancy land—Availability.*

Trees situated on a debtor's tenancy land could not be sold. (*Sathe, J.M. and Ross, A.M.*) DANA KUFR *v.* PYRE LAL. 1942 O A. (Supp) 471 (2)=1942 O.W.N. (B.R)716 (1)=1942 A.W.R. (Rev.) 445 (2)

——S. 24—*Exemption from sale—Patwari having both ancestral residential house and house in his own circle.*

The ancestral residential house of a patwari in his own village is exempted from sale even though he may have a house in the circle in which he is the patwari. The latter cannot become his permanent residence and hence he should be allowed to retain his house in the village to which he belongs. (*Shirreff, S.M. and Sathe, J.M.*) SHYAM SINGH *v.* JHAMAN LAL. 1942 O.A. (Supp.) 493 (1)=1942 O.W.N. (B.R.) 688=1942 A.W.R. (Rev.) 467 (1).

——S. 24—*Exemption from sale—Private redemption thereafter, if can be allowed—Such redemption if a bar to sale under S.* 24.

Redemption of a mortgaged house by payment out of Court after it has been exempted from sale should not be allowed and such a redemption cannot stand in the way of the house being sold. The fact that it was mortgaged shows that it was not necessary for residential purposes. (*Shirreff S.M. and Sathe, J.M.*) SWAMI GOPAL GURHA *v.* GODHAN LAL. 1942 A.W.R. (Rev.) 335

U. P. ENCUM. ESTATES ACT (1934), S. 24.

=1942 O.A. (Supp.) 361=1942 O.W.N. (B.R.) 602 =1942 R.D. 730.

——S. 24—*Exemption from sale—Scattered trees.*

It is against the principles of good management of land to sell scattered trees. Their sale should therefore be avoided especially when they can be valued under S. 2-j (v) and 2-k (v) also. (*Shirreff, S.M. and Sathe, J.M.*) SHANKER SINGH *v.* TH. MAHENDRAPAL SINGH. **1942 O.A. (Supp.) 495=1942 O.W.N. (B.R.) 722= 1942 A.W.R. (Rev.) 469.**

——S. 24 and U.P. Tenancy Act, S. 206 (c) (g)—*Grove in tenancy land, if can be sold under S. 24, Encumbered Estates Act.*

Under S. 206 (*g*) of the U. P. Tenancy Act if a grove is situated in tenancy land the owner of the grove becomes its grove-holder in supersession of all subsisting rights and liabilities. Consequently such a grove is clearly transferable under S. 206 (*c*) and so can be sold under S 24 of the U.P. Encumbered Estates Act. (*Sathe, J.M.*) PARAM SINGH *v.* GANGA PRASAD. **1942 O. W N. (B.R.) 687 (1) =1942 O.A. (Supp.) 487 (2).**

——S. 24—*Nohra—If an adjunct to the house and to be exempt from sale.*

The possession of a Nohra or cattle shed is essential for the needs of the zamindars living in villages and it should be treated as an adjunct to the residential house and should not be sold under S. 24 of the U. P. Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J.M.*) KUNDAN LAL *v.* GAJADHAR. **1942 O.A. (Supp.) 32=1942 A.W.R. (Rev.) 32=1942 O.W. N. (B.R.) 65=1942 R.D. 97.**

——Ss. 24 and 58—*Place of sale—Liquidation proceedings taking place in different district—Procedure to be followed.*

It is certainly desirable that the sale should take place in the district in which the property is situated. But if liquidation proceedings are taking place in a different district then under S. 58 of the Encumbered Estates Act the Board may transfer the proceedings from the Court of that Collector to the desired Court. (*Shirreff, S.M. and Sathe, J.M.*) SAJJALI BEGUM *v.* DWARKA DASS. **1942 R.D. 697=1942 O.W.N. (B.R.) 569=1942 A.W.R. (Rev.) 431=1942 O.A. (Supp.) 457.**

——S. 24—'*Residential house*'—*If includes out-houses and compound.*

A residential house always carries with it out-houses and a compound. The word residential house in S. 24 of the U. P. Encumbered Estates Act should not be interpreted in such a way as to exclude the latter. Hence a *champal* as well as the *Nohra* adjacent to the house of the debtor should be excluded from the sale. (*Shirreff, J.M. and Sathe, A.M.*) CHANDRA BHAN *v.* AJAI SINGH. **1942 O.W.N. (B.R.) 5=1942 O.A. (Supp.) 17 (2)=1942 A.W.R. (Rev.) 17 (2)=1942 R.D. 5.**

——S. 24—*Retention of more than one house, if forbidden.*

S. 24 of the U. P. Encumbered Estates Act does not forbid the retention of more than one house. If there are more families than one to be provided for enough houses should be allowed to be retained for their use. (*Shirreff S.M. and Sathe, J.M.*) LACHMAN SINGH *v.* PEYARE LAL. **1942 O.W.N. (B.R.) 97=1942 O.A. (Supp.) 68 (2)=1942 A.W.R. (Rev.) 62 (2)=1942 R.D. 129.**

——S. 24—*Rights under a lost promissory note in favour of debtor, if can be sold.*

When it is pleaded that a promissory note in favour of a debtor has been lost there is nothing to prevent a sale of the rights under that note in proceedings under the Encumbered Estates Act, (*Shirreff, S.M. and Sathe, J.M.*) BALDEO RAI *v.* SITA RAM RAI. **1942 O.A. (Supp.) 295=1942 R.D. 582=1942 A.W.R. (Rev.) 269=1942 O.W.N. (B.R.) 465.**

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——S. 24—*Sale of half of a house—If possible.*

Where the mortgage was only of half of a house, it was held, that if it was possible to mortgage half of a house it was possible to sell that half alone and to reside in the other and that hence it was no reason for refusing to sell the mortgaged half. (*Shirreff, S.M.*) RAZIA BANO *v.* BABAR ALI. **1942 A.W.R (Rev.) 170 (2)= 1942 O.A. (Supp.) 190 (2)=1942 O.W.N. (B.R.) 203 =1942 R.D 269.**

——S 24 and U. P. Tenancy Act, (1939), Ch. X—*Sale of interest of grove-holder—What passes.*

When a sale is directed under S. 24, U. P. Encumbered Estates Act, of the interest of a grove holder what should be sold is the interest of the grove-holder in the grove as contemplated in Ch. X of the U. P. Tenancy Act and not merely the right to collect fruits. (*Shirreff, S. M. and Sathe, J. M.*) RAM CHAND *v.* HANUMAN DASS. **1942 O.A. (Supp.) 491 (1)=1942 O.W.N. (B.R.) 711=1942 A.W.R. (Rev.) 465 (1).**

——S. 24—*Scattered trees on protected land—If can be sold under S. 24.*

Sattered trees can be sold under Oudh Settled Estates Act and so can also be sold in proceedings under S. 24 of the Encumbered Estates Act even though they may stand on protected land. (*Sathe, J. M.*) RAM PHER DUBE *v.* RAM NATH SINGH. **1942 O.W.N. (B.R.) 373=1942 R.D. 462=1942 O.A. (Supp.) 241=1942 A.W.R. (Rev.) 215.**

——S. 24—*Well—Exemption from sale—Question of easement being involved—Procedure.*

A well is not entitled to any exemption from sale either under S. 60, C. P. Code, or S. 24 of the Encumbered Estates Act. Where a question of easement is involved, it cannot be gone into in the Encumbered Estates Act proceedings, but if a purchaser could be found who is willing to buy the well subject to any right of easement that the debtor might be entitled to, there is no reason why it should not be sold under S. 24. (*Sathe, J.M.*) ANOKHEY LAL *v.* BABU RAM. **1942 O.A. (Supp.) 471 (1)=1942 O.W.N. (B.R.) 697=1942 A.W.R (Rev.) 445 (1).**

——S. 24—*What could be sold under—Grove—Scattered trees.*

A grove-holder's right in the grove can be sold under S. 24 of the U.P. Encumbered Estates Act but scattered trees could only be valued under S. 2 (j) (v) and 2 (k) (v) and cannot be sold under S. 24. (*Shirreff, S.M. and Sathe, J.M.*) DHYAN SINGH *v.* RAM DEO. **1942 O.A. (Supp.) 492 (1)=1942 O.W.N. (B.R.) 703 (2) =1942 A.W.R. (Rev.) 466 (1).**

——S. 24, proviso, 2—*Liability to sale—House mortgaged to creditor but without possession.*

Where a house is mortgaged to the creditor but without possession, it is liable to sale under the second proviso to S. 24 U. P. Encumbered Estates Act. (*Shirreff, S.M. and Sathe, J.M.*) CHHATAR *v* THAKUR SINGH. **1942 R.D. 351 (2)=1942 A.W.R (Rev.) 253 (1)=1942 O.A. (Supp.) 279 (1)=1942 O.W.N. (B.R.) 262 (2).**

——S. 24, Provisos second and third—*Scope of exemption of residential house.*

Under the second proviso to S. 24 of the Encumbered Estates Act the residential house is to be left to the debtor if it is free from any mortgage. This, of course, must be read with the third proviso, under which, if the debt can be liquidated under S. 27, the Collector shall not sell any property to the sale of which the debtor has objected. Where the debts amounted to about Rs. 8,000

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and the instalment value of the debtor's proprietary rights in the land had been calculated at only Rs. 1,187 and there was no possibility of the debt being liquidated under S. 27 of the Act, it was held that a residential house subject to a simple mortgage was liable to sale under the Encumbered Estates Act. (*Shirreff, J. M.*) SARJU NARAIN *v.* DEODATT. **1942 R.D. 361=1942 O.W.N. (B.R.) 272=1942 A.W.R. (Rev.) 256 (2)=1942 O.A. (Supp) 282 (2).**

——**S. 24, proviso 2**—*One of the debtors living in separate house away from the rest—Exemption from sale.*

Where one of the debtors being not closely related to the others lives separately in a different house apart from the rest, his residence also is exempt from sale. (*Shirreff, S.M. and Sathe, J.M.*) RAHIM ALI KHAN *v.* MUTSADDI LAL. **1942 O.W.N. (B.R.) 165 (2)=1942 R.D. 231 (2)=1942 A.W.R. (Rev.) 148 (1)=1942 O.A. (Supp.) 168 (1).**

——**S. 24, Proviso 11**—*Scope of exemption under—If in addition to those provided by S. 60, C. P. Code.*

S. 24, United Provinces Encumbered Estates Act, nowhere lays down that no property mentioned in the list sent by the Special Judge shall be exempt from sale except to the extent mentioned in the second proviso to S. 24 (1). The exemption given by this proviso is in addition to any exemptions to which the debtor applicant may be entitled under S. 60, C. P. Code, like any other Judgment-debtor. Hence where the mortgaged property mainly consists of *sir* only the debtor applicant would be an agriculturist within the meaning of S. 60, C. P. Code and he would be entitled to exemption from sale of his bullocks though the list sent by Special Judge includes them as being liable to sale and attachment. (*Sathe, J.M.*) GOKAL CHAND *v.* JAISI. **1942 A.W.R. (Rev.) 366 (2)=1942 O.W.N. (B.R.) 492=1942 O.A. (Supp.) 392 (2).**

——**S. 24, Proviso 11, Cl. (b) and Encumbered Estates Act Rules, R. 33**—*Exemption of mortgaged residential house from sale—Extinguishment of mortgage under S. 18—Such mortgages if included in mortgages referred to in S. 24.*

A residential house which had been mortgaged by the debtor cannot be claimed to be exempt from sale because the mortgagee creditor has obtained a simple money decree and the mortgage has been extinguished under S. 18 of the United Provinces Encumbered Estates Act and the house is thereby free from the mortgage. The reference to mortgages in S. 24 of the Act and in R. 33 of the Rules under the Encumbered Estates Act must include such mortgages. (*Shirreff, S.M.*) TARA CHAND *v.* SHIB PRASAD. **1942 R.D. 593=1942 A.W.R. (Rev.) 307=1942 O.A. (Supp.) 333=1942 O.W.N. (B.R.) 476.**

——**S. 24 (1), Proviso**—*Mandatory nature of S. 24 (1)—If can be avoided by resort to the proviso.*

According to Sl. 24 (1) of the United Provinces Encumbered Estates Act it is mandatory on the Collector to sell non-landed property first before touching landed property for the purposes of liquidation and it is not open to him to go against the mandatory provision simply on the strength of the proviso to S. 24 (1). (*Shirreff, J.M. and Sathe, A.M.*) RAJ DEVI *v.* LAKSHMI NARAIN. **1941 O.A. (Supp.) 929=1941 A.W.R. (Rev.) 1160.**

——**S. 24 (1), Proviso 2 (b)**—*Exemption from sale of mortgaged house—Availability.*

Where a house is mortgaged it is not possible under proviso 2 (*b*) of S. 24 (1) of the Encumbered Estates Act to exempt it from sale. (*Sathe, J.M. and Ross, A.*

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M.) DANA KUER *v.* PYRE LAL. **1942 O.A. (Supp.) 471 (2)=1942 O.W.N. (B.R.) 716 (1)=1942 A.W.R. (Rev.) 445 (2).**

——**S. 24 (1), Proviso 2 (b)**—*Exemption from sale of mortgaged house—Availability.*

Where houses are mortgaged, under proviso 2 (*b*) of Sec. 24 (1) of the U. P Encumbered Estates Act none of them can be exempted from sale. (*Sathe, S.M.*) NANNI DEVI *v.* BHOODAR DASS. **1942 O.A (Supp.) 472 (1)=1942 O.W.N. (B.R.) 716 (2)=1942 A.W.R. (Rev.) 446 (1).**

——**S. 25 and United Provinces Encumbered Estates Act Rules, R. 76**—*Application for mortgage—Stage up to which can be filed—Rejection of one, if bars a fresh modified one.*

An application for a mortgage under S. 25, Encumbered Estates Act, can be filed at any time up to the declaration of the final award and the fact that one application has been rejected will not bar another modified application as could be seen from R. 76 of the U. P. Encumbered Estates Act Rules. (*Sathe, J.M.*) BUDH SEN *v.* MADHO SINGH. **1942 O.A. (Supp.) 491 (2)=1942 O.W.N. (B.R.) 712=1942 A.W.R. (Rev.) 465 (2).**

——**S. 25**—*Conditions to be agreed to by applicant for mortgage.*

The provisions of S. 25 of the U. P. Encumbered Estates Act clearly lays down that a mortgage shall not be granted unless the applicant for it agrees to pay the amount still due from the debtor's applicants. If he is unwilling to do this the mortgage cannot be granted. (*Sathe, J.M.*) RAM LAL *v.* SHAITAN SINGH. **1942 O.A. (Supp.) 473 (2)=1942 O.W.N. (B.R.) 687 (2)=1942 A.W.R. (Rev.) 447 (2).**

——**S. 25**—*Conditions to be satisfied by creditor wishing to take mortgage.*

If a creditor wishes to take a mortgage, he has to comply with the provisions of S. 25 Encumbered Estates Act and must pay of all the claims of the other debtors besides also setting off his own claim as a consideration for the mortgage. It cannot be contended that where the other creditors are not likely to get anything, whatever mode of liquidation is adopted, then the payment of their debts should not be insisted upon. Such a contention is entirely against the provisions of S.25. (*Shirreff, S.M. and Sathe, J.M.*) KIRPAL SINGH *v.* AMIR SINGH. **1942 O.A. (Supp.) 496 (1)=1942 O.W.N. (B.R.) 741=1942 A.W.R. (Rev.) 470 (1).**

——**S. 25 and Rr. 70 and 75**—*Details to be specified by Sub-Divisional Officer when granting mortgage.*

Rr. 70 and 75 of the U. P. Encumbered Estates Act Rules require the Sub-Divisional Officer when he grants a mortgage to specify the date from which the mortgage is to begin, the period for which it is to last and the amount of the debt in lieu of which it has been given (*Shirreff, S.M. and Sathe, J.M.*) HAR SUKH *v.* BHAGIRATH. **1942 O.W.N. (B.R.) 720 (2)=1942 O.A. (Supp.) 490 (2).**

——**S. 25 and United Provinces Debt Redemption Act, Rules under R. 11 (4)**—*Granting mortgage of debtor's property under S. 25—Consultation as to wishes of parties—Desirability.*

R. 11 (4) of the rules framed under United Provinces Debt Redemption Act provide that the Collector shall consult the wishes of the parties and in particular of the judgment-debtor in regard to the period of the mortgage and the area to be covered by it and how their interests would be best served. Though there is no corresponding rule under the Encumbered Estates Act the principle underlying the above rule should be followed where mortgages are granted under S. 25 of that Act. (*Shir-*

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reff, S. M.) MAHESH BUX SINGH *v.* RAJENDRA SINGH. **1942 R D. 425=1942 O.W N. (B.R.) 336=1942 A.W.R. (Rev) 265 (2)=1942 O.A. (Supp.) 291 (2).**

——**S. 25**—*Mortgage in favour of creditor of protected property—If can be given.*

The debtor's protected property can be given in mortgage to a creditor, if he wants it.

Per *Sathe, J. M.*—Such a mortgage will terminate on the death of the proprietor irrespective of the period for which it might have been sanctioned by the Collector. (*Shirreff, S. M. and Sathe, J. M.*) RAM PRASAD *v.* DALAL SINGH. **1942 O A. (Supp.) 474 (2)=1942 O.W.N. (B.R.) 724=1942 A.W.R. (Rev.) 448 (2).**

——**S. 25**—*Mortgage—Stage at which can be sanctioned.*

A mortgage under S. 25 can be sanctioned at any time before the liquidation award is finally declared. (*Shirreff S.M. and Sathe, J.M.*). SITA RAM *v.* MUNNA SINGH. **1942 A.W.R. (Rev.) 374=1942 O.A. (Supp.) 400=1942 O.W.N. (B.R.) 592=1942 R.D 720.**

——**S. 25**—*Mortgage—Stage up to which can be granted.*

A mortgage can be granted under S. 25, Encumbered Estates Act at any time up to the declaration of the final award. (*Sathe, J.M.*) MAUJI RAM *v.* ZAHAR SINGH. **1942 O.A. (Supp.) 504 (2)=1942 O.W.N. (B.R.) 753=1942 A.W.R. (Rev.) 478 (2).**

——**S. 25**—*Mortgage under—Stage up to which can be granted.*

A mortgage can be given under S. 25 at any time before the award is declared final. An award is not final unless there has been a preliminary award and time is given to the parties for objection. Where no such preliminary award was made but a final award was declared it was *held* that it was not a final award and that a mortgage granted even after the date of the so-called final award was valid. (*Shirreff, S.M.*) MAHOMED SALAR *v* LACHHMAN DASS. **1942 O.A. (Supp.) 490 (1)=1942 O.W.N. (B.R.) 656.**

——**Ss. 25, 27 and 28**—*Right to apply for mortgage—Time limit, if any—If barred after proceedings under S. 27 are started.*

No time limit has been fixed for the filing of an application for a mortgage under S. 25 of the U. P. Encumbered Estates Act. A request for a mortgage can be entertained at any time before the final liquidation award is declared. There is nothing either in the Act or in the rules framed under the Act suggesting that once proceedings have started under S. 27 or S. 28 of the Act, no request for mortgage can be entertained. (*Sathe, J.M.*) JAGDISH BUX SINGH *v.* RANI INDER KUER. **1942 O.W.N. (B.R.) 647=1942 O.A. (Supp.) 467=1942 A.W.R. (Rev.) 441 (2).**

——**S. 25 and Encumbered Estates Act Rules, R. 43 (iii)**—*Scope of R. 43 (iii)—Protected land, if cannot be mortgaged at all.*

R. 43 (*iii*) of the U. P. Encumbered Estates Act Rules merely explains the point that if there is only protected property, no property can be transferred to the creditors and that there will only be an order for the debtor to pay the instalment value of his proprietary rights in protected land. The rule cannot be taken as laying down that protected property will in no case be transferred to the creditors. Apart from this R. 43 does not come into play until after the decision has been taken whether a mortgage under S. 25 of the Act should be granted or not. There is nothing to bar protected property under the U. P. Encumbered Estates Act being mortgaged during the lifetime of the owner. (*Shirreff, S.M. and Sathe, J.M.*) TEWARI BHAGWANDIN *v.* JUGAL KISHORE. **1942 R.D. 583=1942 A.W.R. (Rev.) 320 (2)=1942 O.A. (Supp.) 346 (2)=1942 O.W.N. (B.R.) 466.**

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——**Ss. 25 and 28 (2) and R. 43 (iii)**—*Scope and effect of Rule 43 (iii)—Mortgage of protected land if barred.*

R. 43 (iii) only explains the procedure to be followed under Cl. (2) of S. 28 of the Act and that is, that if there is only protected property no property will be transferred to the creditors, but there will only be an order for the debtor to pay the instalment value of his proprietary rights in protected land. The rule cannot be taken as laying down that protected property will in no case be transferred to the creditors. That rule comes into operation only after a decision as to whether the mortgage under S. 25 should be granted or not has been taken. There is nothing to bar the property protected under the Encumbered Estates Act being mortgaged during the lifetime of the owner. (*Shirreff, S. M. and Sathe, J.M.*) PANNA LAL *v.* GANGA PRASAD. **1942 O.W.N. (B.R.) 547 (2).**

——**S. 25**—*Who can apply for mortgages.*

S. 25 contemplates that any person may apply for a mortgage whether he be a creditor or an outsider altogether. The law does not restrict applications for mortgages only to applications filed by all the creditors together. (*Shirreff, S.M. and Sathe, J.M.*) SITA RAM *v.* MUNNA SINGH. **1942 A W.R. (Rev.) 374=1942 O.A. (Supp.) 400=1942 O.W.N. (B.R.) 592=1942 R.D. 720.**

——**S. 25**—*Who can apply for mortgage under—Condition to be complied with.*

S. 25 of the U. P. Encumbered Estates Act does not require that all the creditors must join in taking a mortgage. The applicant for mortgage need not be a creditor at all. The only condition laid down in the section is that the applicant must be prepared to pay off the whole of the amount still due from the debtor applicant. BUDH SEN *v.* MADHO SINGH. **1942 O.A. (Supp.) 491 (2)=1942 O.W.N. (B.R.) 712=1942 A.W.R. (Rev.) 465 (2).**

—— **S. 26, R. 21, Note**—*Applicability of Note to R. 21—Transferable and permanent assignment of land revenue.*

Note to R. 21 relates to revenue free property and it cannot apply where the property concerned is a transferable and permanent assignment of land revenue, because it cannot be described as revenue free property. (*Harper, S.M. and Shirreff, J.M.*) AKBAR HUSAIN *v.* BALABH DAS. **1941 O.A. (Supp.) 964 (2)=1941 A.W.R. (Rev.) 1216 (2).**

—— **S. 26 and R. 27 (iii)**—*Fixing of transfer value—Property involved, a transferable and permanent assignation of land revenue—Standard transfer multiple, if should be increased.*

In the case of a transferable and permanent assignation of land revenue, in fixing the transfer value, the standard transfer multiple should be increased as provided in R. 27 (*iii*) (*Harper, S.M. and Shirreff, J. M.*) AKBAR HUSAIN *v.* BALABH DAS. **1941 O.A. (Supp.) 964 (2)=1941 A.W.R (Rev.) 1216 (2).**

——**S 26**—*Instalment value to be determined under—Nature of—When to be made—Proprietary rights in land if includes sites built on in the city.*

The instalment value to be determined under S. 26 of the U. P. Encumbered Estates Act is the instalment value of the debtor's proprietary rights in land. The occasion for its determination does not arise unless the sum realised under Ss. 23 and 24 is insufficient to liquidate the debt. Land on which houses are built in the city

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would not come within the meaning of the words 'proprietary rights in land'. Land, in the Encumbered Estates Act, has the special meaning of a share or of an interest in a mahal. (*Shirreff, S.M. and Sathe, J.M.*) SAJJALI BEGUM *v.* DWARKA DASS. **1942 R.D. 697 = 1942 O.W.N. (B.R.) 569 = 1942 A.W.R. (Rev.) 431 = 1942 O.A (Supp.) 457.**

——**S. 26**—*Objection as to inclusion of mortgagee rights in debtor's property—Proper stage to raise—Raising after final award, when justified.*

Though the proper stage at which an objection as to the inclusion of mortgagee rights in the debtor's property has to be raised is when the valuation statements are under consideration under S. 26 of the U. P. Encumbered Estates Act, yet it is open to a party to raise such an objection against the final award itself provided it had not been raised and disallowed at any earlier stage of the proceedings. (*Shirreff, S.M and Sathe, J.M.*) SHRI LAL *v.* HARPAL SINGH. **1942 O.A. (Supp.) 474 (1) = 1942 O.W.N. (B.R.) 694 = 1942 A.W.R. (Rev.) 448 (1)**

——**Ss. 27 and 30**—*Repayment period—Extension to maximum period allowable—Justifying circumstances—Creditor, if affected.*

The period of repayment may be fixed at 20 years, the maximum allowable under the law, where the debtor is a widow with minor children to be educated. The alteration in the period of repayment does not affect the creditor who will be given Government bonds for the full amount due to him. (*Shirreff, S.M. and Sathe, J.M.*) FAZLUNNISA *v.* RAM LAKHAN LAL. **1942 O. A. (Supp.) 468 (1) = 1942 O.W.N. (B.R.) 692 = 1942 A.W.R. (Rev.) 442 (1).**

——**Ss. 28 and 45**—*Hearing of appeal against interlocutory order after final award had become absolute—Competency.*

The hearing of an appeal against an interlocutory order in liquidation proceedings after the final liquidation award has been made and has become absolute (not having been appealed against) would be infructuous. As the final award has become absolute any consideration of an objection against a previous interlocutory order would be of no avail. (*Sathe, J.M.*) HAZARI LAL *v.* KHARAG JEET. **1942 O.A. (Supp.) 470 (2) = 1942 O.W.N. (B.R.) 703 (1) = 1942 A.W.R. (Rev.) 444 (2).**

——**Ss 31 and 25 and United Provinces Estates Act S. 32**—*Limit placed by S. 32, U. P. Est. Act, if applies to proceedings under U. P. Enc. Est. Act.*

The limit placed by S. 32 of the U. P. Est. Act on sale of proprietary interest cannot refer to proceedings under U. P. Enc. Est. Act, for the latter Act does not contemplate sale of proprietary rights in land by a Court in execution of a decree. The method of dealing with protected and unprotected land when a mortgage has not been given under S. 25 is dealt with in S. 31 of the Enc. Est. Act and that section does not contemplate any kind of transfer of protected land. (*Shirreff, S. M. and Sathe J.M.*) SWAMI GOPAL GURHA *v.* GODHAN LAL. **1942 A.W.R. (Rev.) 335 = 1942 O.A. (Supp) 361 = 1942 O.W.N. (B.R.) 602 = 1942 R.D. 730.**

——**S. 35**—*Applicability—Property given in lieu of interest—Delivery of, if can be resisted.*

S. 35 of the U, P. Encumbered Estates Act covers even cases where property is given to the creditor only in lieu of interest and not usufructuarily mortgaged. If the loan for the interest of which the plot was given to the creditor is the very loan on which a decree has been passed in his favour against the debtor, then the creditor cannot claim to retain the plot in lieu of interest. It must be delivered to the debtor. (*Sathe, J.M.*) SHAMBU

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NARAIN RAI *v.* SHEO PUJAN RAI. **1942 O.W.N. (B.R.) 201 = 1942 R.D. 267 = 1942 A.W.R. (Rev.) 251 (2) = 1942 O.A. (Supp.) 277 (2).**

——**Ss. 35 and 18**—*Application by one of the mortgagors—Decree against him alone—Application under S. 35—What could be given.*

Where only one of the mortgagors apply under S. 4 of the Act and a decree is passed against him only, the rights of the mortgagee are extinguished against him only to the extent of his share and are not extinguished against the other against whom no money decree has been passed. Where there is no division of shares between the two mortgagors, the applicant mortgagor is under S. 35 of the Act entitled only to symbolical possession over his share of the proprietary rights. (*Shirreff, J.M. and Sathe, A.M.*) CHANDRA PRAKASH *v.* ABDUL MAJID KHAN **1941 O.A. (Supp.) 948 = 1941 A.W.R. (Rev.) 1197.**

——**S. 35**—*Application under—Mortgagee whose debt was not included in the list of debts and was not adjudicated upon, if can object to delivery.*

In an application under S. 35, by the debtor for delivery of possession, a mortgagee whose debt was not included in the list of debts by the debtor and who had not appeared before the special Judge and whose claim was not adjudicated upon cannot object to the delivery of possession of property covered by the mortgage. (*Sathe, A.M.*) BAKHTAWARI *v.* BAKHTAWAR. **1941 R.D. 1108 = 1941 O.A. (Supp.) 926 = 1941 A.W.R. (Rev.) 1157.**

——**S. 35**—*Bar to obtaining possession—Property not mentioned in list—Decree putting an end to mortgagee rights.*

The fact that the list accompanying the decree does not show a particular item of property is not an absolute bar to possession being given to the debtor of that property where the decree states that the mortgagee rights under the mortgage deed relating to that property shall come to an end. (*Shirreff, S. M. and Sathe, J. M*) TAJAMMUL HUSAIN *v.* HEMCHANDRA MUKHERJI. **1942 O.W.N. (B.R.) 118 = 1942 O.A. (Supp.) 49 = 1942 A.W.R. (Rev.) 49 = 1942 R.D. 150**

——**S. 35**—*Decree against father alone for his share of debt—Sons made parties and whole property shown in the written statement—Delivery of possession of whole property—If can be ordered—Remedy of sons.*

Where, though all the sons were added as parties on the request of the creditor and the entire property of the father and sons was shown in the father's written statement, the special Judge passes a decree against the father alone for his share of the debt, then delivery of possession can only be for his share. The sons, if they want delivery for their shares, should first make the special Judge pass a decree against them for their shares of the debt. (*Sathe, A.M.*) BANWARI *v.* PARTAP SINGH. **1941 O.A. (Supp.) 911 = 1941 A.W.R. (Rev.) 1130.**

—— **S. 35**—Delivery of possession—Objection by mortgagee whose claim has been discharged under S. 13 —Competency. *See* U. P. ENCUMBERED ESTATES ACT, SS. 13 AND 35. **1942 O.W.N (B R.) 42 (2).**

——**S. 35**—*Delivery of possession under—Objection on the ground that it was not included in application under S. 4—If open at that stage.*

An objection to the delivery of possession on the ground that neither the property nor debt for which it was mortgaged was disclosed in the original application under S. 4 of the U. P. Encumbered Estates Act is not open to a creditor at that stage and it has no force in view of S. 13 of the Act. The creditor's remedy was to have applied under the proviso newly added below S. 11

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(2) of Encumbered Estates Act by the amending Act. (*Sathe, J.M.*) RAM SAKOOP *v.* TURSI RAM. **1942 O.W.N. (B.R.) 6=1942 O.A. (Supp.) 18 (2)=1942 A.W.R. (Rev.) 18 (2)=1942 R.D. 6.**

——**S. 35**—*Mortgaged property allotted to mortgagee at partition—Mortgagor if can ask for its transfer.*

Where at a partition property mortgaged to a co-sharer by another co-sharer is allotted in full proprietary rights, he is entitled to so hold it. The mortgagor having lost all rights over it cannot seek to obtain a transfer of them under S. 35 of the U. P. Encumbered Estates Act simply because of a decree passed in his favour by Special Judge in Encumbered Estates Act proceedings. (*Shirreff, S.M and Sathe, J.M.*) RAM SUMIRAN TEWARI *v.* HIRA TEWARI. **1942 R.D. 729 =1942 O.A. (Supp.) 405=1942 O.W.N. (B.R.) 601=1942 A.W.R. (Rev.) 379.**

——**S. 35**—*Mortgage of joint* sir—*Death of one of the proprietors after a joint application under S. 4 of the Act—Impleading of others as his heirs—Subsequent compromise decree by the special Judge affecting only share of surviving applicants—Construction and effect.*

Where two sets of proprietors of joint *sir* plots mortgaged them jointly and later on applied under S.4 of the U. P. Encumbered Estates Act and one of them died the others were substituted as the heirs of the deceased person. On a dispute as to whether the share of the deceased proprietor had already been sold or not the matter was compromised and a consent decree was passed by special Judge against the surviving debtor applicants for their shares of the mortgaged debt only. When those debtors sought to obtain possession of the entire *sir* originally mortgaged it was *held* that the special Judge's decree must be held to mean that the deceased debtor had no more share left at the time of the decree which could pass on to the survivors and that since the latter had no right in that share they had also no liabilities and that hence the survivors were only entitled to symbolical possession over their share in the *sir* plots which were jointly mortgaged by them and the deceased. (*Shirreff, S. M. and Sathe, J. M.*) NAGESHAR RAI *v.* GUCHANI. **1942 R.D. 341=1942 O.W.N. (B.R.) 252=1942 A.W.R. (Rev.) 260=1942 O.A. (Supp.) 286.**

——**S. 35**—*Mortgagee pleading tenancy rights—Presumption from entry as to tenancy rights in the year prior to mortgage.*

When in an application under S. 35 of the U. P. Tenancy Act the mortgagee pleads that he had tenancy rights in the plots in question before he became a mortgagee of them and the entries in the papers show him as sub-tenant in the year prior to the mortgage, it is not an unreasonable inference to draw that he continued to be a sub-tenant in the year of the mortgage. The mortgagor can only get proprietary possession over those plots. (*Shirreff, J.M. and Sathe, A.M.*) RAM NARASH SINGH *v.* SAMPAT KURMI. **1941 A.W.R. Rev.) 1124 (1) = 1941 O.A. (Supp.) 905 (1).**

——**S. 35**—*Nature of proceedings under the Act—Necessity of notice to parties—Objection against mistake in delivery of possession—Orders without notice to the other side—Legality.*

Proceedings under the Encumbered Estates Act are judicial proceedings and orders should be passed on them only after giving due notice to all the parties concerned. Hence where in a case symbolical possession was ordered but the Kurk amin gave actual possession and objection is filed against it, orders on such objection could not be passed without giving notice to the other party. (*Sathe, J.M.*) PRAYAG SAINTEWAR *v.* GAJ

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LAL. **1942 O.A. (Supp.) 402=1942 A.W.R. (Rev.) 376=1942 O.W.N. (B.R.) 627.**

——**S. 35**—*Nature of proceedings under—Question of title, how affected by delivery of possession.*

Proceedings under S. 35 of the U. P. Encumbered Estates Act are summary proceedings and do not settle question of title finally. Hence it is open to a tenant who has been dispossessed by an order under S. 35 to file a suit for declaration of his rights as a tenant. (*Shirreff, S.M. and Sathe, J.M.*) RAM JATAN RAM *v.* BHAGWAN PRASAD. **1942 A.W.R. (Rev.) 428=1942 O.A. (Supp.) 454=1942 O.W.N. (B.R.) 625.**

——**S. 35**—*Orders under— Pendency of appeals against orders of special Judge—Proper procedure.*

Where appeals are filed against the orders of the special Judge to the District Judge and High Court if the debtor applies under S. 35, it is futile to pass orders dependent on the varying fortunes of the appeals. The S. D. O. should delay the transfer of possession on the ground of the pendency of the appeals even in the very first instance. (*Sathe, J.M.*) RAM DAYAL *v.* SADHOO RAM. **1942 O.A. (Supp.) 68 (1)=1942 A.W.R. (Rev.) 62 (1)=1942 O.W.N. (B.R.) 138=1942 R.D. 204.**

——**S. 35**—*Proceedings under—Proper stage.*

Proceedings under S.35, United Provinces Encumbered Estates Act, can start only after the decrees are sent by the Special Judge to the Collector under S.19 of the Act. Any order as to restoration of possession at any earlier stage is premature. (*Shirreff, S.M. and Sathe, J.M.*) BINDESHWARI SHUKUL *v.* JHALAR. **1942 A.W.R. (Rev.) 354 (1)=1942 O.A. (Supp.) 380 (1)=1942 O.W.N. (B.R.) 584 (2)=1942 R.D. 712 (2).**

——**S. 35**—*Proprietary rights delivered—Second application in respect of land—Competency.*

Where on application under S. 35, proprietary rights are delivered to the debtor, a second application under S. 35 for the delivery of possession of a shop alleged to have been built by the mortgagee is quite competent. A civil suit is not required for this purpose when there is S. 35 specially enacted for the benefit of debtors. (*Sathe, A. M.*) JOTA RAM *v.* MAHABIR SINGH. **1941 R.D. 1131=1941 O.A. (Supp.) 936 (1)=1941 A.W.R. (Rev.) 1167 (1).**

——**S. 35**—*Right to get possession under—Applicant, permanent lessee of mortgaged property defaulting to pay off mortgage—Mortgagee though shown as creditor, no decree passed by Special Judge—Effect.*

Where a permanent lessee of mortgaged property defaults to pay off the mortgage as agreed between him and his lessor and applies under the U. P. Encumbered Estates Act and shows the mortgagee as a creditor but the Special Judge feels unable to pass a decree in his favour, the debtor applicant cannot claim to be put in possession under S. 35, U. P. Encumbered Estates Act until the claim of the mortgagee is either decreed or dismissed on merits. The debtor applicant will continue to remain the lessee of the land in dispute subject to the encumbrance of the mortgage. (*Shirreff, S. M. and Sathe, J.M.*) SIDDIQ AHMAD KHAN *v.* KANDHA LAL. **1942 O.A. (Supp.) 463=1942 A.W.R. (Rev.) 437=1942 O.W.N. (B.R.) 677.**

——**S. 35**—*Right to retain cultivatory possession—Facts to be proved—Nature of proceedings made—Rejection of claim—Remedy.*

Before a person can claim to retain cultivatory possession of mortgaged property in an application for delivery of possession of such property under S. 35 of U. P. Encumbered Estates Act, he has to show either that his tenancy started from a date prior to the mortgage or if his tenancy started after the mortgage that it was

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a *bona fide* lease. Proceedings uuder S. 35 are miscellaneous proceedings and do not settle the matters in dispute finally. Hence where a claim to retain cultivatory possession of the mortgaged property is rejected in such proceedings the claimant has still a right to establish his title to the tenancy claimed by him by means of a regular suit. (*Sathe, J. M.*) BISHUN DAYAL *v.* MATHURA. **1942 O.A. (Supp.) 173 (1) = 1942 A.W. R. (Rev.) 153 (1) = 1942 O.W.N. (B.R.) 504.**

——S. 35—*Right to transfer of possession of property given in lieu of interest—Onus—Rights of such transferee.*

If the debtor applicant claims restitution of a plot on the ground that it was transferred only in lieu of interest, the onus is on him to show that it was so transferred where the plot is not specifically mentioned either in the list of property filed by the defendant applicant before the special Judge or in the list of property sent by the special Judge along with the decrees to the Collector under S. 19 of the Encumbered Estates Act, the debtor applicant cannot be given possession of it when the opposite party claims it as his statutory tenancy. A transaction involving a transfer of land in lieu of interest is not identical with a legal mortgage of the same where proprietary rights are transferred. When land is given to a person in lieu of interest without the fixation of any rent on it the transferee becomes its licensee and is liable to ejectment when the debt is repaid. But if a definite rent is fixed on it, then he becomes its tenant and the only effect of the circumstance that the land was given in lieu of interest will be that the rent will be liable to be set-off against the interest due on the debt. (*Shirreff, S. M. and Sathe, J.M.*) SHEODAT *v.* JHINGURI. **1942 O.A. (Supp.) 212 = 1942 O.W.N. (B.R.) 345 = 1942 R.D. 434 = 1942 A.W.R. (Rev.) 192.**

——S. 35—*Subject of transfer of possession—Temple offerings.*

A debtor applicant's share in a temple offerings can be said to be his property and as such can form the subject of transfer of possession under S. 35, U. P. Encumbered Estates Act. His possession over his share of the offerings is not very different from the possession of a co-sharer's in an undivided mahal. (*Sathe, J.M.*) MUL RAM *v.* DURG SINGH. **1942 O. A. (Supp.) 39 (2) = 1942 A. W R. (Rev). 39 (2) = 1942 O.W.N. (B.R.) 64 = 1942 R.D. 96.**

——S. 35—*Time to creditor to file objections and to prove them—Necessity—Orders in a hurry—Propriety.*

A creditor should be given some time at least to file his objections to the delivery to the debtor and to prove them. Orders under S. 35 should not be passed in too great a hurry without giving the creditor such an opportunity. (*Sathe, J.M.*) MASIHUDDIN AHMAD *v.* WAHAJUDDIN HYDER. **1942 R.D. 238 = 1942 O.A. (Supp.) 108 (2) = 1942 O.W.N. (B.R.) 172 = 1942 A. W.R. (Rev.) 95(2).**

——Ss. 35 and 18—*Transfer of possession—If subject to conditions of mortgage..*

Under S. 18 of the U. P. Encumbered Estates Act all the rights arising in a mortgage cease to exist when a simple money decree is passed. Hence the conditions in the mortgage cannot be applied to transfer of possession under S, 35 of the Act. (*Sathe, J.M.*) DALBAHADUR SINGH *v.* RAJA SINGH. **1942 O W N. (B R.) 181 = 1942 R.D. 247 = 1942 A.W.R. (Rev.) 168 (1) = 1942 O.A. (Supp.) 188 (1).**

——S. 35—*Transfer of possession—Notice prior to—Necessity—Absence, if material where knowledge is proved.*

Though the Act does not require it, it is desirable that

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notice should be given before possession is transferred to the debtor under S. 35 of the U.P. Encumbered Estates Act as there may be many grounds on which a debtor's right to possesion under the section can be challenged. But where the creditor has had full knowledge of the proceedings and had even applied for stay long before the actual date of the order, the mere non-service of a notice cannot be urged as a ground for setting aside an order transferring possession. (*Shirreff, S. M. and Sathe, J. M.*) TAJAMMUL HUSAIN *v.* HEMCHANDRA MUKERJI. **1942 O.W.N. (B.R) 118 = 1942 O.A. (Supp.) 49 = 1942 A.W.R. (Rev.) 49 = 1942 R.D. 150.**

——S. 35—*Transfer of possession of property in hands of mortgagee's son—If and when can be had—Heir of mortgagee not added on latter's death* pendente lite—*Effect—Proper procedure to be adopted.*

Where the property is in the possession of the heirs of a mortgagee creditor on the latter's death, it is only if the debtor is entitled to it in one of two ways, *viz.*: (1) by the passing of a money decree against him under S. 18 of the U. P. Encumbered Estates Act and (2) by the wiping out of the creditor's claim completely under S. 13 of the Act that it could be transferred to the debtor. Hence where during the pendency of the application under the Act the mortgagee creditor dies and his heirs are not brought on record, the proceedings abate as against him. After decrees are passed against the rest and forwarded to the Collector, the debtor cannot ask for transfer of possession of the property of the deceased creditor as there is neither a decree under S. 18 nor is the creditor's claim completely wiped out under S. 13 of the Act. In such a matter the proper thing would be to hold that proceedings do not abate on failure to add legal representatives and that it is the duty of Court to compel parties to bring the heirs on record so that the matter might be finally decided for the benefit of both parties. (*Sathe, J.M.*) SHRI GOPAL *v.* CHUNNI LAL. **1942 A.W.R. (Rev.) 71 (2) = 1942 O A. (Supp.) 77 (2) = 1942 O.W.N. (B.R.) 104 = 1942 R.D. 136.**

——S. 35—*Transfer of possession under—No notice to creditors—Objections—Proper disposal.*

Where without giving notice to the creditors there is a transfer of possession under S. 35 of the U. P. Enc. Estates Act, and the creditors raise objections thereafter, it cannot be summarily rejected on the ground that possession had already been delivered. (*Harper, S.M. and Sathe, J.M.*) GANPAT RAI *v.* RAM SARUP **1942 R. D. 306 = 1942 O W.N. (B R) 240 = 1942 A.W.R. (Rev) 248 (1) = 1942 O A. (Supp.) 274 (1)**

——S. 35—*Transfer of possession—Validity—Plot not mortgaged—Mistaken transfer by Kurk Amin—Proper remedy.*

The possession of a plot which is neither mortgaged nor included in the mortgage deed, cannot be transferred under S. 35, U.P. Encumbered Estates Act to the debtor. Where the debtor neither applies for the transfer of such a plot, nor is it included in the list of properties to be transferred but the Kurk Amin nevertheless transfers possession of such a plot the remedy is by an application under O. 21, R 100, C. P. Code, or by separate suit and not by way of a revision or an appeal. (*Shirreff, S.M. and Sathe, J.M.*) JAN ALI KHAN *v.* RAMA DHARE. **1942 O A. (Supp) 376 (1) = 1942 A W R. (Rev) 350 (1) = 1942 O.W.N. (B.R.) 567 = 1942 R.D. 695.**

——S. 45—*Appeal against final award—Objection as to non-inclusion of certain trees in sale under S. 24—If can be raised for the first time.*

Where in the list sent by the Special Judge to the S. D. O. along with the decrees under S, 19

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of Encumbered Estates Act no trees were shown and no application for their inclusion in the sale under S. 24 was made before the award was declared, it is too late to raise an objection on that ground for the first time in an appeal against the final award. (*Sathe J.M.*) SATYANARAIN *v.* MOHD. ZUBAIR. **1942 R D. 713=1942 A.W.R. (Rev.) 390 (1)=1942 O.W.N. (B R.) 585=1942 O.A. (Supp) 416 (1).**

——Ss. 45 and 24—*Appeal against final liquidation award—Re-agitation of objections against preparation of post slump valuation already disposed of and not appealed against.*

Where objections against the preparation of post slump valuation are raised and disposed of but not appealed against they cannot be once again re-agitated in an appeal against the final liquidation award. (*Sathe, J.M.*) RAMCHANDRA *v.* MST. KAMLI. **1942 O.W.N. (B.R.) 701=1942 O.A. (Supp.) 486 (2).**

——S. 45—*Appeal against order for payment of Court-fee as on review—Omission to implead all creditors as parties—Defect, if fatal.*

Where an application to vacate a compromise decree passed in his favour under S. 9 of the U.P. Enc. Estates Act made by a creditor is directed to be treated as an application for review by the Special Judge and proper Court-fee is ordered to be paid thereon and the creditor appeals against such an order, all the creditors who were parties to the application for review should be made parties to the appeal as all of them are interested in the application. Omission to implead some of them is a fatal defect and would entail the dismissal of the appeal. (*Agarwal and Madeley, JJ.*) ABDUL MOEED *v.* LAL AST BUJA PRASAD SINGH. **201 I.C. 111=15 R.O. 53=1942 O A. 204=1942 O.W.N. 268=1942 A.W.R. (C.C.) 192=A.I.R. 1942 Oudh 353.**

——S 45—*Appeal against refusal to transfer possession and appointing receiver—Opposing creditors alone made parties—Effect.*

Where the S. D. O., refuses to transfer possession and decides to appoint a receiver at the instance of some only of the creditors and an appeal is filed by the debtor impleading only the opposing creditors, the appeal though not incompetent, can proceed only in respect of the S. D. O.'s order regarding the appointment of a receiver and his order refusing to transfer possession only so far as the property in possession of the opposing creditors is concerned. (*Shirreff, S. M. and Sathe, J. M.*) ALI HAMMAD *v.* PARBATI. **1942 O.W.N. (B R.) 123=1942 A.W.R. (Rev) 88 (2)=1942 O.A. (Supp) 101 (2)=1942 R.D. 167.**

——Ss. 45 and 11—*Appeal by creditor against decision of objection in favour of objecter—Parties—Competency of appeal in the absence of all the creditors as parties.*

Where an objection has been decided in favour of the objector against the creditors and one of the creditor appeals against it impleading the objector and the applicants as parties, the other creditors cannot be adversely affected by the decision of the appeal and if so need not be joined. If the appeal succeeds they will get the benefit of the success and if it fails their position will remain unaffected. Hence the appeal without adding them as parties is not incompetent. (*Agarwal and Madeley, JJ.*) HAR NARAIN PRASAD *v.* ASHIQ HUSAIN. **17 Luck. 636=199 I.C. 808=14 R.O. 517=1942 O.W.N. 127=1942 O.A. 73=1942 A W.R. (C.C.) 95=1942 R.D. 826=A.I.R. 1942 Oudh 313.**

——S. 45—*Appeal by debtor—Maintainability—Failure to implead all creditors.*

An appeal by the debtor would be maintainable even though all the creditors are not impleaded if the excluded

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creditors would not be prejudiced by reason of the appeal being allowed. (*Agarwal and Madeley, JJ.*) SARWAR SULTAN BEGAM *v.* SHEIK ABDUL HALIM. **202 I. C. 164=14 R.O. 574=1942 O.A. 124=1942 O. W.N. 202=1942 A.W.R. (C.C.) 145=A.I.R. 1942 Oudh 332.**

——S. 45—*Appeal by debtor for reduction of creditor's claim—Maintainability—All creditors not impleaded.*

Where the debtor applicant appeals to get a creditor's claim reduced, it is maintainable even though all the creditors are not added as parties because if he succeeds it cannot possibly do any harm to, but will rather be in the interests of other creditors. (*Agarwal and Madeley, JJ.*) DURGA PRASAD SINGH *v.* SAMSHER BAHADUR SINGH. **201 I.C. 616=15 R.O. 102=1942 O.A. 131=1942 O W.N 205=1942 A W.R. (C.C.) 152=1942 R.D. 539=A.I.R. 1942 Oudh 317.**

——Ss. 45 and 35—*Appeal in respect of plots not objected to before S. D. O.—Competency.*

Where a creditor fails to object before the S. D. O. as regards the transfer of certain plots under S. 35 of U. P. Encumbered Estates Act, he cannot in an appeal against the disallowance of his objections in respect of other plots, raise also objections in respect of the former set of plots. (*Shirreff, S.M. and Sathe, J.M.*) RAM SUMIRAN TEWARI *v.* HIRA TEWARI. **1942 R.D. 729=1942 O.A. (Supp.) 405=1942 O.W.N. (B R.) 601=1942 A.W.R. (Rev.) 379.**

——Ss. 45 and 11—*Appeal— Maintainability—Failure to implead all creditors.*

Appeals by unsuccessful claimants against orders on objections under S. 11 are incompetent if some or all the creditors are not impleaded in cases where they may be affected adversely by the result. (*Bennett and Agarwal, JJ.*) LAKSHMI NARAIN *v.* SATGUR NATH. **199 I.C. 801=14 R.O. 521=1942 O.W.N. 248=1942 O A. 185=1942 A.W.R. (C.C.) 173=A.I.R 1942 Oudh 339.**

——S. 45—Appeal—Parties—Absence of some of the creditors in appeal as parties—If fatal to maintainability of appeal. *See* 1941 Dig., Col. 1175. RAMESHWAR *v.* AJUDHIYA PRASAD. **17 Luck. 175.**

——S. 45—*Appeal—Parties—All creditors not made parties in appeal by applicants under S. 4—Competency of appeal.*

Where in an appeal under S. 45 of the U. P. Encumbered Estates Act by the applicants under S. 4 of the Act the creditors generally would be benefited if the appeal succeeds, it is immaterial whether all the creditors are made parties to the appeal. The appeal is competent even when some of them are not impleaded as parties. (*Bennett and Agarwal, JJ.*) JHAM SINGH *v.* SURAJ BAKSH SINGH. **200 I.C. 325=15 R.O. 15=1942 R.D 533=1942 O.W.N. 355=1942 A.W.R. (C.C.) 228=1942 O.A. 249=A.I.R. 1942 Oudh 389.**

——Ss. 45 and 14—*Appeal under S 45 against order under S. 14—Failure to implead the creditors, if fatal.*

Where on the disallowance of the claim of a creditor under S. 14, U.P. Encumbered Estates Act, an appeal is filed under S. 45 of the Act, all the creditors should be made parties as they are also interested in the appeal. Hence the failure to implead them as parties is fatal to the maintainability of the appeal. (*Agarwal and Madeley, JJ.*) SAUBHAGYAWATI DEVI *v.* DEPUTY COMMISSIONER OF KHERI. **201 I.C. 174=15 R.O. 62=1942 O.W.N. 300=1942 O.A. 217=1942 A.W. R. (C.C.) 205=A.I.R. 1942 Oudh. 397.**

——S. 45—*Appeal under—Some of the creditors not made parties to—Effect.*

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Where in an appeal against a money decree passed in favour of several creditors some of the creditors in whose favour the decree is passed are not made parties, the whole appeal must fail where the relief against those creditors could not be separated from that of the rest. (*Shirreff, S.M and Sathe, J. M.*) NARAIN DUTT *v.* KUNJLAL. 1942 R.D. 486 (1)=1942 O W N. (B.R.) 397 (1)=1942 A.W.R. (Rev.) 277=1942 O.A. (Supp.) 303.

——S. 45 and Limitation Act (1908) S. 5—*Application after limitation to add creditors left but in an appeal under S. 45—Sufficient cause to excuse delay—Ignorance of law—Absence of opposition by those creditors.*

Where an application after the expiry of limitation for the filing of an appeal under S. 45 of the U.P.E. Est. Act is made for the addition of certain creditors who had not been made parties to such an appeal, it could not be pleaded as a sufficient cause to excuse the delay that the creditors concerned did not object. Nor could ignorance of law as to addition of parties be so pleaded (*Bennett and Madeley, JJ.*) DY. COMMISSIONER, FYZABAD *v.* CHHEDI TEWARI. 203 I.C. 579=1942 O.A. 336=1942 O W N 438=1942 A.W.R. (C.C.) 292=A.I.R. 1943 Oudh 57.

——S. 45—*Omission to implead a creditor where relief claimed is common to all—Effect—Propriety of converting such appeal into revision.*

Where the relief claimed by a debtor in the appeal, is common to all the creditors, if one of them is not made a party to the appeal, the order of the lower Court be comes final as against the particular creditor and his non-inclusion as a party is fatal to the appeal. The appeal cannot be converted into a revision merely to enable an appellant to get over a legal defect due to his own negligence. (*Sathe J.M.*) NAUNIHAL SINGH *v.* DEVI PRAKASH. 1942 O.A. (Supp.) 470 (1)=1942 O.W.N (B.R.) 699=1942 A.W.R. (Rev.) 444 (1).

——(as amended in 1939), S. 45 (2 a)—*Second appeal—Maintainability—First appeal decided before date of the amending Act coming into force.*

Where a first appeal is decided by the lower appellate Court before 30th September, 1939, no second appeal would lie but if the first appeal is filed and decided before such date, a second appeal would obviously lie. (*Thomas, C.J., Bennett, Ghulam Hasan, Agarwal and Madeley, JJ.*) BINDESHARI BAKHSH SINGH *v.* JANG BAHADUR SINGH. 204 I.C. 92=1943 R.D. 106=1942 O.A. 607=1942 O.W.N. 740=A.I.R. 1943 Oudh 85 (F.B.).

——S. 45 and Rules, R. 6—*C. P. Code O. 41, R. 22—Scope of R. 6—Cross objections in appeals under S. 45—Maintainability.*

According to R. 6 of the rules framed under S. 14 of the U. P. Encumbered Estates Act the whole of the C. P. Code is applicable to the proceedings under the Act unless those provisions are inconsistent with the provisions of the Encumbered Estates Act and of the rules framed thereunder. As there is nothing in that Act and the rules which conflict with O. 41, R. 22, it follows that cross objections in an appeal under S. 45 of the Act would lie. (*Ghulam Hasan and Madeley, JJ.*) SAR FRAZ AHMAD *v.* MANNI LAL. 203 I.C. 449=15 R.O. 212=1942 A.W.R. (C.C.) 309 (2)=1942 O.A. 373=1942 O W.N. 585=A.I.R. 1943 Oudh 38.

——S. 45 (2)—Right of appeal—Law governing—Amendment of Encumbered Estates Act after the decision by the special Judge and before decision in appeal—Second appeal if lies. *See* 1941 Dig, Col. 1176. KAILASH BAKHSH SINGH *v.* AMAR KRISHNA NARAIN SINGH. A.I.R. 1942 Oudh 29 (2).

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——Ss. 45 (2-a) and 11—Appeal—Parties—Dismissal of objection under S. 11—Absence of all creditors as parties—Effect. *See* 1941 Dig., Col. 1176. BISHUNATH PRASAD *v.* SARJU SARAN TEWARI. A.I.R. 1942 Oudh 10.

——S. 45 (2-a)—Right of second appeal—First appeal filed before amendment but disposed of after amendment—Inference of retrospective effect by implication. *See* 1941 Dig., Col. 1176. KANIZ ABID *v.* ANRUDH SINGH. 198 I.C. 780=14 R.O. 441

——S. 45 (2-a)—Right of second appeal—If retrospective—Original order prior to and appellate order subsequent to amendment. *See* 1941 Dig., Col 1176. LIAQAT HUSAIN *v.* MAHOMED RAZI. 198 I.C. 596=14 R.O. 421.

——S. 45 (2-a)—*Second appeal under—Competency—First appeal filed before September, 30, 1939 but decided after that date.*

[Per Full Bench—(*Thomas, C.J. and Ghulam Hasan, J.* dissenting)]—

A second appeal lies under S. 45 (2-a) of the U. P. Enc. Estates Act as amended by the U. P. Encum. Est. Act XI of 1939 which came into force on 30th September, 1939, where the first appeal to the lower appellate Court was filed before, but decided after September, 30, 1939. (*Thomas, C.J., Bennett, Ghulam Hasan, Agarwal and Madeley JJ.*) DEBI PRASAD *v.* PHUNDAN LAL. 201 I.C. 531=15 R.O. 77=1942 A.W.R. (C.C.) 177=1942 O.A. 189=1942 O.W.N. 251=A.I.R. 1942 Oudh 291 (F. B.).

——Ss. 45 (5) and 46—*District Judge deciding appeal prior to Amending Act of 1939—Revision, competency—If affected by being filed after new Act—Conversion into second appeal.*

Where a District Judge decides an appeal under the Encumbered Estates Act prior to Amending Act of 1939 the decision is final and Cl. (5) of S. 45 bars interference in revision with such an order. This position is unaffected by the fact that the revi ion is filed after the amended Act came into force. Nor could such a revision be converted into a second appeal as that would be giving retrospective effect to the provisions of the new Act introducing the right of second appeal. (*Thomas, C.J. and Ghulam Hasan, J.*) SHEO NATH *v.* TRIBENI SHANKAR. 1942 A.W.R. (C.C.) 339 (2)=1942 O. A. 467.

——S. 46—*Application under—Maintainability—Case not pending but decided.*

An application under S. 46, Encumbered Estates Act, can be made only when a case is pending and not after it has been decided and hence S. 46 would be inapplicable to a case where the special Judge has already decided on a claim. (*Agarwal and Madeley, JJ.*) DEBI BAKHSH SINGH *v.* RAM DEI 203 I.C. 641=1942 O.W.N. 738=1942 O.A. 598=A.I.R. 1943 Oudh 132.

——S. 46—*Competency of revision in cases appealable to Board under S. 45—Interference, if obligatory.*

There is nothing in the provisions of S. 46 of the U.P. Encumbered Estates Act to bar the entertainment of a revision application even in cases which are appealable to the Board of Revenue under S. 45. Though such an application is not illegal the question whether in such a case the Board should interfere is entirely a matter of discretion of the Court. (*Sathe, J.M.*) PRASRAM SAINTHWAR *v.* ORI LAL. 1942 O.A (Supp.) 402=1942 A.W.R. (Rev.) 376=1942 O.W.N. (B.R.) 627.

——S. 46—*Interference in revision—Question of fact—Revision in appealable case.*

As the wording of S. 46 of the U. P. Encumbered Estates Act is very wide, the Court can interfere even in

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matters of fact in revision and its jurisdiction is not confined merely to setting right defects of a legal nature or of procedure or of jurisdiction. But simply because the Board has this power it would not exercise it when the points raised in the revision are such as could properly have been raised in a regular appeal. (*Sathe, J. M.*) PRASRAM SAINTHWAR *v.* ORI LAL. **1942 O. A. (Supp.) 402=1942 A.W.R. (Rev.) 376=1942 O. O.W.N. (B.R.) 627.**

——**S. 46**—Revision—Competency—Correction by Special Judge after sending decree to Collector under S. 19. *See* 1941 Dig., Col. 1177. HARI RAM *v.* SHYAM BAHADUR. **198 I C. 21=14 R.O. 371.**

——**S. 46 and C. P. Code S 115**—Revision—Competency—Decision of District Judge in appeal against decision of Special Judge of second grade—Proper forum for revision. *See* 1941 Dig., Col. 1178. KANCHAN PRASAD *v.* HANSA. **A.I.R. 1942 Oudh 21.**

——**S. 46**—*Revision, if excluded by right of appeal—Discretion of Court.*

The wording of S. 46, Encumbered Estates Act, is very wide and does not restrict revisions only to such cases in which no appeal lies. Nevertheless the Court will not ordinarily interfere in revision unless the applicant satisfies it that he had valid reasons for omitting to file an appeal even when an appeal lay. (*Sathe, J.M.*) KALI CHARAN *v.* CHIRONJI LAL. **1942 O.W.N. (B.R.) 742=1942 O.A. (Supp.) 488 (1).**

——**S. 46 and C. P. Code, S. 115**—*Revision under—Competency—Decision of first appellate Court in Encum. Estates Act proceeding not open to second appeal.*

In proceedings under the Enc. Estates Act, a revision under S. 46 of the Act or under S. 115 of the C.P. Code does not lie against a decision of the lower appellate Court, where it is held that a second appeal does not lie. (*Thomas, C.J. Bennett, Ghulam Hasan, Agarwal and Madeley, JJ.*) DEBI PRASAD *v.* PHUNDAN LAL. **201 I.C. 531=15 R.O. 77=1942 A.W.R (C.C.) 177=1942 O.A. 189=1942 O.W.N. 251=A.I.R. 1942 Oudh 291 (F.B.).**

——**S. 46**—*Revision under—Competency—Order refusing postponement of mutation case till disposal of proceedings under Encumbered Estates Act—Proper remedy.*

Where an application to postpone a pending mutation case till the disposal of proceedings under Encumbered Estates Act is rejected, it can only be taken up in appeal or revision under the provisions of the U. P. Land Revenue Act and not under the provisions of the U. P. Encumbered Estates Act though the ground for postponement may have been based on S. 7 of the Encumbered Estates Act. Hence a revision under S. 46 of Encumberd Estates Act would not lie (*Sathe, J.M.*) MURLIDHAR *v.* PIRTHI RAJ **1942 O W.N (B.R.) 529=1942 O.A (Supp.) 369=1942 A.W R. (Rev.) 343.**

——**Ss 46 and 45**—*Right of appeal, if bars revision—Discretion of Court.*

The existence of a right of appeal does not bar the maintainability of a revision, but a Court in its discretion would not ordinarily entertain a revision in a case where an appeal lies. It was *held* that the fact that a party was unable to pay court-fee on appeal was not a ground for entertaining a revision instead. (*Agarwal and Madeley, JJ.*) DEBI BAKHSH SINGH *v.* RAM DEI. **203 I.C. 641=1942 O.W.N. 738=1942 O.A. 598=A.I.R. 1943 Oudh 132.**

——**S. 46**—*Sale before sanction of liquidation scheme—Validity—Transfer sanctioned under S. 7 (3)—Absence of prejudice—Interference, if called for.*

Though transfers of property before the final sanction of the liquidation scheme are not permissible, where the

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transfer to a creditor is sanctioned under S. 7 (*b*) of the Act at the request of the debtor and no other creditor is prejudiced by it, interference under S. 46 is not called for. (*Sathe, A.M.*) SPECIAL MANAGER, COURT OF WARDS, SHAPUR ESTATES *v.* RAJA RAM ASA RAM **1941 O.A. (Supp.) 913=1941 A.W.R. (Rev.) 1132.**

——**Ss 49 (2), Proviso and 45**—*Duty of Special Judge to decide what debt is recoverable from what property—Failure to so decide—Proper remedy—Effect of not availing.*

The intention of S. 49, U.P.E.Est. Act read with the proviso, is that the Special Judge should decide what debts are legally recoverable from the ancestral property and what debts are recoverable from applicant's other property. If he does not choose to do so, it cannot be done by the Revenue Court to which the Special Judge's money decree is merely sent for execution. The applicant has a remedy against such a refusal of the Special Judge to decide in the form of an appeal to the High Court under S. 45 (1) of the Act. But if he does avail himself of it, the proceedings of the Special Judge cannot be questioned in the executing Court and the decree has to be executed against the whole property of the applicant. (*Shirreff, S. M.*) SHARDA PRASAD AGARWALA *v.* SHIAM LAL. **1942 O A (Supp.) 349 (1)=1942 A.W.R. (Rev.) 323 (1)=1942 O.W.N. (B. R.) 557.**

——**S. 50 and Specific Relief Act (1877), S 42**—*Order for substitution on death of applicant under Encumbered Estates Act—If bars civil suit as to title to succeed the deceased.*

The Special Judge when he orders substitution of names on the death of an applicant under the Encumbered Estates Act only decides summarily who is the person *prima facie* entitled to represent the deceased. Hence it cannot bar a civil suit to decide the title of persons entitled to succeed to the property of the deceased. Such a suit is not barred by S. 42 Specific Relief Act. (*Bennett, J.*) INDRA PAL *v.* SAT PRASAD. **17 Luck. 655=199 I.C. 673=14 R.O. 511=1942 R.D. 316=1942 O.A. 96=1942 A.W R. (C.C.) 117=1942 O.W.N. 153=A.I.R. 1942 Oudh 322.**

——**S. 50**—*Order for substitution of names on death of party—Special Judge, if competent to revise.*

A prior order of substitution of names on death of a party passed by a Special Judge in proceedings under the U. P. Encumbered Estates Act can be revised by him subsequently. (*Bennett, J.*) INDRA PAL *v.* SAT PRASAD. **17 Luck. 655=199 I.C. 673=14 R.O. 511=1942 R.D. 316=1942 O A. 96=1942 A. W.R. (C.C.) 117=1942 O.W.N. 153=A.I.R. 1942 Oudh 322.**

——**S. 54 (1) and R. 87**—*Case dealt with by Assistant Collector in pursuance of R. 87—Collector's orders in regard to—If* ultra vires.

Where an Assistant Collector deals with a case satisfying the requirements of R. 87, he has all the powers of a Collector in dealing with the case. Any orders passed by him are only liable to appeal under S. 45 or revision under S. 46. Hence the Collector has no power to pass any order in such case and if he does, it is irregular and *ultra vires*. (*Shirreff, J.M. and Sathe, A.M.*) RAJ DEVI *v.* LAKSHMI NARAIN. **1941 O.A. (Supp.) 929=1941 A.W.R. (Rev.) 1160.**

——**S. 54 (2 a)**—Right of second appeal—Suit prior to amendment giving right of second appeal—Appellate order subsequent to it. *See* 1941 Dig., Col. 1177. ANAND BEHARI LAL *v.* MATHURA PRASAD. **A.I.R. 1942 Oudh 29 (1).**

——**S. 138 (4) and Penal Code (1860), S. 186**—Attachment—Weighment of articles—Proper procedure

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—Obstruction to improper procedure—If an offence under S. 186, I. P. Code. *See* 1941 Dig., Col. 1154. EMPEROR *v.* MAHOMED SHAFI. **I.L.R. (1941) All. 639.**

——**Ch. V**—*Liquidation proceedings—Addition of legal representatives—Duty of Court.*

Where a decree has been transferred to the Sub-Divisional Officer for liquidation the duty of bringing the heirs of a deceased party on the record is not on any of the parties but on the Court itself; for none of the parties can be said to be an applicant at that stage and the duty of completing the liquidation lies on the Court. (*Shirreff, S.M. and Sathe, J.M.*) KAMALUDDIN *v.* MST. INTIAZUNNISSA. **1942 O.A. (Supp.) 446=1942 A.W.R. (Rev.) 420.**

——**Ch. V**—*Powers of S. D. O. in liquidation proceedings—Division of debts and property in case of joint money decree—Competency.*

While liquidation proceedings are going on before the S. D. O. in respect of a joint money decree against the debtors, the S. D. O. cannot as an executing Court divide the debts because the decree is a joint one. Nor could he divide the property for he could not assume the functions of a partition officer. (*Sathe, J.M.*) KANTIKA TEWARI *v.* HARI DAS. **1942 R.D. 592=1942 A.W.R. (Rev.) 273 (2)=1942 O.A. (Supp) 299 (2)=1942 O.W.N. (B.R.) 475.**

——**Ch. V**—*Procedure to be followed by Sub Divisional Officer when special Judge's decree contains directions which cannot be complied with under Ch. 5.*

The procedure to be followed by the Sub-Divisional Officer when a special Judge's decree contains directions which cannot be complied with in accordance with the provisions of Ch. V of the U.P. Encumbered Estates Act is to comply with the provisions of that chapter and ignore such provisions in the special Judge's decree as are inconsistent with Ch. V. (*Shirreff, S. M. and Sathe, J.M.*) RAM NARAIN SINGH *v.* SHER BAHADUR SINGH. **1942 O.A. (Supp.) 476 (2)=1942 O.W.N. (B.R.) 757=1942 A.W.R. (Rev.) 450 (2).**

——**Ch. V**—*Scope of Sub-Divisional Officer's functions under—Question as to whether original loan was that of the debtor himself or came to him as a prior encumbrance—If and when can be gone into.*

The point whether the original loan was taken by the debtor himself or came to him as a prior encumbrance with the property which came to him as a gift can be considered only before a decree is passed by the special Judge. But once a decree is passed no such objection can be taken. The Sub-Divisional Officer has to assume in the liquidation proceedings under Ch. V of the Encumbered Estates Act that the decree passed by the special Judge is a valid one and the only point which he has to see in determining whether the land is protected or not is whether the land would have been protected under S. 17 of the Debt Redemption Act in execution of the decree to which the Act applied. (*Shirreff, S. M. and Sathe, J.M.*) GOBIND RAM *v.* BABU RAM. **1942 O.A. (Supp) 494 (2)=1942 O.W.N. (B.R.) 756=1942 A.W.R. (Rev.) 468 (2).**

——**Ch. V and U. P. Debt Redemption Act, Ss 2 (9) and 19**—*Scope of proceedings under Ch. 5, U. P Encumbered Estates Act—Question as to whether debt was on basis of loan—Relevancy.*

The Sub-Divisional Officer cannot refuse protection to the property of a debtor on the ground that the decree passed in favour of the creditor did not fall within the category of a loan as defined in S 2(9) of the Debt Redemption Act. After a decree has been passed by the special Judge, the question whether the debt for which the decree has been passed was on the basis of a loan as

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defined in S. 2 (9) of the U. P. Debt Redemption Act is irrelevant in deciding whether protection should be given to land during liquidation proceedings under Ch. V of the Encumbered Estates Act. (*Sathe, J M. and Ross, A.M*) NEWASI LAL *v.* MST. KATORI. **1942 O.A. (Supp.) 496 (2)=1942 O.W.N. (B.R.) 743=1942 A. W.R. (Rev.) 470 (2).**

UNITED PROVINCES ENCUMBERED ESTATES ACT RULES, R. 6—*Bringing of heir on record after transfer of decree to Sub-Divisional Officer for liquidation—Power and duty of Sub-Divisional Officer.*

Under the addition to R. 6 of the Encumbered Estates Act Rules made in January, 1942, the power to bring heirs of the parties on record now lies with the Sub-Divisional Officer after a decree has been transferred to him under S. 19 for liquidation. The duty also to bring them on record at that stage lies on the Court; for none of the parties can be said to be an applicant at that stage and the duty of completing the liquidation lies on the Court itself. Hence an application by an heir to come on record at that stage cannot be dismissed either on the ground of delay or want of power in the Sub-Divisional Officer. (*Shirreff, S. M. and Sathe, J. M.*) KAZI KAMALUDDIN *v.* IMTIAZ-UN-NISSA. **1942 O. W.N. (B R.) 658.**

—— **(Rules), R. 16 (3)**—*Valuation statement—Temporary increased rate of rent—If can be taken note of.*

Where during the period after ejectment and reinstatement of a tenant, the land is let out to a new tenant at an enhanced rate, the rent paid by the latter for a short time should not be taken into account in the preparation of the valuation statement. (*Shirreff, S. M and Sathe, J.M.*) DEO PRAKASH *v.* NONIHAL SINGH. **1942 O.W.N. (B.R.) 101=1942 A W.R. (Rev.) 97 (2) 1942 O.A. (Supp.) 110 (2)=1942 R.D. 133.**

——**Rr. 16 (4) and (5) and 78**—*Basing of valuation statement on records of nearest preceding year—When justified—Right to apply for re-calculation.*

Where a Sub-Divisional Officer bases his valuation statements on the records of the nearest preceding year to that for which the records were not available owing to settlement operations, his action is correct according to R. 16 (4) and (5) of the U. P. Encumbered Estates Act Rules which govern such a case. If the debtor owing to settlement operations becomes entitled to any re-calculation, he can apply for it under R. 78. (*Sathe, J. M*) JUMNA KUER *v.* HUKUM SINGH. **1942 O. A. (Supp.) 476 (1)=1942 O.W.N. (B.R.) 711 (2)=1942 A W.R (Rev.) 450 (1).**

——**R 16 (5)**—*Scope and applicability*

Sub-Cl. (5) of R. 16 of the U. P. Encumbered Estates Act Rules provides only for those cases where the patwari records themselves are either unavailable or incomplete and it cannot be said that such records are incomplete simply because some holdings remained unlet in a particular year. (*Sathe, J. M.*) INDER SINGH *v.* AJODHYA PRASAD. **1942 O.A. (Supp.) 469 (2)=1942 O.W.N. (B.R.) 713=1942 A.W.R. (Rev.) 443 (2).**

—— **Rr. 17 (4) and 18 (3)**—*Mode of valuation of* sir *when roster rates are available.*

The valuation of *sir* when there are roster rates available in that village should be arrived at by deduct ing two annas in the rupee from the standard or occu pancy roster rates and not from the incidence o occupancy rents arrived at by dividing the total occu pancy rental by the total occupancy area of the village (*Shirreff, S.M. and Sathe, J.M.*) BALDEO RAI *v.* SITA

U.P. ENCUM. ESTATES ACT (1934), Rules, R.26.

RAM RAI. **1942 O A. (Supp.) 295=1942 R D. 582 =1942 A.W.R. (Rev.) 269=1942 O.W.N. (B.R.) 465**

——**Rr. 26 and 54-A**—*Preparation of preliminary award—Notice to parties—Necessity—Loss of chance to apply for mortgage, if a ground for setting aside award.*

A preliminary award should ordinarily no doubt be drawn up in the presence of parties (*i.e.*) after notice to them, but that is not absolutely mandatory. The absence of such a notice cannot be relied upon to set aside an award otherwise valid on the ground that had such notice been given there would have been an opportunity to apply for a mortgage under S. 25, Encumbered Estates Act. (*Sathe, J.M.*) KEWAL *v.* NIHAL SINGH. **1942 O.A. (Supp) 493 (2)=1942 O.W.N. (B.R.) 702 =1942 A.W.R. (Rev.) 467 (2).**

——**Rr. 54-A and 54-C**—*Appeal against dismissal of objections to provisional award—Passing of final award—Effect on pending appeal.*

Where an appeal against the dismissal of objections to a provisional award was filed and before its disposal the final award was made and became absolute it was *held* that under the circumstances it was useless to consider the pending appeal which was against an interlocutory order because the final award had become absolute and could not be touched whatever the result of the case might be. (*Sathe, J.M.*) NIRMAL KUMAR *v.* SANGRAM BAHADUR. **1942 A.W.R. (Rev.) 424 (2)=1942 O.A. (Supp.) 450 (2)=1942 O.W.N. (B.R.) 622.**

——**Rr. 54 A and 54-C** — *Applicability — Appeal against interlocutory order during liquidation proceedings—Subsequent final award not appealed against—Effect on pending appeal.*

Where after an appeal against an interlocutory order during liquidation proceedings the final award was made but that was not appealed against it was *held* that it would be infructuous to dispose of the pending appeal as the final order regarding the liquidation award had become absolute. It was further *held* that neither R. 54 A nor R. 54-C. of the Encumbered Estates Act Rules applied to the facts of the case. (*Sathe, J.M.*) YAGDEVI *v.* RAM SAMUJH SINGH. **1942 A.W.R. (Rev.) 418 (2)=1942 O.A. (Supp.) 444 (2)=(1942) O.W.N. (B.R.) 621.**

——**R. 72**—*Scope and intention of.*

It is very doubtful if R. 72 of the U. P. Encumbered Estates Act Rules really contemplated that a fresh post slump valuation should be prepared on the figures as they stood on the date of the mortgage application. But what perhaps R. 72 meant to lay down was that the Collector should calculate the post slump profits of the preperty whose mortgage has been applied for and compare these profits with the post slump profits of the whole property on the basis of the post slump valuation statements already prepared under R. 16 (1) of the Encumbered Estates Act Rules. (*Sathe, J.M.*) MAUJI RAM *v.* ZAHAR SINGH. **1942 O.A (Supp.) 504 (2)=1942 O.W.N. (B.R.) 753=1942 A.W.R. (Rev.) 478 (2).**

——**R. 88**—*Limits to the power of Sub-Divisional Officer to appoint receiver.*

A Sub-Divisional Officer has the power of a Collector with regard to the appointment of a receiver but he has this power only with respect to cases in which the land revenue is less than Rs. 5,000 and the total of the decrees passed is less than one lakh. In cases whete the revenue and the debts are beyond those amounts, the Sub-Divisional Officer has no power to appoint a receiver. (*Harper, S.M. and Shirreff, J.M.*) BRIJ RANI *v.* ABDUL KARIM KHAN. **1942 O.W.N. (B.R.)**

U. P. LAND RECORDS MANUAL, Para. 1, 26=1942 R.D. 42=1942 A.W.R. (Rev.) 144=1942 O.A. (Supp.) 164.

UNITED PROVINCES EXCISE MANUAL, Vol. 1, Rr. 357 (5) and 358 (8)—Construction of—Resale in default of deposit—Date of resale not notified—Liability of purchaser, if affected—Sale, if *ultra vires*. *See* 1941 Dig., Col. 1179. UNITED PROVINCES *v.* NARAIN SARUP. **A.I.R. 1942 Oudh 12.**

U. P. GENERAL CLAUSES ACT (I OF 1904), S. 6 (e)—*Scope and effect of—Conviction for offence under Motor Vehicles Act of* 1935 *after New Act of* 1939 *coming into force—Legality.*

The provisions of S. 6 (*e*) of the U.P. General Clauses Act make it clear that the conviction after coming into force of the Motor Vehicles Act 1939, in respect of an offence under the rules under the old Act of 1935 is not bad and penalty can be imposed and enforced just as if the old Act had never been repealed. (*Madeley, J.*) D. R. CHHABLANI *v.* EMPEROR. **199 I.C. 321=43 Cr. L.J. 489=1942 A.Cr.C. 81=14 R.O. 502=1942 O.A. 114=1942 O.W.N. 190=1942 A.W.R. (C.C.) 135= A.I.R. 1942 Oudh 310.**

UNITED PROVINCES LAND RECORDS MANUAL Para. 1—*Defeated candidate for post of Patwari—Right of appeal.*

A candidate for the appointment to the post of a patwari who has been defeated has no right of appeal under the law. (*Satho, J.M.*) HUNDI LAL *v.* KUBER SINGH. **1942 O.A. (Supp) 218=1942 O.W.N. (B. R.) 333=1942 R.D. 422=1942 A.W.R. (Rev.) 198= 1942 A.L.J. (Supp) 44.**

——**Para. 1**—*Patwari—Tenure of office—Person appointed in a vacancy.*

A man who is appointed in a place rendered vacant by the dismissal of the former incumbent to the office of the patwari is entitled to retain that post only so long as the former incumbent is not reinstated. When the order of dismissal is cancelled, the original patwari is entitled to be reinstated and the person appointed in the vacancy should be made to vacate the place. (*Sathe, J.M.*) HUNDI LAL *v.* KUBER SINGH. **1942 O.A. (Supp.) 218=1942 O.W.N. (B.R.) 333=1942 R.D. 422=1942 A.W.R. (Rev.) 198=1942 A.L.J. (Supp.) 44.**

——**Para. (1) (f)**—*Discretion of Assistant Collector to appoint patwari, when arises.*

The discretion of the Assistant Collector to appoint a patwari comes into play only when there are more than one validly nominated candidates. It cannot override the custom recorded in the *wajib-ul-arz* that the nominations have to be confined to the relations of the outgoing patwari. (*Shirreff, S.M. and Sathe, J.M.*) JAMUNA PRASAD *v.* MAHANTH MAHENDRANAND GIR. **1942 O.A. (Supp.) 410=1942 O.W.N. (B.R.) 615 (2)=1942 A.L.J. (Supp.) 52=1942 A.W.R. (Rev.) 384.**

——**Para. (1) (f)**—*Nomination of patwari—Limitation if any—Effect of nominating after lapse of* 15 *days after the vacancy.*

The law prescribes no limitation for making valid nominations for the post of a patwari. The only penalty prescribed for failure to nominate a new candidate within 15 days of the vacancy is that fresh nominations can be called for by the Assistant Collector and if there are none the right of making the appointment vests in the Assistant Collector. (*Shirreff, S.M. and Sathe, J.M.*) JAMUNA PRASAD *v.* MAHANTH MAHENDRANAND GIR. **1942 O.A. (Supp.) 410=1942 O.W.N. (B.R.) 615 (2)=1942 A.W.R. (Rev.) 384=1942 A.L.J. (Supp.) 52.**

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——**Para. (1) (f)**—*Scope of discretion of Asisstant Collector under.*

Under para. (1) (*f*) of the Land Records Manual the Collector or the Assistant Collector dealing with the case has the power of rejecting a nomination if in his opinion the nominee is not qualified or fitted to perform the duties of a patwari. This discretion is a wide one and if in the opinion of the Court there is enough material on record for considering a particular nominee as unsuitable the Court has power to reject his nomination. (*Shirreff, S.M and Sathe, S M*) JAMUNA PRASAD *v.* MAHANTH MAHENDRANAND GIR. **1942 O A. (Supp) 410=1942 O W.N. (B R.) 615 (2)=1942 A.W.R. (Rev.) 384=1942 A.L.J. (Supp.) 52**

——**Para. 2, Class 20**—*Entry under in the khatauni—Trespasser against* sir *holdor.*

Class 20 in para. 2 of the khatauni is meant for persons who commit trespass against the tenant and it is the proper class in which a trespasser against *sir* holder should also be shown. (*Shirreff S M. and Sathe, J.M.*) MUNRAJI *v.* BINDESARI RAI **1942 O.A. (Supp.) 246 (2)=1942 A.W.R. (Rev.) 220 (2).**

——**Para. 2 (b), Rule 212 (c)**—*Relaxation of rule as to age of heir candidate for patwari's post.*

Though there is provision for relaxation of the rule prescribing the minimum educational qualification for the post of a patwari there is no such relaxation of the rule prescribing minimum age. Hence if the age of an heir candidate for the post of patwari does not satisfy the requirements of para. 2 (*b*) and R. 212 (*c*) of the Land Records Mannal, he cannot be appointed. (*Shirreff, S M. and Sathe, J.M.*) RAJESHWAR PRASAD *v.* EMPEROR. **1942 O W N (B.R.) 204 (2)=1942 R. D. 270 (2) 1942 A.W.R. (Rev.) 166 (2)=1942 O.A. (Supp.) 186 (2).**

——**Para. 7 (a)**—*Applicability—Transfer of patwari—Re-allocation of circles—One of the circles only affected to a small extent.*

Where in consequence of settlement operations there is re-allocation of circles and there is a transfer of a patwari but the boundary of one of the circles alone is affected a little by the exclusion of a small village, the case does not fall under para. 7 (*a*) of the U. P. Land Records Manual. (*Shirreff, J.M. and Sathe, A.M.*) ASA RAM *v.* MANOHAR LAL. **1942 O.W.N. (B.R.) 12=1942 O.A. (Supp.) 12=1942 A.W.R (Rev.) 12 =1942 R.D. 12**

——**Para. 7 (c)**—*Patwaris — Principle regarding transfer of—Imputation of being 'ring-leader of clique of patwaris'—If would come under 'any other sufficient reason' mentioned in Para. 7 (c).*

Transfers of patwaris should be ordered very sparingly and for well-established reasons. . The mere imputation that a certain patwari is a ring-leader of a clique of a class of patwaris is not enough to bring the case within the mischief of 'any other sufficient reason' mentioned in Para. 7 (*c*) of the United Provinces Land Records Manual. (*Shirreff, J.M. and Sathe, A M.*) BHAGWAT PRASAD *v.* EMPEROR **1941 R.D. 1117=1941 O A. (Supp.) 938=1941 A.W R. (Rev) 1169.**

——**Para. 300**—*Scope of Commissioner's power of transfering superior Kanungo.*

The Commissioner's power to order the tranfer of a superior Kanungo as an administrative measure is unrestricted. It cannot be interfered with in appeal. (*Sathe, J.M.*) MANI RAM SINGH, *v.* EMPEROR. **1942 O.A (Supp) 451=1942 A.W.R. (Rev.) 425=1942 O.W.N.) B.R. 646.**

UNITED PROVINCES LAND REVENUE ACT (III OF 1901), Ss. 14 and 44—*Collector exercising powers under S. 14—Finding in mutation case—Binding nature.*

When a Collector decides a question of succession in a case under the U. P Encumbered Estates Act he passes his order in the exercise of his powers as such under S. 14 of the U.P. Land Revenue Act and he is a Revenue Court under S. 4 (8) of that Act. Hence he is bound to follow the decision in a prior mutation case which is binding on him under S. 44 of the U. P. Land Revenue Act. His order is only a summary one and not a final adjudication. (*Shirreff, S.M.*) WAMAN RAO *v.* BISHWA NATH TRIMBAK. **1942 R.D. 340= 1942 O.W N. (B.R.) 251=1942 A.W.R. (Rev.) 256 (1)=1942 O.A. (Supp.) 282 (1).**

U. P. LAND REV. ACT (1901), S. 33.

——**S. 24**—*Patwaris—Disagreement as to choice—Proper procedure.*

According to Para. 1 (*b*) of the U. P. Land Revenue Records Manual as corrected by correction slip No. 1 of 1937 where there is disagreement among lambardars as to the choice of a patwari, the Assistant Collector should proceed to ascertain the local custom and to appoint one nominated in accordance with it. Where the local custom is that it is to be done in accordance with the wishes of the majority of co-sharers, they should be given an opportunity to express their opinion regarding the candidates by being called upon by a proclamation to do so. (*Sathe, J.M.*) PRATAP SINGH *v.* HARISH CHAND. **1942 O.A. (Supp.) 73=1942 O.W.N (B.R.) 108= 1942 A.W.R (Rev.) 67=1942 R.D. 140.**

——**S. 24 (1) (5)**—*Appointment of patwari—Proper nomination within time—Notice for fresh nomination—Propriety.*

When once a lambardar makes a valid nomination to the post of a patwari within 15 days of the occurrence of the vacancy, the nominee should be accepted and notice asking for fresh nomination should not be issued even though nominating lambardar may make a fresh nomination. (*Shirreff, S M.*) NAUBAHAR SINGH *v.* ZULFIQAR ALAM. **1942 R.D. 289 (1)=1942 O.W.N. (B.R.) 223 (1)=1942 A.W.R. (Rev.) 252 (2)=1942 O.A. (Supp.) 278 (2).**

——**Ss. 32 and 40**—*Khewat—Correction—Entry of kabiz and gairkabiz of very old standing.*

There is no provision in the Land Records Manual which allows entries of kabis and gairkabiz to be made in the Khewat. If they are recent entries by the patwari without authority it could be ordered to be expunged. But if the entry is of very old standing and if correct would create certain rights in the persons entered as such, it cannot be expunged unless it is shown that it is obviously incorrect. (*Sathe, J.M*) KARAN SINGH *v.* MAHAR SINGH. **1942 O W N. (B R.) 24= 1942 O A (Supp.) 20 (2)=1942 A.W.R. (Rev.) 20 (2)=1942 R D. 40.**

——**S. 32**—*Patwari papers—Entries in—Value.*

No presumption attaches to patwari paper entries unless they are old. (*Sathe, A.M.*) SRIPAL SHUKLA *v.* SHAMBHU DATT. **1941 O.A. (Supp.) 964 (1)= 1941 A.W.R. (Rev.) 1216 (1).**

—— **Ss 32 and 33**—*Proper entry in* khatauni *and* khasra—*Trespasser against* sir *holder.*

The proper class in which a trespasser against the *sir* holder should be shown in the *khatauni* is class 20 occurring in Part II of the *khatauni* and in the remarks column of the *khasra*. (*Shirreff, S.M and Sathe, J.M.*) MAN RAJI *v* BINDESARI RAI. **1942 R.D 496=1942 O.W.N (B.R.) 407.**

——**S. 33 and Registration Act S. 17 (2) (vi)**—*Application for mutation—Compromise recorded in—Absence of registration—Validity.*

U. P. LAND REV. ACT (1901), S. 33.

Where compromise relating to the subject-matter in dispute pending in a mutation case is accepted by the Court and recorded, it does not require registration for its validity. (*Bennett, J.*) RAM MANOHAR DAS *v.* MOHAMMAD RISHID SHAHID HUSAIN. 204 I.C. 389 =1942 O.W.N 450=1942 A.W.R. (C.C.) 300 (2)= 1942 O. A. 350.

——S. 33—*Application under—Maintainability—Claim to have share of property in name of another, transferred.*

A request to transfer a share in the property standing in the name of another to his own name is a request which cannot possibly be granted in a correction application under S. 33 of the U. P. Land Revenue Act. (*Shirreff, S.M. and Sathe, J.M.*) RAM PIARI *v.* OM PRAKSH. 1942 O.A. (Supp.) 38=1942 A W R. (Rev.) 38=1942 O.W.N. (B.R.) 72=1942 R.D. 104.

——S. 33—*Correction of papers—If can be made on the basis of a preliminary decree for partition.*

An application under S 33 of the U.P. Land Revenue Act for correction of papers based on a preliminary decree for partition declaring the shares of the parties is one properly made under that section, the decree being a transaction affecting the rights or interests of the parties in the *khewat*. (*Shirreff, S. M.*) TULSI RAM *v.* RAMJI DAS. 1942 O W N. (B R.) 371=1942 R.D. 460=1942 A.W.R. (Rev.) 265 (1)=1942 O.A. (Supp) 291 (1).

——Ss. 33 and 40 (2)—*Correction of papers—Question of possession doubtful—Proper procedure to be adopted.*

Where in a correction of papers case the A. R. O. finds that the question of possession is doubtful the case has to be decided by a summary enquiry into title under S. 40 (2) of the U P. Land Revenue Act and the application could not be thrown out merely because the applicant had failed to prove his own possession satisfactorily. (*Sathe, J M.*) DALIP SINGH *v.* BHIKHAI KURMI. 1942 R D. 200=1942 O. W N. (B R.) 134=1942 O.A. (Supp.) 104=1942 A. W.R. (Rev.) 91.

——Ss. 33 and 40 (2)—*Natural changes—Application for correction—Proper procedure.*

Per *Shirreff, J. M.*—Where owing to recent natural changes an entry ceases to correspond with the actual facts and there is no evidence of actual possession the area being waste sand and water, it is a case in which a summary enquiry into title is the proper procedure prescribed by S. 40 (2) of the Land Revenue Act. It is not a question of making use of S. 33 of the Act to obtain an adjudication on long standing dispute as to title.

Per *Sathe, A. M.*—The application necessarily involves a decision on a question of title pure and simple for which Revenue Courts are not the proper forum. (*Shirreff, J.M and Sathe, A.M*) AVADHESH PRATAP SINGH *v.* PASHUPAT PRATAP SINGH. 1941 O.A. (Supp) 951=1941 A.W.R. (Rev.) 1200.

——Ss. 34 and 40—*Mutation—Application by one of two vendees—Maintainability.*

Where neither the sale deed nor the agreement between the two co-vendees under it mention the specific shares of the two co-vendees, an application for mutation by one in respect of a portion of the property sold cannot lie. The application must be in respect of the entire property covered by the sale-deed. But it is not necessary that all the vendees must join in an application for mutation. One can apply asking for mutation for both. (*Shirreff, S. M. and Sathe, J M.*) ALI AHMAD *v.* BANO BEGUM. 1942 A.W.R. (Rev.) 53=1942 O.A. (Supp.) 53=1942 O.W.N. (B.R) 93=1942 R.D. 125.

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——S. 34—*Mutation—Joint vendees—Application by one under U. P. Encumbered Estates Act—If disentitles the other to apply for mutation, on behalf of both.*

Where one of the two co-vendees applies under the U. P. Encumbered Estates Act, there is no ground for refusing mutation on an application by the other on behalf of both. (*Shirreff. S. M. and Sathe, J.M.*) ALI AHMAD *v.* BANO BEGUM. 1942 A.W R. (Rev.) 53=1942 O.A. (Supp.) 53=1942 O.W.N. (B.R.) 93 =1942 R.D. 125.

——S. 34—*Mutation on the strength of allowances made out of affection—If can be made—Proper procedure.*

Where certain shares are allowed out of affections to persons who would have no title to succeed, mutation on the strength of such allowance cannot be allowed in mutation proceedings started on the death of a co-sharer. The proper procedure is to give those persons the shares by a separate transaction and then initiate separate mutation proceedings. (*Shirreff, S.M. and Sathe, J.M.*) SUBHKARAN SINGH *v.* GADDU SINGH. 1942 O.A. (Supp.) 374=1942 A.W R (Rev.) 348=1942 O W.N (B.R.) 572=1942 R.D. 700.

——S. 34 (2) and (3)—*Mutation—Absence of physical or constructive possession—If affects right to.*

Where the transferee has not obtained possession either physical or constructive, he is not entitled to mutation of names because S. 34 of the U. P. Land Revenue Act shows that possession is a necessary condition before a mutation application can be filed and S. 40 lays down that all disputes regarding entries should be decided on the basis of possession. (*Sathe, A.M.*) GIRWAR *v.* BIRJI. 1941 O.A. (Supp.) 940=1941 A. W.R. (Rev.) 1171.

——S. 34 (3)—*Application under—Maintainability—Applicant not in possession.*

An application for mutation cannot lie under S. 34 (3) of the U. P. Land Revenue Act if the applicant is not in possession. (*Sathe, J. M.*) RAMJIT AHIR *v.* RAMPALAL TEWARI 1942 O.W.N (B.R.) 280=1942 R.D 369=1942 A.W.R. (Rev.) 247 (1)=1942 O.A. (Supp.) 273 (1).

——S. 34 (5)—*Mutation application—Necessity irrespective of result.*

The ultimate result of an application is not material so far as Cl. (5) of S. 34 of the U.P. Land Revenue Act is concerned. In fact a transferee of proprietary rights need not await the result of his mutation application before instituting other proceedings in the Revenue Courts in respect of the property. The futility of such an application is no answer to the mandatory provision of S. 34 (5). (*Sathe, J.M.*) PARMESHWAR *v.* RAM KISHUN MISRA. 1942 O.A. (Supp.) 89=1942 A W. R. (Rev.) 83=1942 O.W.N. (B R.) 143=1942 R.D. 209.

——S. 34, Expl.—*Mutation—Right to—Compromise in partition suit with specification of shares—If a transfer entitling mutation.*

A compromise in a suit for partition of joint family property in which the shares of the parties are specified amounts to a 'transfer' under the Explantion to S. 34 of the U P. Land Revenue Act and hence mutation can take place on the basis of such a compromise. (*Shirreff, S. M.*) TULSI RAM *v* RAMJI DAS. 1942 O W.N. (B R.) 371=1942 R D. 460=1942 A.W.R. (Rev.) 265 (1)=1942 O.A. (Supp.) 291 (1).

——Ss 34 and 40—*Nature of application to alter status of persons already entered in the Khewat.*

Where the names of the parties concerned are already entered in the *Khewat* and an application is made to alter the entry as to their status (*i.e.*) as mortgagor and

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mortgagee, when there has been no transaction between them warranting such a change in their status, it is not an application for mutation of names, but for correction of the *Khewat*. If the entries had stood for over twenty years, before they can be altered, they must be shown to be obviously incorrect. (*Shirreff, S.M. and Sathe, J.M.*) RAM LAGAN SINGH *v.* LACHMI NARAYAN SINGH. **1942 A.W.R. (Rev.) 430=1942 O.A. (Supp.) 456=1942 O.W.N. (B.R.) 632.**

——**S. 36**—Applicability of O. 32, R. 7, C. P. Code, to proceedings under. *See* C. P. CODE, O 32, R. 7. **1942 R.D. 399.**

——**S. 36**—*Ex-proprietary holding—If can be carved out, when ex-proprietor does not claim ex-proprietary rights.*

Where a proprietor does not claim ex-proprietary rights either at the time of the transfer or of mutation ten years later or in the still later proceedings started on the patwari's report, no ex-proprietary holding can be carved out for the person entitled to ex-proprietary rights who does not wish to claim them. (*Sathe, A.M.*) KHUBI *v.* FAQUIRA. **1941 O.A. (Supp.) 910=1941 A.W.R. (Rev.) 1129.**

——**Ss. 36 and 42**—*Order under S. 36—Extent to which it operates as* res judicata.

Orders passed in miscellaneous proceedings under the Land Revenue Act do not debar any person from establishing his right to the property claimed by him in a Civil or Revenue Court unless the proceedings fell under S. 42 of the Act. Where the question in proceedings under S. 36 of the Act was whether a person was a *sir*-holder or not, no question of the status of his tenants directly arises, though their status as tenants depended on the decision in the case. Such a case cannot be said to fall under S. 42 and hence the order passed therein does not operate as *res judicata*. (*Shirreff, S.M. and Sathe, J.M.*) SUKH RAM CHAMAR *v.* MST. KASTURA KUAR. **1942 O.A. (Supp.) 294=1942 R.D. 596=1942 A.W.R. (Rev.) 268=1942 O.W.N. (B.R.) 479.**

——**S. 36**—*Proceedings under—Compromise between ex-proprietor and former co-*sir*-holder—Competency—Mortgagee, if a necessary party.*

Where on the mortgage by one of the three co-sharing *sir*-holders proceedings are started under S. 36 of the U. P. Land Revenue Act, the ex-proprietor is not competent to enter into a compromise with his former co-*sir*-holders alone. If there is to be a compromise it should be joined by the mortgagee as well. (*Shirreff, J.M. and Sathe, A.M.*) RAJJO LAL *v.* SANWALIA. **1942 O.A. (Supp.) 43 (1)=1942 O.W.N. (B.R.) 40 (1)=1942 A.W.R. (Rev.) 43 (1)=1942 R.D. 56 (1).**

——**S. 36**—*Proceedings under—Decision that no ex-proprietary rights have arisen in a particular plot—Subsequent suit for ejectment from that plot—Plea of ex-proprietary tenancy in defence—Bar of* res judicata.

Where in proceedings under S. 36 of the U. P. Land Revenue Act it is decided that ex-proprietary rights have not arisen in a particular plot, it operates as *res judicata* in a subsequent suit for ejectment from that plot wherein the defendant pleads that he is an ex-proprietary tenant. (*Shirreff, S.M.*) CHITTAR *v.* UMRAI LAL. **1942 O.A. (Supp.) 155=1942 A.W.R. (Rev.) 135=1942 R.D. 886 (1)=1942 O.W.N. (B.R.) 297 (1).**

——**S. 36**—*Rent fixed by decision under—Right to challenge in arrears of rent case.*

No Court of concurrent or inferior jurisdiction is competent to question a judicial order on merits except when a question of fraud or want of jurisdiction is involved. Hence an order fixing the rent of an ex-proprietary holding under S. 36 of the U. P. Land Revenue Act cannot be questioned on merits in the Court of an Assistant Collector 2nd class in an arrears of rent suit unless fraud or want of jurisdiction is involved. (*Shirreff, S. M. and Sathe, J. M.*) KHETPAL *v.* RAGHUBAR SINGH. **1942 A.W.R. (Rev.) 328=1942 O.W.N. (B.R.) 485=1942 O.A. (Supp.) 354.**

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——**S. 36**—Sir *holding—Division among joint* Sir-*holders—Proper procedure.*

A *Sir* holding cannot be divided amongst joint *Sir*-holders by means of 'Tasfia *Sir*' proceedings under S. 36 of the Land Revenue Act. *Sir* can be divided only by means of a regular case under Land Revenue Act. (*Sathe, A.M.*) ABDUL RAZAK *v.* MUMTAZ ALI. **1941 R.D. 1127=1941 O.A. (Supp.) 949=94 A.W.R. (Rev.) 1198.**

——**S. 39**—*Applicability—Correction of entries in khasra—Inherent powers.*

Even though S. 39 of the U. P. Land Revenue Act might not apply to the *khasra*, Revenue Courts have inherent powers to correct entries in the *khasra*. (*Shirreff, S.M. and Sathe, J.M.*) SURAJ BUX SINGH *v.* SARJU LONIA. **1942 O.W.N. (B.R.) 167=1942 R.D. 233=1942 A.W.R. (Rev.) 250 (1)=1942 O.A. (Supp.) 276 (1).**

——**Ss. 39 and 40**—*Dispute between co-sharers regarding* sir *and* khudkasht *rights—Proper remedy.*

A suit between co-sharers only regarding their *sir* and *khudkasht* rights cannot lie under the Tenancy Act. The only remedy which they can have is by means of correction of papers case under the Land Revenue Act and once their possession is proved their claim to correction of the entry cannot be rejected merely on the ground of the age of the entry. (*Shirreff, S. M. and Sathe, J.M.*) RAM KIRPAL *v.* LAL MAN. **1942 O.A. (Supp.) 215=1942 O.W.N. (B.R.) 328=1942 R.D. 417=1942 A.L.J. (Supp.) 42=1942 A.W.R. (Rev.) 195.**

——**S. 39**—*Long delay in applying for correction—If fatal.*

A long delay of 17 years in applying for correction of entries on the basis of the Civil Court's decree is fatal to the applicant's case. (*Sathe, A.M.*) HOSHIAR *v.* SARUPA. **1941 R.D. 1110=1941 O.A. (Supp.) 957=1941 A.W.R. (Rev.) 1209.**

——**S. 40**—*Basis on which mutation may be granted—Trespasser if entitled to on basis of his possession.*

Before mutation can be granted to an applicant, it must be shown that the applicant's possession is on the basis of succession or transfer. A trespasser for example would not be entitled to mutation merely on the basis of his possession. (*Shirreff, S.M. and Sathe, J. M.*) RAM LAGAN SINGH *v.* LACHMI NARAYAN SINGH. **1942 A.W.R. (Rev.) 430=1942 O.A. (Supp.) 456=1942 O.W.N. (B.R.) 632.**

——**Ss. 40 and 42**—*Correction of papers cases—Decisions of A.R.O. in Oudh—If and when operates as* res judicata.

While an order of an A.R.O. in Oudh passed under S. 40 of the U.P.Land Revenue Act would not operate as *res judicata*, if the case is decided under S. 42 of the Act the order would operate as *res judicata*. (*Shirreff, S M and Sathe, J. M.*) KALLO PANDEY *v.* LAL MOHAMMAD KHAN. **1942 R.D. 493=1942 O.W.N. (B.R.) 404=1942 A.W.R. (Rev.) 279=1942 O.A. (Supp.) 305**

——**S. 40**—*Mutation—Possession with lambardars—Basis of decision.*

An application for mutation where the actual possession is with the lambardar and not with either of the parties, must be decided on the merits of title and not of possession. (*Shirreff, S. M. and Sathe, J. M.*) ALI

U. P. LAND REV. ACT (1901), S. 40.

AHMAD *v.* BANO BEGUM. **1942 A.W.R. (Rev.) 53 = 1942 O.A. (Supp.) 53 = 1942 O.W.N. (B.R.) 93 = 1942 R.D. 125**

——**S. 40**—*Mutation proceedings—Duty of Revenue Courts to respect transfers by Civil Court—Refusal of mutation to decree-holders on the ground of absence of possession—If justified.*

In mutation proceedings before a Revenue Court a transfer of possession given by a Civil Court must be respected unless the proceedings are commenced after a long delay. A decree-holder could not be refused mutation on the ground that he was not in possession. (*Shirreff S.M. and Sathe, J.M.*) MAHD. FAZIL *v.* SHAH ABDUL HAI ASHRAF. **1942 O.A. (Supp.) 201 = 1942 R.D. 411 = 1942 O.W.N. (B.R.) 322 = 1942 A.W.R. (Rev.) 181.**

——**S. 40**—*Mutation—Right to—Mere extinction of title—Sufficiency—Declaratory decree—Mutation when can be given.*

For a mutation application the mere extinction of title is not enough. The party in whose favour the title is declared must obtain legal possession over the property before he applies for mutation of names in the *khewat*. Hence no mutation can be given on the strength of merely a declaratory decree until that decree is put into execution, and the possession is formally and legally transferred. (*Shirreff, S. M. and Sathe, J. M.*) RAM KISHORE RAI *v.* KAPIL DEO NARAIN SINGH. **1942 A.W.R. (Rev.) 280 (2) = 1942 O.A. (Supp.) 306 (2) = 1942 R.D. 489 = 1942 O.W.N. (B.R.) 400.**

——**Ss. 40 (3) and 44**—*Decision in correction case—When* res Judicata.

Unless a case is disposed of under S. 42 of the U. P. Land Revenue Act, the orders passed in a correction of patwari papers case do not operate as *res judicata* and cannot prevent any person from establishing his rights in the land concerned in any Civil or Revenue Courts having jurisdiction. (*Sathe, A. M.*) BHAGWANT SINGH *v.* INDERJIT SINGH. **1941 A.W.R. (Rev.) 1123 (2) = 194 O.A. (Supp.) 904 (2).**

——**S. 41**—*Boundary dispute between villages—Existence of boundary pillars, inconsistent with settlement map—Preference.*

In the case of a dispute as to the boundary between the two villages it is much safer to rely upon the actual boundary pillars which exist upon the plot and which for all practical purposes was treated by the villagers for considerable time as the boundary between the villages than upon a map made at the settlement and subsequent measurements made at the present time to show that the pillars are not the real boundary between the villages. (*Allsop, J.*) KUBER RAI *v.* SHYAM NARAIN RAI. **1942 A.L.W. 531 = 1942 A.W.R. (H.C.) 292 = A.I.R. 1943 All. 46.**

——**S. 41**—*Demarcation case—Settlement map containing only provisional lines as plots were under water—Dispute as to boundaries—Proper remedy.*

Where though there was a partition at the time of settlement as the plots were under water there was no demarcation of definite boundaries of each patti and the settlement map only contained provisional lines, and there is a dispute between the parties there can be no demarcation on the basis of the lines in the settlement map. The only legal method of having the location of the areas allotted to the different pattis finally determined is that of partition. (*Sathe, J. M.*) SHYAMA SINGH *v.* BUDHRAM SINGH. **1942 O.A. (Supp.) 409 = 1942 O.W.N. (B.R.) 618 = 1942 A.W.R. (Rev.) 388.**

——**S. 41 and Land Records Manual, R. 116**—Liability to furnish particulars of collections—On whom cast—Ziladar refusing to give patwari, information about collections—If an offence under S. 176, I.P. Code. *See* 1941 Dig., Col. 1186. EMPEROR *v.* RAM BARAN SINGH. **17 Luck. 89.**

U. P. LAND REV. ACT (1901), S. 86.

——**S. 42**—*Correction case—Question at issue not as to class of tenancy but as to its existence—Effect of decision in the case.*

Where in a correction of papers case the question at issue was not as to the class of tenancy but as to whether the persons concerned were tenants at all or merely trespassers, the decision in that case would not operate as *res judicata* in a later suit for the ejectment of the same persons as trespassers under S. 180 of the U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) NAZIR *v.* ZAHOOR FATIMA. **1942 A.W.R. (Rev.) 363 = 1942 O.W.N. (B.R.) 506 = 1942 O.A. (Supp.) 389.**

——**Ss. 57 and 213**—*Settlement entry—If can be discarded because of stray entries during long period—Refusal of lower Courts to act on recent entries—Interference in third appeal.*

One or two stray entries during a long stretch of time cannot justify discardment of the previous settlement entry. Where the lower Courts fail to give effect to such entries on the ground of their being unreliable, they are not acting against any law or usage having the force of law as to justify interference in third appeal. (*Sathe, J.M.*) DALIP SINGH *v.* BHIKHAI KURMI. **1942 O.A. (Supp.) 104 = 1942 O.W.N. (B.R.) 134 = 1942 R.D. 200 = 1942 A.W.R. (Rev.) 91.**

——**S. 76**—Usufructuary mortgage and subsequent simple mortgage—Provision for appropriation of profits towards interest in the earlier mortgage—Redemption and possession by subsequent mortgagee—Liability to account—Mortgagee voluntarily setting-off profits against interest—If can affect his rights. *See* 1941 Dig., Col. 1187. TAJAMMUL HUSAIN KHAN *v.* AMIRUDDIN. **17 Luck. 297 = 197 I.C. 471 = 14 R.O. 314 = A.I.R. 1942 Oudh 189.**

——**S. 79, Revenue Court Manual, R. 53**—*Appeal in matter of fixation of rent—Adding of under-under-proprietor for the first time before the Board—Powers.*

O. 41, R. 20, C. P. Code, has been made applicable to appeals under the Land Revenue Act by R. 53 of Revenue Court Manual. Where in a case under S. 79 of the Land Revenue Act an aggrieved under-proprietor makes only the superior proprietor a party in the appeal to the Board and it is found that no correct determination of rent could be made without the presence of the under-under-proprietor, the Board could summon the latter and hear them. (*Harper, S.M. and Sathe, A.M.*) RAM LAL PANDEY *v.* JAGDAMBIKA PRATAP NARAIN SINGH. **1942 A.W.R (Rev.) 22 = 1942 O.A. (Supp.) 22 = 1942 O.W.N. (B.R.) 81 = 1942 R.D. 113.**

——**S. 86**—Procedure as to recording of cesses—Absence of wajib ul-arz at a settlement—Government sanction for continuance of custom recorded in previous wajib-ul-arz, if can be inferred. *See* 1941 Dig., Col. 1188. CHAMELI *v.* STATE KISHANGARH. **198 I.C. 830 = 14 R.A. 316 = 1941 A.L.J. 730 = 1942 R.D. 17 = A.I.R. 1942 All. 79.**

——**S. 86 (4)**—*Scope and applicability of—Right to recover dues not forming part of rent and not included in any list by Settlement Officer.*

It cannot be said that that S. 86 (4) of the U. P. Land Revenue Act applies only when a list of some kind has been prepared by the Settlement Officer but does not apply when such a list does not exist. Dues which do not form part of the rent at all and have not been included in any list by the Settlement Officer are barred by S. 86 (4) from being claimed. (*Harper, S.M.*) AMAR

U. P. LAND REV. ACT (1901), S. 87.

KRISHAN NARAIN SINGH *v.* LALTA. **1942 A.W.R. (Rev.) 247 (2)=1942 O.A. (Supp.) 273 (2)=1942 R.D. 357=1942 O.W.N. (B.R.) 268.**

——**S. 87**—*Collection of post-slump rate above valuation—Extent of validity.*

Where post slump rates are above the valuation, even if they are collected, the law is that they must not exceed 1/5 of the produce values. (*Harper, S.M.*) SIRDAR NIHAL SINGH *v.* EMPEROR. **1942 O.A. (Supp.) 384 (2)=1942 A.W.R. (Rev.) 358 (2)=1942 O.W.N. (B.R.) 498.**

——**S. 87**—*Liability to pay* rasaum zamindari—*How can be created—Order fixing new rent under S. 87 silent as to any such payment—Effect.*

A liability to pay *rasaum zamindari* cannot be created by mere inference but should be proved by a specific and definite order. Hence when the order fixing the new rent under S. 87 of U. P. Land Revenue Act is silent as to any such payment, the tenant is not liable to pay it. (*Shirreff, S.M. and Sathe, J.M.*) DUNI CHAND *v.* RAM SINGH. **1942 A.W.R. (Rev.) 126=1942 R.D. 252=1942 O.W.N. (B.R.) 186=1942 O.A. (Supp.) 143.**

——**S. 87**—*Old rent to be compared with valuation at circle rates—If the contractual rent or rent paid after remission.*

It cannot be contended that when comparing old rents with valuation at circle rates the comparison should not be with the rent as actually paid before the revision operation but with the old contractual rent fixed before the omissions were given because it is the remitted rent that has become the legal rent payable and that alone can be taken into consideration. (*Harper, S.M.*) SIRDAR NIHAL SINGH *v.* EMPEROR. **1942 A.W.R (Rev.) 358 (2)=1942 O.W.N. (B.R.) 498=1942 O.A. (Supp.) 384 (2).**

——**S. 87**—*Revised rent rates approved by Board—If and when can be interfered with.*

Where the revised rent rates proposed by the Rev. Officer and approved by the Board is ordinarily not open to criticism thereafter, if they are applicable to the parganas concerned as a whole, their individual application to special villages is undoubtedly open to subsequent consideration. (*Harper S.M.*) SIRDAR NIHAL SINGH *v.* EMPEROR. **1942 A.W.R. (Rev.) 358 (2)=1942 O.W.N. (B.R.) 498=1942 O.A. (Supp) 384 (2)**

——**S. 87**—*Revising Officer's powers in proceedings under—Competency to give declaration regarding correct rent.*

A Revising Officer has no powers to give any declaration regarding the correct rent of a holding in proceedings under S. 87 of the U. P. Land Revenue Act. Under this section he can only abate or commute rents. (*Shirreff, S.M. and Sathe, J.M.*) HINDU SINGH *v.* BADAN SINGH. **1942 O.W.N. (B.R.) 379=1942 R.D. 468=1942 O.A. (Supp.) 250=1942 A.W.R. (Rev.) 224.**

——**S. 87 (1) and (2)**—*Commutation of kind into cash rent—Limits on the power of the revising officer—Abatement of* rasaum zamindari.

Cl. (2) of S. 87 of the Land Revenue Act only bars commutation of a kind rent into a cash rent *suo motu*. But the powers of the revising officer to abate grain rent *suo motu* are nowhere restricted either by Cl. (1) or by Cl. (2) of the section. Hence even if *rasaum zamindari* is a kind rent it can be abated to nil under S. 89 (1) as amended by Act III of 1938. (*Shirreff, S.M. and Sathe J.M.*) DUNICHAND *v.* RAM SINGH. **1942 A.W.R. (Rev.) 126=1942 R.D. 252=1942 O.W.N. (B.R.) 186=1942 O.A. (Supp.) 143.**

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——**S. 99** — *Valuation of assumption areas—Standard or rooster rates to be applied*—Sir *and* khudkasht *areas.*

The standard rates of settlement and not of rooster are the suitable rates to be applied to assumption areas. Hence in the case of *sir* and *khudkasht* areas settlement rates for occupancy tenants should be applied. (*Shirreff, J.M. and Sathe, J.M.*) MANZOOR AHMAD *v.* EMPEROR. **1942 O.A. (Supp.) 48=1942 A.W.R. (Rev.) 48=1942 O.W.N. (B.R.) 148=1942 R.D. 214.**

——**Ss 106 and 107**—*Mahal assessed singly and not separately according to thaks—Single joint application for partition in respect of all pattis—Maintainability—Bringing in of all khatas into the pool—Matter of procedure—Rules to be observed.*

Where the whole village is comprised in one mahal and it has been assessed singly and not separately according to thaks, an applicant for partition would be justified in presenting a single joint application in respect of all pattis. The question of bringing in or not of all khattas into the pool is a matter of procedure. But where the existing khatas are according to the shares of the co-sharers, if the khata in which the applicant has no share should not be disturbed when kuras are prepared. (*Shirreff, S.M. and Sathe, J.M.*) CHIRANJI LAL BAGLA *v.* AKBAR ALI. **1942 O.W.N. (B.R.) 117=1942 O.A. (Supp.) 62 (2)=1942 A.W.R. (Rev.) 56=1942 R.D 149.**

——**S 106**—Partition—Proof of prior private partition—Inference. *See* 1941 Dig., Col. 1188. BHUKHEL *v.* BHAGIRATHI. **1942 R.D. 239=1942 O.W.N. (B.R.) 173**

——**S. 111**—*Applicability—Declaration of shares in civil suit under compromise decree—Application for partition on strength of papers showing higher share—Objection by other side—Duty of partition Court.*

Where in a civil suit there has been a compromise decree declaring the respective shares of the parties and one of the parties later on applies for partition on the strength of papers showing higher share for him and the other party objects, the objection does not involve a question of proprietary title which had not been already determined by a Court of competent jurisdiction and consequently S. 111 of the U.P. Land Revenue Act is not applicable. The question had been decided by a competent Court and the partition Court should give effect to it. (*Shirreff, S.M.*) NATHU *v.* MANOHARI. **1942 O.A. (Supp.) 128=1942 R.D. 243=1942 O.W.N. (B.R.) 177=1942 A.W.R. (Rev.) 111.**

——**Ss. 111 and 233 K**—*Bar of suit—Question of charge of* haq malikana *not raised in partition—Charge, if extinguished.*

A charge as distinct from a mortgage does not create any interest in the property. It follows that a question about the charge of *haq malikana* does not involve a question of proprietary title within the meaning of S. 111 of the U.P. Land Rev. Act. That being so a failure to bring the question of the charge of *haq malikana* before the partition Court at the time of the partition could not have the effect of extinguishing the charge. (*Ghulam Hasan and Madeley, JJ.*) SHEOMANGAL SINGH *v.* BISHUNATHESHWARJI. **203 I.C. 229=15 R.O. 169=1942 A.W.R. (C.C.) 304=1942 O.W.N. 460=1942 O.A 358=A.I.R. 1942 Oudh 494.**

——**Ss. 111 (1) (c) and 112**—*Decision on dispute as to respective areas of different parties in partition—Appeal—Forum.*

Where a partition officer decides the dispute between the parties as to the areas to which each of the parties is entitled in the partition it is a decision under S. 111 (1) (*c*) of the Land Revenue Act and an appeal there-

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from lies to the District Judge under S. 112 and not to the Deputy Commissioner. (*Shirreff, S. M. and Sathe, J.M.*) RAGHUVENDRA BAHADUR SINGH *v.* SHEIKH MUHAMMAD HABIBULLAH. **1942 O A. (Supp) 464=1942 A.W.R. (Rev.) 438=1942 O.W.N. (B.R.) 679.**

——**S. 114**—*Partition—Effect of co-sharer taking land as unencumbered while in fact it is encumbered.*

If at the time of partition a co-sharer takes in his share land which is already encumbered, as land without any encumbrances it is that co-sharer who would have to suffer for it and not the mortgagee. (*Shirreff, S M. and Sathe, J.M.*) DHONI HAI *v.* SHEO KUMAR SINGH. **1942 O A. (Supp) 202=1942 R D. 408=1942 O.W.N. (B.R) 319=1942 A W R. (Rev.) 182.**

—— **S. 117 and Partition Manual, Para. 30 (4)**—*Advantage of provisions of para.* 30 (4)—*If can be claimed at the time of confirmation.*

It is not too late to claim to take advantage of the provisions of R. 30 (4) of the U.P. Partition Manual at the time of confirmation of partition. It is not a question of severalty, but, that of a claim arising out of the Amin's proposals. (*Shirreff, S. M and Sathe, J. M.*) FAQIRA *v.* JAHANGIRA. **1942 O.W.N. (B R.) 429=1942 A.W R (Rev.) 312 (1)=1942 O.A. (Supp.) 338=1942 R.D. 519.**

——**S. 117**—*Partition—Distribution of shares over kinds of lands—Claim to exchange* sir *for* banjar *land—If can be allowed.*

According to S. 117 of the U P. Land Revenue Act, a co-sharer must be given first from *sir* land and he can be given land of other classes only if his share is not made up from his *sir* land. Hence when a co-sharer gets more than his share of *sir*, he could not get any portion of the *banjar*, nor could he claim it in exchange for *sir*. (*Sathe, J M.*) BHAGGU *v.* KALYAN DASS. **1942 O. W.N. (B.R.) 87=1942 A.W R. (Rev.) 97 (1)=1942 O.A. (Supp,) 110 (1)=1942 R.D. 119.**

——**S. 131**—*Partition cases—Change of title—Point of time.*

In partition cases the title changes only from the date on which the partition takes effect and not from the date on which it is confirmed by the Collector. The rights and liabilities of the parties to a partition continue unchanged and unaffected until the partition takes effect on 1st July following the Collector's confirmation order. (*Sathe, J.M.*) RAM GHULAM *v* RADHA KISHUNJI. **1942 O.W.N. (B.R.) 233=1942 O.A. (Supp.) 158=1942 R.D. 299=1942 A.W.R. (Rev.) 138.**

——**Ss. 132 (3) and 133 (d)**—*Appeal under—Scope of—Different orders by Collector on same day—Separate appeals—Competency.*

An appeal against the order of a Collector confirming a partition under S. 132 (3) of the Land Revenue Act is a second appeal and in that appeal all objections can be taken against any of the decisions of the Collector in disposing of the appeals which were pending before him before the confirmation of the partition. Hence where on the same day the Collector passes an order in respect of certain objections in an appeal in a partition case and also confirms the partition proposals, separate appeals from those orders cannot be filed. (*Sathe, J.M.*) ABDUL HAKIM KHAN *v.* SHABBIR AHMAD KHAN. **1942 O A. (Supp.) 69=1942 O.W. N. (B R. 98 (1)=1942 A W.R. (Rev.) 63=1942 R. D .130 (1).**

——**S. 133 (2)**—*Appeal prior to confirmation of partition—Effect.*

Where an appeal under S. 133 (2) of the U.P. Land Rev. Act is filed before the confirmation of the partition by the Collector and long before it had taken effect, it is premature. (*Shirreff, S.M.*) GAINDAN LAL *v.* RAM SARUP. **1942 A.W R (Rev.) 371=1942 O.W. N. (B.R.) 512=1942 O.A. (Supp.) 397.**

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——**S. 142**—*Liability for land revenue.*

A co-sharer is not released from his liability for payment of land revenue even though he did not make the collections. (*Shirreff, S. M. and Sathe, J. M.*) MOHAMMAD KHALIL *v.* MANOHAR LAL **1942 O.W N. (B. R.) 439 (2)=1942 A.W.R. (Rev.) 312 (2)=1942 O A. (Supp.) 338 (2)=1942 R.D. 529 (2).**

——**S. 142**—*Liability for revenue—Lease by proprietor—Liability of lessor.*

Under S. 142 of the U. P. Land Revenue Act all the proprietors are responsible for the revenue. Hence in the case of lease by a proprietor, the lessor is a person in proprietary possession for his own benefit with in the meaning of the Expln. to S. 142 and therefore a proprietor and liable for the revenue along with his lessee. (*Shirreff, S.M. and Sathe, J M.*) BHAGWANT RAI *v.* DISTRICT BOARD, FATEHPUR. **1942 O A. (Supp.) 468 (2)= 942 A.W.R. (Rev.) 442 (2)=1942 O.W.N. (B.R.) 615 (1).**

——**S. 142, Expln.**—*Interpretation—Liability of proprietor not in possession for arrears of land revenue.*

The provision in S. 142, U. P. Land Revenue Act, that all the proprietors of a mahal are jointly and severally responsible to Government for revenue assessed thereon must be read in the light of the Explanation which shows that they can only be held liable if they are in proprietary possession for their own benefit. Hence when a proprietor is not in possession at all, he cannot certainly be held to have been in proprietary possession for his benefit and so would not be liable to Government for the revenue. (*Bennett and Madeley, JJ.*) THAKUR PRASAD *v.* ANRUDH SINGH. **204 I.C. 479=1943 R D. 108=1942 O.W.N. 784=1942 O.A. 622.**

——**Ss. 144, 184**—*Presumption of payment of all revenue on behalf of co-sharers—If can be relied on where co-sharers pay individually.*

In a case where co-sharers pay their revenue individually, the presumption that a lambardar has paid all the revenue on behalf of the co-sharers cannot be relied upon. (*Agarwal and Madeley, JJ.*) DURGA PRASAD SINGH *v.* SHAMSHER BAHADUR SINGH. **201 I.C. I.C. 616=15 R.O. 102=1942 R D. 589=1942 O.A. 131=1942 O.W N. 205=1942 A.W.R. (C.C.) 152=A.I.R. 1942 Oudh 317.**

——**Ss. 150 and 151**—Attachment of mahal—Right of Zamindar to intervene and sue for ejectment. *See* 1941 Dig., Col. 1193. MANSOOR AGA *v.* MANZOOR HUSAIN. **1941 A.L.J. (Supp.) 143.**

——**S. 197**—*Partition Manual—Para. 9 (b)—Maha of several khata khewats—Application for imperfect partition—All co-sharers, if should be made parties—Forms of proclamation and service—Procedure regarding.*

Where only some of the co-sharers of one of the several *khata khewats* constituting a mahal apply for an imperfect partition, it is not necessary that the remaining co-sharers should be made 'parties' to the partition case. It was *held*, on the facts of the case that as regards the supply of an adequate number of proclamation forms required by para. 9 (*b*) of the Partition Manual it was not possible (or necessary) to serve a copy of the proclamation individually on the co sharers of the remaining *khewats* and that the plaintiffs should therefore supply sufficient number of forms for individual service on the co-sharers of the *khata* under partition and the proclamation on the co-sharers of the remaining *khatas* of the *khewats* should be served

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as laid down in S. 197 of the Land Revenue Act, (*Shirreff, J.M. and Sathe, A.M.*) RAM CHANDER DASS *v.* JHANDU MAL. 1941 R.D. 1135=1941 O.A. (Supp.) 939=1941 A.W.R. (Rev.) 1170.

——S. 201—*Applicability—Restoration of appeal—Limitation Act, if affects period of limitation.*

S. 201 of the U. P. Land Revenue Act applies to appeals also and hence restoration of an appeal is governed by the rule of limitation prescribed by that section and it is not affected by the period prescribed by the Limitation Act, for the latter does not affect the limitation prescribed by a local law. (*Shirreff, J.M.*) HARI SHANKAR MISRA *v.* RAM CHARAN, 1942 O. W.N. (B.R.) 22 (1)=1942 A.W.R. (Rev.) 80 (1)=1942 O.A. (Supp.) 86 (1)=1942 R.D. 38 (1).

——S. 207—*Bar of suit—Mutation matter—Decision based on award—'It' in the words 'for setting it aside', if refers to award.*

The mere fact that the decision of the Revenue Court in the matter of mutation was based upon an award of an arbitrator would not operate as a bar to a civil suit for adjudication of question of title. The word 'it' in the words "and no person shall institute any suit in the Civil Court for setting it aside", in S. 207 does not refer to the award but refers to the decision of the Revenue Court. (*Bennett and Madeley, JJ.*) GIRJA DAT SINGH *v.* GANGOTRI DAT SINGH, 17 Luck. 558=198 I.C. 553=14 R.O. 414=1942 R.D. 63=1942 O. W.N. 30=1942 O.A. 8=1942 A.W.R. (C.C.) 20=A. I.R. 1942 Oudh 258.

——S. 211—*Revenue Manual, para. 911 (f)—Rev. Court Manual, Ch. I—Instruction 2 (ii) (a)—Appeal against order of Commissioner transferring superior Kanungo—Nature of—If can be filed to the Board direct.*

An order of the Commissioner tranferring a superior Kanungo is an original order and hence an appeal lies to the Board under S. 211, Land Revenue Act and that appeal must be treated as a judicial one under para. 911 (*f*) of the Revenue Manual. The procedure for the presentation of such appeals is governed by Instruction 2 (ii) under Ch. 1 of the Revenue Court Manual. Under sub-clause (*a*) of that instruction an appeal can be filed to the Board direct by presentation to the Registrar or Member personally. (*Sathe, J.M.*) MANI RAM *v.* EMPEROR, 1942 O.A. (Supp.) 451=1942 A.W.R. (Rev.) 425=1942 O.W.N. (B.R.) 646.

——Ss. 213 and 111—*Third appeal—Exercise of discretion by partition officer under S. 111.*

A partition officer has a discretion to proceed under either of the Cl. (*a*), (*b*) or (*c*) of S. 111 of the U. P. Land Revenue Act when the question of proprietary title has not been already determined. If he proceeds under one sub-clause instead of another no third appeal would lie under S. 213, Land Revenue Act, as his action cannot constitute any breach of specified law or usage having force of law, (*Sathe, J.M.*) BINDESHARI KUNWAR *v.* BHUNESHWARI RAJLAKSHMI DEVI, 1942 O.W.N. (B.R.) 436 (1)=1942 A.W.R. (Rev.) 292 (2)=1942 O.A. (Supp.) 318 (2)=1942 R.D. 526 (1).

——Ss 216 and 218—*Powers of appellate Court—Reference to Board—Competency—Proper procedure.*

S. 216 of the U. P. Land Revenue Act does not include in the various actions which an appellate Court can take, that of reference to the Board. Hence when a Collector feels in an appeal by a patwari against his transfer, that the punishment is inadequate and that it should be enhanced, the proper procedure for him to adopt would be to dismiss the appeal and then refer the case to the Board under S. 218 for enhancement as he is himself not competent to enhance. (*Shirreff, J.M. and Sathe, A.M.*) CHHEDI LAL *v.* EMPEROR. 1942 A.W.R. (Rev.) 76=1942 O.A. (Supp.) 82=1942 O. W.N. (B.R.) 70=1942 R.D. 102.

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——S. 216—*Summary dismissal of second appeal—Legality—Judgments of lower Courts differing.*

Under S. 216 of the U. P. Land Revenue Act any appeal can be dismissed summarily. Hence the Commissioner would be within his powers if he dismissed a second appeal summarily even though the judgments of the two lower Courts were not concurrent but conflicting. (*Sathe, J.M.*) RAMJIT AHIR *v.* RAMFALAT TEWARI. 1942 O.W.N. (B.R.) 280=1942 R.D. 369=1942 A. W.R. (Rev.) 247 (1)=1942 O.A. (Supp.) 273 (1).

——S. 218—Reference to Board—Appeal by patwari against transfer—Proper procedure. *See* U. P. LAND REVENUE ACT, SS. 216 AND 218. 1942 O.W.N. (B. R.) 70.

——S. 218—*Reference—Competency—Reference in respect of one's own orders.*

Under S. 218 of the U.P. Land Revenue Act an officer can make a reference only in respect of orders passed by Courts subordinate to himself and cannot make a reference in respect of an order passed by himself. (*Sathe, J.M.*) RAM BRICHH *v.* RAM JANAM. 1942 A.W.R. (Rev.) 408=1942 O.A. (Supp.) 434=1942 O.W.N. (B.R.) 635.

——S. 218—*Reference under—When could be made—Commissioner finding his own order irregular on reconsideration—Proper remedy.*

Under S. 218 of the United Provinces Land Revenue Act a Commissioner can only refer to the Board cases disposed of by Subordinate Revenue Courts in which an irregularity has been committed. It does not empower him to refer orders passed by himself if he subsequently thinks that those orders were irregular. But it will be open to any of the parties who feels aggrieved by the Commissioner's order to move the Board to set it aside if the case falls within the purview of S. 219 of the Act. (*Sathe, J.M.*) ARGLES *v.* NASARULLAH 1942 A. W.R. (Rev.) 273 (1)=1942 O.A. (Supp.) 299 (1)=1942 O.W.N. (B.R.) 443 (1)=1942 R.D. 560 (1).

——S. 233-K—*Applicability.*

If a question of title affecting the partition which might have been raised in the partition proceedings is not so raised and the partition is completed S. 233-K debars parties to the partition from raising the question subsequently in a Civil Court. (*Collister and Allsop, JJ.*) BHAGWATI SARAN SINGH *v.* PARMESHWARI NANDAN SINGH. I.L.R. (1942) All. 518=202 I.C. 227=15 R.A. 104=1942 A.L.J. 197=1942 A.L.W. 245=A.I.R. 1942 All. 267 (2).

——S. 233-K and C. P. Code (1908), S. 11—*Bar of claim under—Distinction.*

A claim may be barred under S. 233-K, U.P. Land Revenue Act, even when it is not barred under S. 11 of C. P. Code and the two bars though sometimes they may overlap are independent of each other and the question of *res judicata* arising in a Revenue Court partition is really a matter to be determined under principles of S. 11, C.P. Code. The bar of S. 233-K comes into play even when it is possible to grant the plaintiff a relief without disturbing the pattis or mahals formed at partition or the liability of revenue which was assessed on it and it is sufficient to attract the statute if a fraction of share or revenue is affected provided the title to that share or liability to pay revenue was adversely determined at the partition expressly or impliedly against the claimant who wants to avoid the effect of partition. But it cannot be said that the Revenue Court partition except when such a result can be reached by application of the principles of *res judicata* or S. 11, C. P. Code, has the

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effect of destroying contracts or trusts subsisting between the parties simply because entries have been made at the partition in disregard of contract or trust between the parties. S. 233 K would not bar claims arising under contracts or transfers. (*Dar, J.*) RAM BARAM DUBE *v.* BAHADUR KHAN. **1942 A L J. 449=1942 A.L.W. 588=1942 A.W.R. (H.C.) 297=A.I.R. 1942 All. 425.**

——**S. 233 K**—Bar of suit—Faiture to bring question of *haq malikana* to notice of partition Court charge if extinguished. *See* U. P. LAND REV. ACT, SS. 111 AND 233-K. **1942 O.W.N. 460=1942 O A 358.**

——**S. 233 (m)**—Applicability—Suit for contribution by an under-proprietor who has paid rent due from all. *See* 1941 Dig., Col. 1195. NEGESHAR PRASAD *v.* CHANDRAPAL SINGH. **A.I.R. 1942 Oudh 14.**

——**S. 234 (b)**—*Supervisor* Kanungo—*Nature of proceedings for the punishment of—Punishment based on suspicion—Propriety.*

Proceedings for the punishment of a supervisor *Kanungo* are judicial proceedings and no punishment can be awarded in judicial proceedings merely on suspicion. (*Shirreff, S.M. and Sathe, J.M.*) CHABINATH SINGH *v.* EMPEROR. **1942 R.D. 566=1942 A.W.R. (Rev.) 274=1942 O.A. (Supp.) 300=1942 O. W.N. (B.R.) 449.**

——**S. 234 (k) and R. 41**—*Rate to be applied for settlement of revenue of alluvial mahal—Disparity between valuation and highest recorded rate.*

Where the highest rate recorded for any mahal is very much below the valuation, the S. D. O. is justified in adopting those rates, under R. 41 as based on rents actually paid for mahals of similar position and soils, for purposes of settlement of revenue of alluvial mahals. (*Shirreff, J.M. and Sathe, J.M.*) MANZOOR AHMAD *v.* EMPEROR. **1942 O A. (Supp.) 48=1942 A.W.R. (Rev.) 48=1942 O.W.N. (B.R.) 148=1942 R.D. 214.**

UNITED PROVINCES LOCAL RATES ACT (I OF 1914), S. 8 (1) (a)—*Liability of under-proprietors to pay police rate.*

Under-proprietors are liable to pay the rural police rate under Cl. (*a*) of Cl. (1) of S. 8 of the Local Rates Act. (*Agarwal, J.*) JUGENDRA BAKHSH SINGH *v.* AHMAD ALI KHAN. **198 I.C. 113=14 R.O. 377=1941 O.W.N. 1334=1941 A.W.R. (Rev.) 1147=1941 O.A. 1037=A.I.R. 1942 Oudh 110.**

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), S. 7 (1) (q)—Applicability—Erection of shrine to house idol found in Municipal property—"Maintaining or developing the value of property vested in the Board"—Meaning and idea contemplated by. *See* 1941 Dig., Col. 1195. MAHOMED ISMAIL *v.* MUNICIPAL BOARD, BENARES. **I L.R. (1941) All. 725=14 R A. 248=197 I.C. 829.**

——**S. 8 (1) (b) (m)**—'Work of public utility'—Nature of work contemplated by—Limitations on the powers of the Board—Maintaining place of worship for one community—When justified. *See* 1941 Dig., Col. 1195. MAHOMED ISMAIL *v.* MUNICIPAL BOARD, BENARES. **I L.R. (1941) All. 725=14 R.A. 248=197 I.C. 829.**

——**Ss. 151 (3) and 152 (1)**—*Notice of vacancy—If to be renewed yearly.*

When law requires a person to give a notice about a matter as soon as that notice is delivered it remains operative and effective unless the notice is withdrawn or its period is determined by a statement in the notice, by act of parties or by operation of statute. A notice served by the owner of a vacant building under S. 151 (3) of the U. P. Municipalities Act remains effective and in force till a notice of re-occupation is given as required

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by S. 152 (1) for the failure of not giving which a penalty is also provided. It was held that where a house had in fact remained vacant for a period beyond 12 months, a notice of such vacancy given and not terminated by a notice of re-occupation would be sufficient to satisfy the conditions of the U. P. Municipalities Act. (*Bajpai and Dar, JJ.*) PREM WATI *v.* MUNICIPAL BOARD, AGRA. **203 I.C. 599=1942 A.L.W. 570=1942 A.L.J. 611=1942 A.W.R. (H.C.) 306=A.I.R. 1942 All. 446**

——**S. 151 (1)**—*'Vacant'—Storing of furniture—Intention to re-occupy house after a time—If negatives vacancy.*

Where furniture is allowed to remain stored in a building and there is an intention on the part of the tenants to re-occupy it on return from the hills, it cannot be said that the building is 'vacant' under S. 151 (1) of the U. P. Municipalities Act. (*Ghulam Hasan and Agarwal, JJ.*). MUNICIPAL BOARD OF LUCKNOW *v.* GOVERNMENT OF U. P. **204 I.C. 186=1942 O.A. 398=1942 A.W.R. (C.C.) 318 (1)=1942 O W.N. 567 =A.I.R. 1943 Oudh 58.**

——**S. 151 (3)**—*Sufficient compliance with—Omission to mention that buildings where 'unproductive of rent'—Intention to claim rebate clear.*

Where a notice under S. 151 (3) though it stated that certain buildings were vacant omitted to mention that they were 'unproductive of rent' also but left no room for doubt that remission was being claimed under S. 151 (3), it was *held* that the notice was a sufficient compliance with the requirements of S. 151 (3). (*Ghulam Hasan and Agarwal, JJ.*) MUNICIPAL BOARD OF LUCKNOW *v.* GOVERNMENT OF U. P. **204 I.C. 186=1942 A.W.R. (C.C.) 318 (1)=1942 O.W.N. 567 =1942 O.A. 398=A.I.R. 1943 Oudh 58.**

——**S. 151 (5) and (1)**—*Continuing right of occupation—Storing furniture and intention to re-occupy house—Building if 'unproductive of rent.'*

When a person stores his things in a house with an intention to re-occupy it on return from the hills there is an *animus revertendi* and he has a continuing right of occupation within the meaning of S. 151 (5) of the U.P. Municipalities Act and the house is not 'unproductive of rent'. (*Ghulam Hasan and Agarwal, JJ.*) MUNICIPAL BOARD OF LUCKNOW *v.* GOVERNMENT OF U. P. **204 I.C. 186=1942 O.A. 398=1942 A.W.R. (C.C.) 318 (1)=1942 O.W.N. 567=A.I.R. 1943 Oudh 58.**

——**Ss. 153 and 296**—*Taxation notification—Construction—'Income'—Meaning.*

Where a charging provision in a notification for the imposition of the 'circumstances and property tax' by the U.P. Municipality provided that 'the rate of assessment' should be on a sliding scale adjusted and assessed on the 'income' of the assessee it was held that the proper construction to be given to the word 'income' in the notification was that it means the net income of the assessee in the same sense in which the word 'profits' would commercially speaking be ascertained. (*Braund and Yorke, JJ.*) UPPER JUMNA VALLEY ELECTRICITY SUPPLY CO., LTD. *v.* NOTIFIED AREA MOWANA. **I.L.R. (1942) All. 493=200 I.C. 739=15 R.A. 81=1942 A.W.R. (H C.) 131=1942 A.L.W. 292=1942 A.L.J. 273=A.I.R. 1942 All. 323.**

——**S. 180 (3)**—Right to proceed with construction by reason of—Warnings from Municipality interfering with—Right to damages. *See* 1941 Dig., Col. 1196. BANWARI LAL *v.* MUNICIPAL BOARD, LUCKNOW, **17 Luck 98.**

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——**Ss. 180 (3) and (5) and 185**—*Scope and effect of—Conditions to be complied with by applicant for sanction to avail benefit of S.* 180 (3).

S. 185 of the U. P. Municipalities Act contemplates not only the erection of a building but the beginning continuance or completion of the erection of a building. Reading sub S (3) with sub S. (5) of S. 180, it would appear that sub-S (3) would cover the case only of a person who is not already in the wrong. In order to get the advantage of sub-S. (3) an applicant must, first of all, make a valid application to the Board. Secondly he must wait for the expiry of a period of one month and after that he must make a written communication drawing the attention of the Board to the omission or neglect to pass an order and thereafter he must wait for a further period of 15 days. Under S 180 (5) it is incumbent on a person who has given notice under S. 178 not to commence any work of which notice has been given until sanction has been given or is to be deemed to have been given by the Board. A notice sent to the Board after starting construction could not be regarded as a notice under sub-S. (3) of S. 180. (*Yorke, J.*) NASIRUDDIN *v.* EMPEROR. **204 I.C. 366=1942 A.W.R. (H.C.) 392 (2)=1942 A.L.W. 694 =1942 A.L.J. 668=A.I.R. 1943 All. 47.**

——S. 211—Order of Executive Officer—Nature of —If can be questioned in Courts of law. *See* U. P. MUNICIPAL ACT, SS. 321 AND 211. **1942 A.L.J. 591.**

——**S. 246**—*Scope and effect—Proceedings in the absence of complaint as is referred to in section—If with jurisdiction.*

S. 246 of the U.P. Municipalities Act bars in express terms a Court from taking cognizance of an offence without the complaint referred to therein and hence the existence of such a complaint is an essential preliminary to the trial. It follows that any action taken by a Court in the absence of such a complaint is without jurisdiction and cannot be upheld. (*Bennett, J.*) ABDUL MAJEED *v.* EMPEROR. **199 I.C. 156=14 R.O. 477= 43 Cr.L.J. 523=1942 A.Cr.C. 53=1942 O.A. 29= 1942 A.W.R. (C.C.) 52=1942 O.W.N. 59=A.I.R 1942 Oudh 244.**

——**S. 298, List 1-H (c)**—*'Kept or plying for hire' —Meaning.*

It cannot be said that the words 'for hire' in 'kept or plying for hire' must be read with word 'kept' as well as with the word 'plying'—The expression 'kept for hire' does not seem to be very natural. The meaning clearly is that all carts either kept in the Municipality or kept outside either plying for hire in the Municipality are liable to be licensed. (*Allsop, J.*) MEWA RAM *v.* EMPEROR. **204 I.C. 443=1942 A. Cr.C. 198 (2) =1942 A.W.R. (H.C.) 337 (1)=1942 A.L.W. 580 (2)=A.I.R. 1943 All. 13.**

——**S. 314**—Construction—'Some person authorised by the Board'—Meaning of. *See* 1941 Dig., Col. 11[97, EMPEROR *v.* ABDUL RAZZAQ. **197 I.C. 239=43 Cr. L.J. 137=14 R.O. 304.**

——**S. 314**—*Forwarding note in complaint signed by some one on behalf of executive officer—Objection as to propriety of complaint, if can be taken in appeal.*

Where the forwarding note at the bottom of the printed complaint is signed by somebody on behalf of the executive officer and no objection is taken either in the trial or appellate Court, it is not open in revision to raise an objection that the note was not signed by a person authorized on behalf of the executive officer. It must be assumed that the prosecution was started on information given by a person authorized on behalf of the executive officer as required by S. 314 of the United Provinces Municipalities Act and there is no real defect in the prosecution. (*Agarwal, J.*) SURAJBALI *v.* EMPEROR. **201 I.C. 466=15 R.O. 103=1942 A.W.R. (C.C.) 275=1942 A.Cr.C. 134=43 Cr.L.J. 739=1942 O.A 303=1942 O.W.N. 425=A.I.R. 1942 Oudh 438.**

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——**Ss. 321 and 211**—*Scope of S. 321—Notice to demolish under S. 211—Competency of law Courts to question—Order of the Executive Officer, if an order of the Board.*

Under S. 321 of the U.P. Municipal Act, no order or direction referred to in S. 318 shall be questioned in any other manner or by any other authority than is provided therein. An order or direction under S. 211 is mentioned in S. 318 and therefore it cannot be questioned by any other authority than the Officer appointed by the Local Government or failing such appointment by the District Magistrate. It follows that it cannot be questioned in a Court of law. The Executive Officer is the Board within the meaning of S. 211. His order is subject to appeal to the whole Board under S. 318 but if no appeal is made or if the appeal being made is rejected, then the order of the Executive Officer would stand, and that would be an order of the Board and it cannot be questioned in a Court of law. A notice to demolish issued under S. 211 by the Executive Officer which was not appealed against could not be questioned in Courts of law. (*Allsop, J.*) MATHURA PRASAD *v.* EMPEROR. **203 I.C. 486=44 Cr.L.J. 84=1942 A.Cr.C. 186=1942 A.L.W. 553=1942 A.W.R (H.C.) 323=1942 A.L.J. 591=A.I.R. 1942 All. 441.**

UNITED PROVINCES OPIUM SMOKING ACT (1934), Ss 25, 13 and 14—*Absence of complaint—Jurisdiction to take cognizance of offence under Ss. 13 and 14—Sanction if equivalent to complaint.*

In the absence of a complaint or report of the Collector or an officer of the Excise Department not below the rank of an Excise Inspector as required by S. 25 of the U. P. Opium Smoking Act, a magistrate has no jurisdiction to take cognizance of an offence under Ss. 13 and 14 of the Act. Sanction to prosecute is not the same thing as making a complaint. (*Ganga Nath, J.*) JADDU LOHAR *v.* EMPEROR. **I.L.R. (1942) A. 153=198 I.C. 896=14 R.A. 345=1942 A.Cr.C. 13= 43 Cr.L.J. 450=1941 A.W.R. (H.C.) 374=1941 All. L.W. 1103=1941 A L.J. 705=A.I.R. 1942 All. 90 (1)**

UNITED PROVINCES PARTITION MANUAL, R. 30 (4)—*Allotment of plots sold—Proper method.*

Under R. 30 (4) of the Partition Manual it is generally desirable that plots sold to individual co-sharers should be allotted to them so far as this is possible without detriment to the compactness or to the fairness of the partition, even though the plots are not (strictly speaking) their severalty. (*Shirreff, S.M.*) GAINDAN LAL *v.* RAM SARUP. **1942 A.W.R. (Rev.) 371= 1942 O.W.N. (B.R.) 512=1942 O.A. (Supp.) 397.**

UNITED PROVINCES REGULATION OF SALES ACT (XXVI OF 1934), S. 5—Order under —Execution and registration of sale deed if necessary for completion of sale—S. 7 if can operate to stay sale ordered but not completed by deed. *See* U. P. ENCUMBERED ESTATES ACT, S. 7 AND U P. REGULATION OF SALES ACT, S. 5. **1942 A.L.W. 185.**

UNITED PROVINCES REVENUE COURT MANUAL—*Instructions regarding summons—Copy of notice sought to be served not left with party summoned—If proper service—Oral communication through peon—Sufficiency.*

Where no copy of the notice sought to be served is left with the party summoned, the issue of the notice is faulty and an oral information conveyed by the peon would not be enough to bind the parties. (*Shirreff, S. M. and Sathe, J.M.*) FAUJDAR SINGH *v.* SAHDEO

U. P. REV. COURT MANUAL, Para. 53.

SINGH. 1942 O.W.N. (B.R.) 678=1942 O.A. (Supp.) 467 (1)=1942 A.W.R. (Rev.) 441 (1).

——Para. 53—*Appeal under Land Revenue Act—Compliance with O. 41, R. 3 (d)—Necessity.*

As the provisions of para. 53 of the U. P. Revenue Court Manual makes the provisions of O. 41, R. 3 (*d*) applicable to appeals under the Land Revenue Act, a Court when allowing an appeal should specify the relief which it means to give the appellant as required by O. 41, R. 3 (*d*), C. P. Code. (*Shirreff, S. M. and Sathe, J.M.*) CHIRANJI LAL BAGLA *v.* AKBAR ALI. 1942 O.W.N. (B.R.) 117=1942 O.A. (Supp.) 62 (2)=1942 A.W.R. (Rev.) 56=1942 R.D. 149.

——Para. 53—*Power of appellate Court to add necessary parties.*

In an appeal under the U. P. Land Revenue Act it is open to the Court to add the necessary parties because para. 53 of the U. P. Revenue Manual has made O. 41, R. 20, C. P. Code, applicable to appeals under U.P. Land Revenue Act. (*Shirreff, S. M.*) GAINDAN LAL *v.* RAM SARUP. 1942 O.A. (Supp.) 397=1942 A.W.R. (Rev.) 371=1942 O W.N. (B R.) 512.

——Paras. 909, 1000, 1001 and Debt Redemption Act, Ss. 16 and 17—*Sale of agricultural land—Stay—Failure to apply under Ss. 909 and 1000 of the United Provinces Revenue Manual—Effect—Long period of stay, if a ground for reopening sale—Debtor not getting the benefit of Debt Redemption Act if justifies holding fresh sale.*

Where on the sale of agricultural land in execution of a Civil Court decree the judgment-debtor fails to apply under either Paras 999 or 1000 of the U. P. Revenue Manual and the sale would have become absolute under Para. 1001 but for a stay order the fact that such stay lasted for nearly four years is no ground for permitting the judgment-debtor to reopen the questions of regularity of sale or the adequacy of the price. Nor is the fact that the debtor is not in a position to get the benefit of the U. P. Debt Redemption Act a ground for holding the sale anew. (*Shirreff, S.M.*) KALYAN RAI *v.* LALITA KUAR. 1942 O.W.N. (B.R.) 502=1942 A.W.R. (Rev.) 185=1942 O.A. (Supp.) 205.

——Para. 911—*Transfer of patwaris—Nature of proceedings—Procedure to be followed.*

Under para. 911 of the U. P. Revenue Department Manual transfers of patwaris are judicial proceedings and judicial procedure must be followed in dealing with them. (*Shirreff, J.M. and Sathe, A.M.*) ASA RAM *v.* MANOHAR LAL. 1942 O W.N. (B.R.) 12=1942 O A. (Supp.) 12=1942 A.W.R. (Rev.) 12=1942 R.D. 12.

——Ch. XL, Paras. 997 and 1011—*Applicability—Decrees passed by Revenue Court.*

Neither para. 997 nor 1011 in Ch. XL of the Revenue Manual has anything to do with a case in which the decree sought to be executed, had been passed by the Revenue Court. Ch. XL in which these paras. occur as the heading shows deals only with the sale of ancestral land in execution of Civil Court decrees. (*Verma and Yorke, JJ.*) HAKIM ALI *v.* SHANKER LAL. I.L.R. (1942) All. 237=203 I.C. 93=15 R.A. 223=1942 A.L.W. 409=1942 A.L.J. 416=1942 A.W.R. (H.C.) 155=A.I.R. 1942 All. 257.

——Para. 1011 (8)—*Scope of right of appeal under.*

Paragraph 1011 (8) of the U. P. Revenue Department Manual gives a right of appeal to the judgment-debtor only against an order confirming the sale and not against any intermediate orders which might be passed by the Collector on the objections of parties. Hence where an appeal is preferred against the dismissal of objections but no appeal is preferred against the confirmation of sale the judgment-debtor cannot get any relief in appeal.

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(*Shirreff, S. M. and Sathe, J. M.*) BHAJAN LAL *v.* KARAN SINGH 1942 A.W.R. (Rev.) 221=1942 O.A. (Supp.) 247=1942 O.W.N. (B.R.) 370=1942 R.D. 459.

UNITED PROVINCES STAYED ARREARS OF RENT (REMISSION) ACT (XVIII OF 1939)—*Benefit under—Stay of rents, if a condition precedent.*

It is not correct to say that in order to entitle the tenants to the benefit of the Act VIII of 1939, the Court should have stayed the rent suits. Under the Stay of Proceedings (Revenue Courts) Act all such suits are automatically stayed without any specific order. (*Thomas, C. J. and Ghulam Hasan, J.*) DAYA SHANKER *v.* BADRI PRASAD. 202 I.C. 529=15 R.O. 132=1942 O.W.N. 543=1942 A.W.R. (C.C.) 328 (3)=1942 O.A. 453=A.I.R. 1942 Oudh 493.

——S. 3—*Agra Tenancy Act, S. 80—Applicability of S. 3 of Stayed Arrears Act to applications for dakkal dehani in pursuance of order under S. 80, Agra Tenancy Act—Order under S. 80, if could be implemented by proceedings under S. 181, U.P. Tenancy Act.*

An application for Dakhal Dehani in pursuance of an order of ejectment under S.80 of the Agra Ten.Act is an application for recovery of arrears of rent and hence would be governed by S.3 of the Stayed Arrears of Rent Act. An order of ejectment passed under S. 80, Agra Tenancy Act, which was not executed by reason of the Stay of Proceedings Act could not be implemented by proceedings under S. 181, U. P. Tenancy Act, after the latter Act came into force. (*Shirreff, S.M. and Sathe, J.M.*) MAHADEO *v.* SHEO RRASAD. 1942 O.A. (Supp.) 440=1942 A.W.R. (Rev.) 414=1942 O.W.N. (B.R.) 657.

——S. 3—*Applicability.*

S. 3 of the U. P. Stayed Arrears of Rent (Remissions) Act only applies to such suits and applications as were stayed under the provisions of the U. P. Stay of Proceedings (Revenue Courts) Act, 1937. The reference to the latter Act means that Act as amended by all the later amending Acts in force up to the passing of the former Act. (*Shirreff, S. M. and Sathe, J.M.*) MOHD. SAFAR *v.* MST. HAJIRA BIBI. 1942 O.W.N. (B.R.) 552=1942 O.A. (Supp.) 368=1942 A.W.R. (Rev.) 342.

——S. 5—*Scope and applicability—Judgment-debtor in possession as mortgagee of land in another mahal and paying local rate of more than Rs. 25—If entitled to the benefit of the Act.*

The word 'person' and not landlord is used in the last clause of S. 5 of the U.P. Stayed Arrears of Rent (Remissions) Act because local rates can be assessed on land held by other persons besides landlords, as provided in S. 8 of the Local Rates Act. Hence where a judgment-debtor is in possession as mortgagee of land in another mahal in respect of which he was paying a local rate of more than Rs. 25 the case comes under S. 5 of the Act and the judgment-debtor is not entitled to the benefit of the Act. (*Shirreff, S. M.*) JAWAHIR SINGH *v.* MUTSADDI LAL. 1942 A.W.R. (Rev.) 264 (2)=1942 O.A. (Supp.) 290 (2) 1942 R.D. 384=1942 O.W.N. (B.R.) 295.

UNITED PROVINCES STAY OF PROCEEDINGS (REVENUE COURTS) ACT (1937), Ss. 2 and 3—*Right to benefit of exclusion of time—Application for execution of decree for ejectment made after expiry of Act—Act coming into force after decree and prior to expiry of limitation.*

Where though a decree for ejectment was obtained no application for execution is made prior to the Stay of Proceedings Act which came into force before the expiry of period of limitation for such an application

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the decree-holder is entitled under S. 3 of the Act on his filing an execution application after the expiry of the Act to the exclusion of the period during which the Act remained in force. (*Shirreff S. M. and Sathe, J. M.*) AMARNATH *v.* BINDESHRI. 19 2 O.A. (Supp.) 388=1942 A.W.R. (Rev.) 362=1942 O.W. N. (B R.) 495 (1).

——S. 3 and U. P. Stayed Arrears of Rent (Remissions) Act (1939), Ss 3, 5 and 8—*Benefit of S. 3 of Stay Act if available to suit falling under S. 5, Remission Act, filed after expiry of Stay Act.*

It was *held* by *Shirreff, S.M.*, that the benefit of S. 3 of Stay Act would be available to a suit falling under S. 5, Remissions Act, filed after expiry of Stay Act to the extent of the period between the passing of the Stay Act and the passing of the Remissions Act, by reason of S. 6(*c*) of the U. P. General Clauses Act but *Sathe, J.M.*, *held* that such benefit would not be available and as the members differed the order of the lower Court was allowed to stand. (*Shirreff, S.M. and Sathe, J.M.*) DURGA NARAIN SINGH *v.* RAMGOPAL. 1942 O.A. (Supp.) 498 (2)=1942 O.W.N. (B.R.) 731=1942 A. W.R. (Rev.) 472 (2).

UNITED PROVINCES SUGAR FACTORIES CONTROL ACT (1938), S. 29 (2) and U. P. Sugar Factories Control Rules, R. 21-A—If *ultra vires* the Provincial Legislature. *See* GOVERNMENT OF INDIA ACT, SCH. VII, LIST I, NO. 45 AND LIST II, NOS. 49 AND 54 AND LIST III, NO. 36. 1942 A.L J. 112.

UNITED PROVINCES TEMPORARY POST-PONEMENT OF EXECUTION OF DECREES ACT (X OF 1937), S. 5—*Scope and effect of a temporary law—Benefit of S. 5—If available after the Act is repealed.*

It is not the law that when a temporary Act comes to an end and ceases to be in force all rights which arose under some of the provisions of the Tem porary Act automatically disappear with the cessation of the Act. It is a question of the interpretation of the particular provision of the statute whether it was to remain in force or whether it was to remain operative even after the Act had ceased to be in force. The language of S. 5 of the U. P. Temporary Postponement of Execution of Decrees Act points to the conclusion that the benefit given by S. 5 was to take effect after the Act had ceased to be in force and the statute contem plated and provided that though it would cease to be in force rights arising thereunder would continue to be in operation. Hence notwithstanding the expiration of the Temporary Postponement of Execution of Decrees Act, 1937 on 31st December, 1940, and the repeal of the said Act by the U.P. Debt Redemption Act, 1940 on January 1st, 1941, creditors are entitled to exclude the time from January 1st, 1938 to December 31st, 1940, in computing the period of limitation applicable to their claims. (*Bajpai, Dar and Yorke, JJ.*) RADHEY LAL *v.* ROOP RAM. 203 I.C. 331=1942 A.L J. 571=1942 A.L.W. 582=1942 A.W.R. (H.C.) 315=A.I.R. 1942 All. 396 (F.B.).

UNITED PROVINCES TENANCY ACT (XVII OF 1939), Ss. 3 (1) and 230—*Effect of S. 3 (1)—Suit by heirs of co-sharer for arrears of profits—Maintain ability.*

S. 3 (1) of the U. P. Tenancy Act has the same effect as S. 229 of the Agra Tenancy Act under which the word 'co-sharer' includes the heirs of a co-sharer, and that is the reason why no corresponding section is to be found in the U. P. Tenancy Act. Hence the heirs of a co-sharer can sue for arrears of profits due to the deceased co-sharer. (*Shirreff, S. M, and Sathe, J. M.*)

U. P. TENANCY ACT (1939), S. 3.

AFZAL KHATOON *v.* MOHAMMAD ISMAIL KHAN. 1942 A.W.R. (Rev.) 147 (2)=1942 O.A. (Supp) 167 (2)=1942 O.W.N. (B.R.) 196=1942 R.D. 262.

——Ss. 3 (1) and 26—*Vendee of* sir—*If becomes a 'landholder'—Test.*

A vendee of *sir* should be treated as a landholder provided all the other co-sharers have agreed to let him act as the landholder for a number of years in which case he should be treated as the agent on behalf of the other co-sharers. (*Shirreff, S.M. and Sathe, J.M.*) HIRA LALL *v.* HARBANS 1942 O.A. (Supp.) 63= 1942 O.W.N. (B.R.) 77=1942 A.W.R. (Rev.) 57= 1942 R.D. 109.

——Ss. 3 (6), 30 and 175—*Effect of S. 3 (6) and S. 30 in regard to land occupied by guava plantation—Status and rights of tenants holding such land under the U. P. Tenancy Act.*

According to S. 3 (6) of the U. P. Tenancy Act land occupied by guava plantations is grove land and by reason of S. 30 of the same Act hereditary rights cannot accrue in respect of such lands. Hence a person holding such land and recorded as a statutory tenant under the Agra Tenancy Act cannot be recorded as a hereditary tenant under the U. P. Tenancy Act but only as a non-occupancy tenant. Though recorded as such he is not liable to ejectment under S. 175 of the latter Act as a tenant from year to year, because the right which accrued under the old Act cannot be taken away by the new Act according to S. 6(*c*) of the U. P. General Clauses Act. (*Shirreff, S.M.*) CHHOTEY *v.* COLLECTOR OF MEERUT. 1942 O.W.N. (B.R.) 125=1942 A.W.R. (Rev.) 88=1942 O.A. (Supp.) 101 (1)=1942 R.D. 170 (1).

——S. 3 (6)—*Grove land—Guavas and peaches—Omission from the definition—Effect.*

Sathe, J.M.—The omission from the new definition of grove land in S. 3 (6) of the U. P. Tenancy Act of the explanation under the definition in S. 3 (15) of the Agra Tenancy Act (1926) that trees such as guavas or peaches shall not constitute a grove does indicate that the Legislature did not mean to prevent such trees from constituting a grove provided they fulfilled the other conditions of the definition and one of such conditions is that the trees must be planted and not self-growing. (*Shirreff, S.M. and Sathe, J.M.*) SHIVA PRASAD *v.* BHAIRON SINGH. 1942 O.A. (Supp.) 50 =1942 O.W.N. (B.R.) 86= 1942 R.D. 118=1942 A.W.R. (Rev.) 50.

——S. 3 (6)—*Grove—Partition of mahal—Grove land falling into different portions—Rights of grove holder.*

After the partition of a mahal a grove holder cannot take any advantage of the fact that the area situated in the other mahals still retains the character of the grove and claim the rights of grove holder in mahals where the land has ceased to be grove. (*Sathe, J. M.*) BHAGWATI SARAN SINGH *v.* NAGESHWAR SINGH. 1942 O.W.N. (B R.) 419=1942 A W.R. (Rev.) 285=1942 O.A (Supp.) 311=1942 R.D. 509.

——S. 3 (10)—*'Land'—Portion occupied by stacks of hay or wood.*

Where land is occupied by stacks of hay or wood, if the occupation is not permanent and is not likely to prevent the land from being used as agricultural land, it is 'land' with in the meaning of the definition in S. 3 (10) of the U. P. Tenancy Act. (*Shirreff, S M.*) HARGIAN *v.* SHEO DATT RAI. 1942 A W.R. (Rev.) 236= 1942 O.A. (Supp.) 262=1942 O.W.N. (B.R.) 169= 1942 R D. 235.

——S. 3 (23)—*'Tenant'—Definition, if excludes permanent lessee with heritable and transferable rights.*

U. P. TENANCY ACT (1939), S. 4.

The definition of 'tenant' given in S. 3 (23) of the U. P. Tenancy Act does not exclude permanent lessees with heritable and transferable rights in Agra. (*Shirreff, S. M. and Sathe, J.M.*) SHRI NATH SHAH *v.* RAM NATH TEWARI. **1942 O A. (Supp.) 478 = 1942 O.W.N. (B. R.) 700 = 1942 A.W.R. (Rev.) 452.**

——**Ss. 4 (1) and 124**—*Condition in kabuliyat not to claim remission—If binding—Rent decree—Allowance for remission granted by Government if can be made.*

Though in the kabuliyat executed by the tenant there is an undertaking that he would claim no remission on account of any agricultural calamity, it cannot prevail against the express provisions of S. 124 read with S. 4 (1) of the U. P. Tenancy Act and hence in passing a decree for arrears of rent, allowance should be made for the remissions sanctioned by Government. (*Shirreff, S.M. and Sathe, J.M.*) JAFAR *v.* SUGAR BIBI. **1942 A.W.R. (Rev.) 237 (1) = 1942 O.A. (Supp.) 263 (1) = 1942 R D 289 (2) = 1942 O.W.N. (B.R.) 223 (2).**

——**S. 9**—*Sir rights, if follow gift of proprietary rights.*

The general rule is that *Sir* rights go along with the proprietary rights when the latter is transferred by gift. (*Sathe, A.M.*) UTTAM SINGH *v.* TALUQDAR SINGH. **1941 A.W.R. (Rev.) 1121 (1) = 1941 O.A. (Supp.) 902 (1).**

——**S. 25**—*Application for mortgage—Time up to which can be applied for.*

An application for a mortgage can be filed at any time even after the preparation of the preliminary award up to the final declaration of the award. (*Sathe, J.M.*) LAKSHMI NARAIN *v.* SHIVA RAJ SINGH. **1942 O. W.N. (B.R.) 693 = 1942 O.A (Supp.) 487 (1).**

——**S. 26**—*Effect of not claiming ex proprietary rights on sale of joint* sir—*Position and rights of vendee.*

In the case of joint *sir* holding, if no ex-proprietary rights are claimed and the vendee of the share of one of the joint *sir* holders comes into possession of specific plots his possession is that of a licensee or trespasser and the holding becomes the *sir* of the remaining *sir* holders. If the vendee perfects his title by adverse possession then only he can be shown as khudkasht holder but not otherwise. (*Shirreff, S.M and Sathe, J.M.*) HAVALDAR RAI *v.* MAHABIR SARAN. **1942 O W N. (B.R.) 620 = 1942 A. W. R. (Rev.) 392 = 1942 O. A. (Supp.) 418.**

——**Ss 29, 175 and 176**—*Agra Tenancy Act, Ss. 20 and 86—Formal application to eject heir of statutory tenant holding over—Stay under Stay of Proceedings Act—Subsequent issue of notice under S. 176 U. P. Tenancy Act—Plea of non-liability to ejectment owing to acquisition of hereditary rights—Maintainability.*

Where an application to eject the heirs of a statutory tenant holding over was not a genuine one to eject them but was one merely in the nature of a registration of a claim to eject and was stayed under the Stay of Proceedings Act and when after New Tenancy Act came into force notices were issued under S. 176 of the Act, it was *held* that the defendants were tenants at the commencement of the Act and that hence they became hereditary tenants and were not liable to ejectment as heirs of a statutory tenant. (*Shirreff, S.M.*) PHUND KUNWAR *v.* GRIWAR. **1942 A.W.R. (Rev.) 434 (1) = 1942 O.A. (Supp.) 460 (1) = 1942 O.W.N. (B.R.) 629.**

——**Ss. 29 (a) and 181**—*Heir of a statutory tenant—Rights—Status of heir holding over after 5 years—Decree for ejectment—Stay—Revival after new Act—Hereditary rights if can be claimed.*

U. P. TENANCY ACT (1939), S. 34.

As the heir of a statutory tenant is one of the classes of tenants enumerated in S. 10 of the Agra Tenancy Act, he is entitled under S. 20 of the Act to retain possession of the holding for 5 years. If he continues to hold for another 3 years and no proceedings are taken to eject him he is to be considered to have been admitted to the holding. But after the expiry of the 5 years, he has no title as the heir of the statutory tenant Where a decree for ejectment was obtained against such a person under S. 86 of the Agra Tenancy Act and it was stayed under the U.P. Stay Act and on the new Act coming into force and execution being revived the heir of the statutory tenant claimed that he had become under S. 29 of the U.P. Tenancy Act a hereditary tenant it was held that it was as a person holding over without title that his ejectment was decreed, and he could not therefore be held to have been a tenant when after the expiry of the 5 years and that not being a tenant he could not become a hereditary tenant under S. 29 (*a*) of the U.P. Tenancy Act. (*Shirreff, S. M.*) MAIKUA *v.* RAM KUMAR. **1942 A.W.R. (Rev.) 294 (1) = 1942 O.A. (Supp.) 320 (1) = 1942 R.D. 499 (2).**

——**S. 33, proviso**—*Agra Tenancy Act (1926), S. 23 proviso—Co-tenancy—Recognition—Facts to be proved—Acceptance as tenant and suing for rent and enhancement—If amounts to recognition.*

Under the proviso to S 23, Agra Tenancy Act, 1926 and the corresponding proviso to S. 33 of the U. P. Tenancy Act a person cannot be deemed to be a co-tenant unless he was a co tenant from the commencement of the tenancy, or has become such by succession or has been specifically recognized as such in writing by the landholder. From the mere fact that a person has been accepted as a co-tenant by the landholder in suit for declaration of right and division of holding, and has been sued for arrears of rent and for enhancement along with the other co-tenants, it cannot be said that there is a specific recognition in writing within the meaning of the above provisions of law. (*Shirreff, S.M.*) RUKKO *v.* KESARI. **1942 R D. 290 = 1942 O.W N. (B R.) 224 = 1942 A.W.R. (Rev.) 237 (2) = 1942 O.A. (Supp.) 263 (2).**

——**S. 33 (2), proviso**—*Creation of co-tenancy—Compromise of proceedings under S. 145, Cr. P. Code—Conditions to be complied with.*

A compromise to create the rights of an occupancy co-tenant would have to be agreed to in writing by the landlords and also to be registered. Hence a compromise of proceedings under S. 145, Cr. P. Code, between rival claimants to an occupancy holding by which parties were to remain in possession of the property half and half and one of them was to pay the expenses of the proceedings, does not create rights of an occupancy co-tenant. (*Shirreff, S.M.*) MADARI *v.* GAURI. **1942 O.W.N. (B.R.) 35 (2) = 1942 O.A. (Supp.) 40 = 1942 A.W.R. (Rev.) 40 = 1942 R.D. 51 (2).**

——**S. 34**—*Succession to Hindu widow who had succeeded to her husband's fixed rate tenancy—Law applicable—Hindu Law of Inheritance Amendment Act, 1929, when would apply.*

Succession to a Hindu widow who had succeeded to her husband's fixed rate tenancy would be governed by the law in force at the time of the death of the widow and not by the law in force at the time of her husband's death. Hence if the Hindu Law of Inheritance Amendment Act had come into force when the widow died it will apply though it might have come into force after the husband's death. (*Shirreff, S.M. and Sathe, J. M.*) MST. KISMATIA *v.* RAM LAKHAN. **1942 O.W.N. (B. R.) 232 = 1942 O.A. (Supp.) 153 = 1942 R.D. 298 = 1942 A.W.R. (Rev.) 132.**

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——**Ss. 35 and 38**—*Ancestral holding—Declaration—Basis.*

A few plots out of a holding cannot be picked out and declared to be ancestral simply because at one time they were included in a holding which belonged to the ancestors of the parties. (*Shirreff, S.M. and Sathe, J.M.*) VIBHUTI NARAIN SINGH *v.* BHAGWAN PRASAD SINGH. 1942 R.D. 738=1942 A.W.R. (Rev.) 396=1942 O.A. (Supp.) 422=1942 O.W.N (B.R.) 610.

——**S. 35**—*Joint holding—Death of one of the joint tenants—Question of co-sharing if can arise when collaterals of equal degree claim succession.*

There can be no question of co-sharing when collaterals of equal degree claim succession on the death of one of the joint tenants of a joint holding. Hence one of such collaterals cannot set up a claim that he alone is entitled to succeed because of his having alone co-shared in cultivation with the deceased. (*Shirreff, S.M. and Sathe, J.M.*) SUNDER LAL *v.* BHARTOO. 1942 A.W.R. (Rev.) 226=1942 O.A. (Supp.) 252=1942 O.W.N. (B.R.) 357=1942 R.D. 446.

——**S. 35 and Agra Tenancy Act (1926), S. 25 (2)**—*Succession — Law governing — Daughter's son claiming to succeed widow who succeeded under Act XII of* 1881 *and died when* 1926 *Act was in force—If should prove co-sharing.*

Succession will be governed by the provisions of the law as it stood when the succession opened. Hence where a daughter's son claims to succeed to a widow who succeeded under Act XII of 1881 and died when the Agra Ten. Act of 1926 was in force, succession will be governed by S. 25 (2) of that Act and he would have to prove co-sharing with the widow if he should succeed. (*Shirreff, S. M. and Sathe, J. M.*) RIAZUDDIN *v.* NAWAB HASAN. 1942 A.W.R. (Rev.) 368 (2)=1942 O.W.N. (B.R.) 501=1942 O.A. (Supp.) 394 (2).

——**S. 35**—*Succession of collaterals of equal degree—Division if to be* per capita *or* per stirpes.

Where there are several collaterals of equal degree entitled to succeed to a deceased tenant the division of shares is to be *per capita* and not *per stirpes*. (*Shirreff, S.M. and Sathe, J. M.*) SUNDER LAL *v.* BHARTOO. 1942 A.W.R. (Rev.) 226=1942 O.A (Supp.) 252=1942 O.W.N. (B.R.) 357=1942 R.D. 446.

——**Ss. 35 and 296 and Agra Tenancy Act, S. 24**—*Succession to holding—Suit prior to new Act—Proof of co-sharing—Necessity.*

As succession will be governed by the Agra Tenancy Act in respect of suits filed prior to the new Act, unless the collateral proves co-sharing with the deceased co-tenant till the latter's death, he cannot succeed. (*Shirreff, S.M.*) BALDEO SANSKRIT PATASHALA, SHEOLI *v.* ZAHRI SINGH. 1942 O.A (Supp.) 41=1942 O.W.N. (B.R.) 35 (1)=1942 A.W.R. (Rev.) 41=1942 R.D. 51 (1).

——**Ss. 35 and 296 and Agra Tenancy Act (1926), S. 24**—*Suit pending when new Act came into force—Proof of co-sharing, if necessary in the case of collateral.*

In the case of a suit pending when the new Act came into force, if a collateral wants to succeed he must prove co-sharing in cultivation with the last male owner. (*Shirreff, S.M. and Sathe, J.M.*) BHARAT SINGH *v.* JAIDEVI. 1942 O.W.N. (B.R.) 519 (1)=1942 A.W.R. (Rev.) 406 (2)=1942 O.A. (Supp.) 432 (2).

——**Ss. 39 (2) and 44**—*Applicability—Sub-sub-lease executed when Agra Tenancy Act was in force—U.P. General Clauses Act, S. 6 (c).*

Ss. 39 (2) and 44 of the U. P. Tenancy Act will not apply to the case of a sub-sub-lease executed when the Agra Tenancy Act was in force because under S. 6 (*c*) of the U. P. General Clauses Act the rights of the parties will be governed by the provisions of the old Act. (*Sathe J. M.*) ZORE *v.* SIRI LAL. 1942 O. A. (Supp.) 235=1942 A. W. R. (Rev.) 209=1942 O.W. N. (B.R.) 381=1942 R.D. 470.

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——**Ss. 40, 41 and 42**—*Scope of exemptions in favour of minors and females as to sub-letting.*

S. 41 of the U. P. Tenancy Act containing the exemption in favour of a minor or a female with reference to sub-letting clearly states that the exemption applies only to the restrictions imposed by S. 40 and there is no reference to the requirements laid down by S. 42. Hence even in the case of a female or a minor the rule as to necessity of registration applies. (*Harper, S M. and Sathe, A.M.*) REOTI PRASAD *v.* MOHAN. 1942 O.A. (Supp.) 42 (2)=1942 O.W.N. (B.R.) 7=1942 A.W. R. (Rev.) 42 (2)=1942 R.D. 7.

——**Ss 40, 41, 42 and 171**—*Sub letting by disabled person for period of five years—Absence of registered instrument—Liability to ejectment.*

A sub-lease by a disabled person for a period of five years, if not registered renders the lessee liable to ejectment from the area sublet otherwise than in accordance with the provisions of the Act. (*Shirreff, S. M. and Sathe, J.M.*) HUKAM SINGH *v.* INDERJIT. 1942 O. W.N. (B. R) 205 (2)=1942 R. D. 271 (2)=1942 A. W.R. (Rev) 166 (1)=1942 O.A. (Supp.) 186 (1).

——**S. 41**—*Exemption under—Blindness—Crucial point of time.*

The exemption from restriction on sub-letting by disabled persons provided by S. 41 of the U. P. Tenancy Act would obviously apply only if the tenant is disabled at the time of sub letting. Hence where a tenant was blind only at the time of suit and not when the holding was sub-let, the exemption did not apply. (*Shirreff, S. M.*) GHANSHIAM RAI *v.* BIRBAL. 1942 R D. 427=1942 O.W.N. (B R.) 338=1942 A. W. R. (Rev.) 275 (2)=1942 O.A. (Supp.) 301 (2).

——**Ss. 44 and 171**—*Illegal transfer — What amounts to.*

All transfers other than (1) certain sub-leases and (2) transfers in favour of co-tenants under S. 33 (2) (*c*) of the U. P. Tenancy Act are illegal under S. 44 of the Act. Hence where in a suit under S. 171 the defendant tenant is neither able to prove that the transferee holds a valid sub-lease from him nor is able to show that the transfer is a transfer to a co-tenant, the transfer is illegal. (*Sathe, J.M.*) RIYASAT *v.* KULLAKAR. 1942 R.D. 712 (1)=1942 O.A. (Supp.) 407=1942 O.W.N. (B.R.) 584 (1)=1942 A.W.R. (Rev.) 381.

——**Ss. 45 and 59 and Agra Tenancy Act (1926), Ss. 35 (f) and 121**—*Effect of tenant being deprived of possession—Right to recover possession also being barred—Trespasser if can be declared sub-tenant of such a person.*

Under both S. 45 (*f*) of the U.P. Tenancy Act and S. 35 (*f*) of the Agra Tenancy Act where a tenant has been deprived of possession and his right to recover possession is barred by limitation his interest as a tenant must be deemed to be extinguished. Hence the trespasser against whom such a person's suit under S. 44 of the Agra Tenancy Act was dismissed cannot in a later declaratory suit be declared to be the sub-tenant of that person. (*Shirreff, S. M. and Sathe, J.M.*) GHANNU *v.* MOHAMMAD ZAHUR. 1942 R.D. 498=1942 O.W.N (B R.) 409=1942 A.W.R. (Rev.) 281=1942 O.A. (Supp.) 307.

——**Ss. 45 and 33**—*Tenancy rights—If can be extinguished by an invalid transfer.*

Where a father makes a gift of his share of a holding to his daughter he does not lose his rights; for the trans-

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fer being invalid his rights continue to subsist in him though the daughter may be in possession, her possession being deemed to be on the donor's behalf. A person cannot lose his rights by a transfer unless the rights so transferred are acquired by the transferee. (*Sathe, J.M.*) JANNU *v.* PARSOTAM. **1942 O. W. N. (B. R.) 432=1942 A.W.R. (Rev.) 290=1942 O.A. (Supp.) 316=1942 R.D. 522.**

——**S. 45 (b) and Agra Tenancy Act, S. 35 (1) (b)**— *Formal* dakhal dehani— *Effect— Presumption under S.* 114, *Evidence Act, in relation thereto.*

A formal *dakhal dehani* even though it may not be followed by actual dispossession extinguishes the rights of a tenant. The presumption under S. 114, Evidence Act that it must be presumed that everything required to be done in the transfer of possession was done according to law could be invoked in such a case. (*Shirreff, S.M. and Sathe, J. M.*) GANGA DIN *v.* SHANKER. **1942 O.W.N. (B R.) 530=1942 A. W. R. (Rev.) 403 (1)=1942 O A. (Supp.) 429 (1).**

——**S. 46**—*Merger—Effect — Person admitted to tenancy thereafter—Status.*

The effect of a fixed rate tenant succeeding to proprietary rights is the merger of the tenancy rights in the proprietary rights and hence a person admitted to tenancy thereafter is a tenant and not a sub-tenant. (*Shireff, S.M. and Sathe, J.M.*) GIRJA PRASAD SINGH *v.* PARSOTTAM. **1942 O. A. (Supp.) 154=1942 O W.N. (B.R.) 249=1942 R. D. 338= 1942 A. W.R. (Rev.) 134.**

——**S. 46**—*Tenant's wife becoming sole proprietor of holding on partition—Gift by her of the property before partition took effect—Merger, if avoided.*

Where on a partition of a mahal the tenant's wife becomes the sole proprietor of the holding and she executes a deed of gift of the property in favour of a third person prior to the partition taking effect (*i.e.*) before 1st July following the confirmation, there is no merger of tenancy rights of the husband in the proprietary rights of the wife. (*Sathe, J.M.*) RAM GHULAM *v.* RADHA KISHUNJI. **1942 O. W N. (B R.) 233=1942 R.D. 299=1942 O.A. (Supp.) 158=1942 A. W. R. (Rev.) 138=1942 A L.J. (Supp.) 34.**

——**Ss. 47 and 295 and Oudh Rent Act, S 61**— *Effect of decree against tenant under S.* 61, *Oudh Rent Act—Rights of sub-tenant, how affected.*

The rights of a tenant against whom a decree has been passed under S. 61 of the Oudh Rent Act are extinguished from the very date of the decree and with effect from that date he becomes a trespasser. Under S. 32 (1) of the Agra Tenancy Act and S. 47 of the U.P. Tenancy Act the rights of the sub-tenant as such also come to an end with effect from that date and he becomes a trespasser. A sub-tenant who has ceased to be sub-tenant when the new Tenancy Act comes into force is not entitled to the benefits of S. 295. (*Shirreff, S. M. and Sathe, J. M.*) AHMAD ALI *v* MATHURA PRASAD. **1942 R.D 476=1942 O.W.N. (B.R.) 387=1942 O. A. (Supp.) 254=1942 A.W.R. (Rev.) 228.**

——**S. 47 (1) and (4)**—*Widow inheriting holding from her husband, re-marrying—Effect—Position of sub-tenants.*

Where a widow inheriting a holding from her husband re-marries, her rights in the holding are extinguished. The extinction of rights is not governed by S. 47 (4) and so must fall under S. 47 (1) of the Tenancy Act and hence the rights of her sub-tenants must be deemed to be extinguished from that date. (*Shirreff, S.M. and Sathe, J.M.*) MOHAMMAD AHMADUDDIN KHAN *v.* SHARAFAT KHAN. **1942 O.A. (Supp.) 413=1942 O. W. N. (B.R.) 674=1942 A.W.R. (Rev.) 387.**

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——**S. 49**—*Consent of landlord—When necessary.*

Under S. 49 of the U. P. Tenancy Act the consent of the landlord in writing is necessary in the case of an agreement between the co-tenants and not in the case of a decree in a suit brought for the division of a holding under S. 37 of the Agra Tenancy Act, but decided under S. 49 of the new Act. The landholder has only to be made a party to the suit under the new Act and decree is binding on him. (*Shirreff, S.M.*) RAGHUBAR *v.* SUKHNANDAN. **1942 A. W. R. (Rev.) 43 (2)=1942 R. D. 54 (2)=1942 O.A. (Supp.) 43 (2)= 1942 O.W. N. (B.R.) 38 (2).**

——**S. 49**—*Contracting out of right to division of holding—Enforceability.*

An agreement not to enforce the right to division or share in a holding in consideration of fixed periodical payments does not contravene any mandatory provision of the Agra. Ten. Act or the U P. Tenancy Act and is also not against any public policy or morality. Such an agreement cannot be void; for it is always open to parties possessing rights to contract themselves out of these rights for a valid consideration provided the agreement is not barred by any provision of law and is not opposed to public policy or morality. Hence it will not be open to parties to claim division in violation of the terms of the agreement. The question whether such terms have been violated or not has to be determined by the Revenue Courts and not by the Civil Courts. (*Shirreff, S.M. and Sathe, J.M.*) PIARE LAL *v.* SALIG RAM. **1942 A.W.R. (Rev) 471=1942 O.A. (Supp.) 497=1942 O.W.N. (B.R.) 680.**

——**S. 49**—*Division of holding when effective—Effect of absence of consent of landholder.*

A division of holding without the consent of the zamindar is not a final division and does not extinguish the rights of the different branches in the holding as a whole. The rights of the co-tenants are not extinguished by a partition which has not been acted upon and which also has not been made binding on the landholder by his consent in writing. (*Shirreff, S. M. and Sathe, J.M.*) BHIKWA *v.* MATHURA SINGH. **1942 A. W. R. (Rev.) 316=1942 O.A. (Supp.) 342=1942 O.W. N. (B.R.) 457=1942 A.L.J. (Supp.) 55=1942 R. D. 574.**

——**S. 49**—*Non-occupancy holding in Oudh—Heritability—Limits—Facts to be proved to establish a claim to share in it.*

Non-occupancy holdings in Oudh are practically uninheritable except to the very limited extent allowed by S. 48 of the Oudh Rent Act. Further even in the case of heritable holdings unless the original holding has continued in an identical form throughout the period there can be no presumption that it is an ancestral one and that all the descendants of the original tenant are entitled to share in it. Before a claim to a share in it can be decreed it must be held that on the death of each successive tenant, the zamindar resettled the land with all his descendants. (*Shirreff, S. M. and Sathe, J.M.*) DATA DIN *v.* PARMESHWAR DUTT. **1942 A. W.R. (Rev.) 300=1942 O.A. (Supp.) 326=1942 O. W.N. (B.R.) 472=1942 R.D. 589.**

——**Ss. 49 and 59**—*Procedure to be followed when question of title is raised in suit for division of holding.*

If in a suit for division of holding questions of title are raised they must be decided in that suit itself. It is wrong to say that title to share in the holding must be first established under S. 59 of the U. P. Tenancy Act before division can be asked for. (*Shirreff, S.M. and Sathe, J.M.*) MOHAN SINGH *v.* SAMRATH SINGH. **1942 O.A. (Supp.) 445=1942 A.W.R. (Rev.) 419=1942 O.W.N. (B.R.) 654.**

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——S. 49—*Suit for division of holding—Alienations by predecessors in interest of the plaintiffs—If in representative capacity or for personal benefit—Onus.*

Where in a suit for a division of the holding it is pleaded in defence that certain alienations made by the predecessors in interest of the plaintiffs were for their own personal benefit and should therefore be included in their share but it is denied by the plaintiffs and it is alleged that the alienations were made in their representative capacity, the onus of proving that the transactions were for the benefit of all co-tenants lies on the plaintiffs. (*Sathe, J.M.*) NAROTTAM *v.* SUNDER. 1942 O.A. (Supp.) 133=1942 O. W. N. (B. R.) 250=1942 R.D. 339=1942 A.W.R. (Rev.) 116.

——S. 53 (2)—*Exchange—Conditions necessary for—Land belonging to applicant and other co-sharers, if can be given.*

The only conditions according to S. 53 (2) which should exist for ordering an exchange of lands are (1) that the land must be under the cultivation of the applicant and (2) that it must be approximately equal in value to the land received by the applicant Hence there is no legal bar to the Sub-Divisional Officer giving a plot in exchange which does not exclusively belong to the applicant but belongs to him and other co-sharers. (*Shirreff, S M. and Sathe J.M.*) SUBHKARAM SINGH *v.* BALBHADDAR SINGH 1942 A.W.R. (Rev.) 412 (2)=1942 O.A. (Supp.) 438 (2)=1942 O. W N. (B R) 643.

——S. 53 (4) (b)—*Exchange of plots in different mahals—Legal bar, if any.*

S. 53 (4) of the U. P. Tenancy Act only requires that the application should be for the exchange of land between persons who are landlords. There is nothing in the clause to suggest that the two landlords must belong to the same mahal. Hence exchange between landlords need not be between landlords in the same mahal. (*Shirreff. S.M. and Sathe, J.M.*) SUBHKARAN SIHGH *v.* BALBHADDAR SINGH 1942 A W.R. (Rev) 412=1942 O.A. (Supp.) 438 (2)=1942 O.W N. (B.R.) 643.

——S. 54—*Application under—Reasonableness of—Collector, if has discretion to enquire into.*

Where an application is made under S. 54 of the U P. Tenancy Act for acquisition of land, the Collector has a discretion to enquire into the reasonableness of the applicant's desire to acquire the land in question. (*Shirreff, S.M. and Sathe, A M.*) KASHI RAM *v.* NATHOO SINGH. 1942 O W N (B R) 120=1942 O.A. (Supp.) 87=1942 A W.R. (Rev.) 81=1942 R.D. 165.

——S. 54—*Right of a co-charer in joint mahal to apply under.*

Under S. 54, U.P. Tenancy Act, any one co-sharer in a joint mahal is entitled to apply for possession of a particular piece of land and get it through Court as against all other co-sharers. The only restriction is that he can apply only to the extent of his share. (*Shirreff, S.M. and Sathe. J. M*) BIRBAL *v.* KALLU SINGH. 1942 O A. (Supp.) 370=1942 A.W.R. (Rev.) 344=1942 O.W.N. (B.R.) 565=1942 R.D. 693.

——S. 54—*Scope of—Extent of Collector's discretion under.*

The terms of S. 54 of the U. P. Tenancy Act are not mandatory and the Collector has discretion to enquire into the reasonableness of the zamindar's desire for acquiring land. Where the landholders did not live in the village and their proprietary rights in the village were obtained by purchase and where they had already a grove in the village and the plot which they sought to acquire was situated at a distance from that grove it was held that the Collector was right in holding that the land was not required by them for a grove for their own enjoyment. (*Shirreff S.M. and Sathe, J M.*) BALWANT *v.* MURLI DHAR. 1942 O.W.N. (B.R.) 433=1942 A. W R. (Rev.) 310 (2)=1942 O. A. (Supp.) 336 (2)=1942 R D. 523.

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——S. 54, Proviso (a)—*Applicability—Conditions.*

Cl. (*a*) of proviso to S. 54 of the U. P. Tenancy Act applies only to the village in which the land to be acquired is situated. Under this proviso the land is not to be acquired if the applicant possesses a grove in the village the area of which with that acquired will exceed 5 acres. Before the proviso comes into play at all, the applicant has to satisfy the Collector that the land is required. (*Shirreff. S.M. and Sathe, J.M.*) BIRBAL *v.* KALLU SINGH. 1942 O A. (Supp) 370=1942 A. W R. (B R.) 344=1942 O.W.N. (B.R.) 565=1942 R D. 693.

——S. 59—*Absence of evidence of plaintiff being out of possession—Dismissal of suit if justified.*

In the absence of definite evidence and finding of the plaintiff in a suit under S. 59 of the U. P. Tenancy Act being out of physical possession, his suit cannot be dismissed merely on the ground that there was a prior ejectment in execution of a decree under S. 61, Oudh Rent Act. (*Sathe, J.M*) BAWAR *v.* MAHESHWAR BUX SINGH 1942 O A (Supp.) 449=1942 A.W.R. (Rev) 423=1942 O W N. (B.R.) 672.

——S. 59—*Compromise giving up 'pukhtadari' rights and getting 'qabzadari' rights in return—Status of such tenant.*

Where by a compromise in a suit during the first settlement the plaintiffs gave up their claim to 'pukhtadari' rights and accepted 'qabzadari' rights in their stead it was held that the right of occupancy without right of transfer was given to the plaintiff in that case. (*Agarwal and Madeley, JJ.*) MATHURAJI *v.* BHUNESHWARI RAJLAKSHMI 204 I C 13=1942 O W. N. 499=1942 A W R. (C.C.) 293=1942 O.A. 352=A. I. R. 1942 Oudh 502.

——S. 59—*Decision under of suit filed under S. 121, Agra Tenancy Act—Suit being by only one of the claimants if bad on that account.*

Where a suit filed under S. 121 of the Agra Tenancy Act is ultimately disposed of under S. 59 of the New Tenancy Act, it cannot be said to be bad on the ground that it was filed by only one of the several claimants and that the others had been made defendants, for S. 59 permits any person claiming even to be a joint tenant to file a declaratory suit. (*Shirreff. S. M. and Sathe, J M*) GIRDHAR DAS *v.* BINDESHWARI. 1942 R. D. 362=1942 O.A (Supp.) 177=1942 O. W. N. (B.R.) 273=1942 A.W.R (Rev.) 157.

——S. 59—*Declaratory suit—Maintainability by one out of several joint tenants.*

S. 59 of the U. P. Tenancy Act permits even a person who claims to be one out of several joint tenants to institute and maintain a declaratory suit. (*Sathe, J. M.*) RAMDAYAL *v.* RAJ BANSIKUNWAR. 1942 O. W. N. (B R.) 288=1942 O.A. (Supp.) 194=1942 A. W. R. (Rev) 174=1942 R.D. 377.

——S 59—*Dispossession after ejectment—Review of ejectment order—Failure to obtain restitution of possession—Effect—Suit for declaration—Maintainability.*

Where a tenant dispossessed on ejectment fails to obtain restitution of possession when the ejectment order is cancelled on review and makes no attempt to assert his claim for over three years, he cannot thereafter sue for a declaration of his rights. (*Shirreff, S.M.*) MOHAN LAL *v.* SAIRA BIBI. 1942 A. W. R.

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(Rev.) 255 (2)=1942 O.A. (Supp.) 281 (2)=1942 R. D. 337 (2)=1942 O.W.N. (B.R) 248 (2).

——S. 59—*Effect of change in the language—Applicability of Proviso to S. 42 of Specific Relief Act to suits under S. 59.*

Though it cannot be said that no suit under S. 59 of the U. P. Tenancy Act can lie when the plaintiff is out of possession, the changed phraseology of the section does not remove the application of the proviso to S. 42, Specific Relief Act, to such cases. That proviso does not bar a suit in all cases where plaintiff is out of possession. (*Shirreff, J.M. and Sathe, A.M.*) RAGHUNATH SINGH *v.* RAM ADHAR. 1941 O. A. (Supp.) 919=1941 A W.R. (Rev.) 1138=1941A.L.J. (Supp.) 145.

——S. 59—*Maintainability of suit against rival tenant alone.*

A suit which is brought against a rival tenant alone and not against the zamindar must fail as the relief open to the plaintiff is only against the landholder. (*Harper, S M. and Sathe, A. M.*) LALLOO *v.* MUNNA LAL 1942 O.W.N. (B.R) 2=1942 O.A. (Supp.) 7=1942 A. W. R. (Rev.) 7=1942 R. D. 2=1942 A. L. J. (Supp.) 1.

——Ss. 59 and 63—*Scope of—Applicability to suits between zamindars* inter se.

Ss. 59 and 63 of the U. P. Tenancy Act contemplate only suits between zamindars and tenants. Hence no suit can lie under either of the sections for a declaration regarding exclusive khudkasht rights between zamindars *inter se.* (*Sathe, J. M.*) KUNJI *v.* DURGA SINGH. 1942 O. A. (Supp) 33=1942 A W .R. (Rev.) 33=1942 O.W.N. (B.R.) 47=1942 R.D. 79.

——S. 59 and Evidence Act (1872), S. 116—*Suit by ejected chief tenant who became a sub-tenant—Maintainability.*

Where the chief tenant is ejected *ex parte* for non-payment of rent and the zamindar thereafter gives a lease in favour of his near relatives who in their turn give a sub-lease to the former tenant in chief it is not open to the latter to sue for a declaration that he is the tenant in chief on the ground that the lease in favour of the near relatives of the zamindar was fraudulent. (*Harper, S. M. and Sathe, A. M.*) RAM RATAN *v.* LACHHMAN. 1942 O.W N. (B R) 153=1942 R. D. 219=1942 O. A. (Supp.) 115 (2)=1942 A.W R. (Rev) 99 (2).

——Ss. 59 and 296—*Suit by one of the joint tenants under S. 121, Agra Tenancy Act—Disposal after new Act—Law applicable.*

A suit filed by one of the joint tenants under S. 121, Agra Tenancy Act, which is pending when the new Act came into force has according to S. 216 of the U. P. Tenancy Act to be disposed of according to S. 59 of that Act. Hence it cannot be dismissed on the ground that the suit was only by one of the joint tenants because S. 59 permits such a suit even if the others do not join. (*Shirreff, S. M and Sathe, J.M.*) JAIPAL *v.* BABBAN MISIR. 1942 A.W.R. (Rev.) 333=1942 O.A. (Supp.) 359=1942 O.W N. (B.R.) 527.

——S. 59—*Suit for declaration by a co-tenant out of possession—Maintainability.*

The possession of one co-tenant is the possession of all co-tenants unless it is openly adverse. A co tenant out of possession cannot get that possession by a declaratory suit. But if he is not asking for possession at all and is content with the constructive possession that he is enjoying through his co-tenants and wants only a declaration regarding his title and the entry of his name in the papers his suit cannot be dismissed unless the co-tenants in possession are able to show that their possession had been openly adverse to him beyond the period of limitation or that the plaintiff has surrendered

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or transferred his share. (*Shirreff, S.M. and Sathe, J. M.*) SITLA BUX SINGH *v.* SHEO TAHAL. 1942 R D. 562=1942 A.W.R. (Rev.) 303=1942 O.A. (Supp.) 329=1942 O.W.N. (B.R.) 445.

——S. 59 and Agra Tenancy Act (1926), S. 121—*Suit for declaration of co-tenancy—Proof of possession and payment of half rent.*

Where the plaintiff in a suit for declaration of co-tenancy with the defendant proves possession along with the defendant and payment of half the rent, he is entitled to get the declaration asked for. (*Shirreff, S.M.*) KHAZAN *v.* HARIYA. 1942 O.W.N. (B.R.) 170=1942 A.W.R. (Rev.) 234=1942 O.A. (Supp.) 260=1942 R.D. 236.

——S. 59—*Suit for declaration of joint tenancy—Evidence which could displace long standing entry in favour of defendants.*

In a suit for declaration of joint tenancy, the evidence of plaintiff's possession, of his having paid rent canal dues, etc. and the fact of the landholder's written statement supporting the claim, are not enough to conclusively prove that the holding was joint when there are long standing entries in favour of the defendants. The best evidence to prove the case of the plaintiff is the production of the zamindar. No amount of other evidence can be believed against long standing entries in favour of the defendants. (*Shirreff. S M. and Sathe, J. M*) RAMCHANDRA *v.* ASA RAM. 1942 O.A. (Supp.) 256=1942 A W. R. (Rev.) 230=1942 O. W. N. (B.R.) 383=1942 R.D. 472.

——Ss. 59 and 29—*Suit for declaration—Plaintiff in possession with consent of landholder—Admission to tenancy not proved—Status of such person.*

Where a plaintiff suing for declaration of rights was found to be a *de facto* tenant of the whole holding from 1344 F and the facts indicated that he was so with the consent of the landholder, but the plaintiff had not proved that he was admitted in 1342-F. on a particularly low rent it was *held* that in such a case the correct finding should be that the plaintiff was the hereditary tenant of the holding but without the settlement of rent. (*Shirreff, S.M. and Sathe, J.M.*) GAVAN SINGH *v.* MIR SINGH. 1942 O. A (Supp.) 148 (2)=1942 O.W.N (B R.) 255=1942 R D. 344=1942 A. W. R. (Rev.) 128 (2).

——S. 59 and Specific Relief Act, S. 42, Proviso—*Suit for declaration while admitting partial possession of defendants—Maintainability.*

Though the plaintiffs in a suit for declaration that they are sole tenants admit the possession of the defendants in respect of a part of the holding, that alone cannot bar a declaratory suit in respect of the holding as a whole. (*Sathe, J.M.*) MAIKWA *v.* PAGALWA. 1942 O.W.N (B.R) 684=1942 O. A. (Supp.) 426=1942 A.W.R. (Rev.) 400.

——S. 59—*Suit for declaration without anticipation of further relief—When title proved.*

Per *Sathe, A.M.*—Where a plaintiff has fair reasons to think that he is in possession but ultimately fails to establish his possession the suit should not be thrown out merely because he did not anticipate an adverse finding and include a prayer for possession in the reliefs claimed by him.

Per *Harper, S. M.*—It may be accepted as the view of the Board that if the plaintiff satisfies the Court that when bringing the declaratory suit he anticipated no further relief, he may get his declaration provided he proves his title. (*Harper, S.M. and Sathe, A.M.*) LALLOO *v.* MUNNA LAL. 1942 O.W N. (B.R) 2=1942 O.A (Supp.) 7=1942 A.W.R. (Rev.) 7=1942 R.D. 2=1942 A.L.J. (Supp.) 1.

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——S. 59—*Suit to declare holding joint—Onus—Facts to be proved.*

A tenancy is the result of a contract between the tenant and the zamindar and it must be shown that the zamindar agreed to admit all the persons to the holding before it can be held that it belongs to all the members of a joint Hindu family. The onus of proving that the zamindar did settle the land with all of them jointly and not only with the individuals in whose name the holding stands lies on the persons who claim the holding to be a joint one. The fact that the plaintiffs lived jointly with the recorded tenant is totally inadequate to prove that the holding was settled jointly with them. No amount of common living can make the parties joint tenants. (*Shirreff, S. M. and Sathe, J. M.*) SRI KRISHAN DATT DUBE *v.* BADRI RAI. 1942 O A. (Supp.) 198 (2)=1942 R. D. 381=1942 O W.N. (B.R.) 292=1942 A.W.R. (Rev.) 178 (2).

——Ss. 59 and 180 (2)—*Suit to declare plaintiff hereditary tenant—Settlement of land though found against plaintiff found to be in adverse possession for over the statutory period—Relief on basis of S.* 180 (2), *if can be given by Court when not prayed for by party.*

Where in a suit under S. 59 of the U. P. Tenancy Act a plaintiff asks to be declared a hereditary tenant the Court though it finds that the land has not been settled with the plaintiff, nevertheless also finds that he has been in adverse possession for over the statutory period, it can decree the suit by applying S. 180 (2) of the Act even though relief on that basis has not been asked for. TheCourt cannot, no doubt, make out a new case on facts for the parties, but it also cannot refrain from applying statutory provisions of law to its own findings of fact irrespective of the fact whether the statutory provisions were mentioned in the pleadings of the parties or not. (*Sathe, J. M.*) PARSOTTAM PANDE *v.* SUMIRAN. 1942 A W.R. (Rev.) 354 (2)=1942 O. A (Supp.) 380 (2)=1942 O.W.N. (B.R.) 596=1942 R D . 724.

——S. 59—*Suit to declare plaintiff sole tenant—Plaintiff's prior admission in correction case as to defendant's right to be entered as co-tenant—Effect.*

In a suit to declare the plaintiff as the sole tenant, his admission in prior correction of papers case that the name of the defendant might also be entered as a co-tenant though it may not operate as an estoppel, is nevertheless a piece of evidence which can be taken into consideration. The plaintiff cannot be believed when he tries to go back on his own admission. (*Sathe, J. M.*) NAHNEY *v.* RAJPAL. 1942 O. A. (Supp.) 242 (2)= 1942 A.W.R. (Rev) 216 (2)=1942 O.W.N. (B.R.) 386=1942 R D. 475

——S. 59—*Suit under—Defendant claiming to be tenant-in-chief—Desirability of impleading zamindar*

Where a recorded occupancy tenant sues for a declaration regarding the status of the defendant who claims to be the tenant-in-chief holding the land direct from the zamindar but who is in fact entered in the papers as his sub tenant, it is desirable that in order to settle the dispute once for all the zamindar should also be made a party to the proceedings. Otherwise it will be open to the zamindar to disown the result of that litigation and to start a fresh litigation of his own. (*Shirreff S.M. and Sathe, J. M.*) BANDHAN *v.* RAHU RAI. 1942 R.D. 696=1942 A. W. R. (Rev.) 391= 1942 O.A. (Supp.) 417=1942 O.W.N (B.R.) 568.

——S. 59—*Suit under—Maintainability—Ancestral holding—Declaration of co-tenancy on that ground—Facts to be proved.*

The mere fact that the plots comprised in the present holdings formed part of a much bigger ancestral *sir* holding which was sub-divided more than once in later

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years is not enough for the conclusion to be drawn that it still continues to belong to all the descendants of the common ancestor. In order to entitle a party to claim co-tenancy in a holding on the ground of its being ancestral it is essential however that the identity of the holding must have remained unchanged throughout the period. Where the identity of the holding had changed more than once and neither party was able to explain on what principle the original holding came to be sub-divided, it was held that the plaintiff's suit for declaration of co-tenancy was rightly dismissed on the ground that the holding was originally ancestral. (*Sathe, J.M.*) GANESH GOVIND RAI *v.* BHOLA GOVIND RAI. 1942 O. W. N. (B.R.) 290 (2)=1942 O. A. (Supp.) 197=1942 R. D. 379 (2)=1942 A.W R. (Rev.) 177.

——S. 59 and Agra Tenancy Act (1926), S. 121—*Suit under S.* 121 *disposed under S.* 59—*Non-joinder of other co-tenants as co-plaintiffs, if fatal.*

Where a suit filed under S. 121, Agra Tenancy Act, has to be disposed of under S. 59 of the U. P. Tenancy Act since it was pending after 1st January, 1940. the non-joinder of all co-tenants as co-plaintiffs cannot be invoked as a reason for the dismissal of the suit because under S. 59 of the U. P. Tenancy Act any person claiming to be even a joint tenant may file a suit for declaration of his rights. (*Sathe, J. M.*) ANNU TEWARI *v.* CHITROO MISRA. 1942 O. W. N. (B R.) 426=1942 A.W.R. (Rev.) 309 (1)=1942 O.A. (Supp.) 335 (1)=1942 R.D. 516.

——S. 59—*Suit under, who can file—All co-sharers if should be impleaded.*

A suit under S. 59 of the U. P. Tenancy Act can be filed by a person who even claims to be a joint tenant. It is not necessary to a suit under S. 25 that all the co-sharers in khewat should be impleaded. It is enough if all the landholders are added as parties. (*Sathe, J. M.*) PUJAN KOERI *v.* MUSAN. 1942 O. A. (Supp.) 373 (2) = 1942 A.W.R. (Rev.) 347 (2)=1942 O.W.N. (B.R.) 561.

——Ss 59 (2) and 242—*Suit under S.* 59—*Addition of party—Condition—Court competent to try.*

In a suit under S. 59, U. P. Tenancy Act, if a person claims the land from the landholder in his own rights, he satisfies the requirements of S. 59 (2) and can be added as a party and such a suit would under S. 242 be triable only by a Revenue Court. (*Sathe. J.M.*) PUJAN KOERI *v.* MUSAN. 1942 O. A. (Supp.) 373 (2)= 1942 A.W.R. (Rev.) 347 (2)=1942 O. W. N. (B.R.) 561.

——S. 60—*Suit under—Maintainability—Admission of person as co-tenant—Transferee of proprietary rights under exchange if estopped from denying status of tenant admitted.*

Where a person has been admitted as a co-tenant of another by the manager of the proprietor, a transferee from the proprietor under an exchange would be estopped as his transferor from denying the status of the tenant so admitted and hence cannot sue under S. 60 of the U. P. Tenancy Act to declare that that tenant was not a tenant at all. (*Shirreff, S.M. and Sathe, J.M.*) BRIJ BEHARI LAL *v.* DEBI DAYAL. 1942 O.A. (Supp.) 488 (2)=1942 O. W. N. (B.R.) 671.

——Ss. 61 and 55—*Declaration as to right to set off rent—If can be given.*

Since a set off in rent is not provided for in any of the clauses in S. 55 no declaration could be given in respect of it under S. 61. (*Shirreff, S. M. and Sathe, J. M.*) BALDEO DAS BIRLA *v.* SRI BALWANT RAO NAIK KATIA. 1942 O A. (Supp.) 419=1942 O.W.N. (B.R.) 637=1942 A.W.R. (Rev.) 393.

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——S. 61 and Agra Tenancy Act (1926), S. 123 (a) and (b)—*Suit for declaration of status and correct area—Plaintiff claiming to be in possession and asserting entry in the patwari papers to be wrong—Suit if could be dismissed as not maintainable by virtue of proviso to S. 42, Specific Relief Act.*

Where the plaintiff in a suit for declaration of status and correct area maintains throughout that he is still in possession of the same area on the spot though the entries in the Patwari's papers show differently, he is perfectly entitled to this under Cls. (*a*) and (*b*) of S. 123 of the Agra Tenancy Act. Such a suit cannot be thrown out on the ground that the plaintiff is out of possession by applying the proviso to S. 42 of the Specific Relief Act. (*Shirreff S. M. and Sathe, J. M.*) TALUQDAR *v.* HASHMAT. **1942 O.A. (Supp.) 209 = 1942 O.W N. (B.R.) 330 = 1942 R. D. 419 = 1942 A. W.R. (Rev.) 189**

——Ss. 61 and 123—*Suit to declare the rent—Competency of Court to decide as to rate of slump remissions.*

In a suit to declare what is the rent of a holding it is not competent for the Court to decide what the slump remission on the rent should be. Slump remissions are given by executive orders and it is not within the competence of judicial Courts to vary these remissions or to sanction them afresh. (*Shirreff, S.M. and Sathe, J.M.*) CHONHAR KALWAR *v* MADHO PRASAD. **1942 A W.R. (Rev.) 353 = 1942 O A. (Supp.) 379 = 1942 O W.N. (B.R.) 577 = 19 42 R.D. 705.**

——Ss. 63 and 180—*Plea of ejectment and declaration of title—If can be combined—Relief under S. 180, if can be obtained when section not referred to in plaint.*

There is no legal bar against a plea for ejectment being joined with a plea for declaration of title. In fact a plea for ejectment involves adjudication on the question of title also. The omission of the mention of S. 180, U. P. Tenancy Act, in the plaint is not very material and relief under the section can be given nevertheless. (*Shirreff, S. M. and Sathe, J. M.*) GHISAI TELI *v.* SHEO MURAT MISIR. **1942 O.A. (Supp.) 293 = 1942 R D 594 = 1942 A. W. R. (Rev.) 267 = 1942 O.W.N. (B R.) 477.**

——S. 81 (1) and (2)—*Declaration as to trees standing on* Kadim Banjar.

Trees standing on *Kadim Banjar* should be presumed to belong to the landholder and not to the tenant to whom the land is for the present let for pasturage and whose possession has neither been admitted or proved. (*Shirreff, S. M. and Sathe, J.M.*) SHAMSHUDDIN AHMAD *v.* FAQIRE. **1942 O.A. (Supp) 501 = 1942 O.W.N. (B.R.) 707 = 1942 A. W. R. (Rev.) 475.**

——S. 82—*Occupancy holding—Husband allowing it to be entered in name of wife—Wife dealing with it as her own with consent of zamindar—Nature of her title.*

Where an occupancy tenant permits the holding to be entered in the name of his wife and it continues for 39 years without a break and during that period she treats the holding as her own to the knowledge of her husband and with the consent of the zamindar, her title to the property is in no way defective. A tenant is entitled to surrender and the zamindar is entitled to admit a new tenant to the holding so surrendered. A grandson of the husband cannot as his heir succeed in a suit for possession based on the ground that her entry was only by way of consolation and that the husband continued to be the tenant always. (*Shirreff, S. M. Sathe, J.M.*) KAFURAN BIBI *v.* MOHAMMAD ISMAIL. **1942 A.W. R. (Rev.) 304 = 1942 O.A. (Supp.) 330 = 1942 O.W.N. (B.R.) 481 = 1942 R.D. 598.**

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——Ss. 82 and 180—*Relinquishment in favour of one of the co-sharers for money consideration—Co-sharer, if becomes a trespasser liable to ejectment.*

Though a relinquishment in favour of one of the co-sharers is not valid, yet if it is for a money consideration, the co-sharer is not liable to ejectment as a trespasser until the question of the money transaction is settled by a proper Court. (*Shirreff, S. M.*) SHIAM LAL *v.* NARPAT SINGH. **1942 R D. 277 (1) = 1942 O W.N. (B.R.) 211 (1) = 1942 A.W.R. (Rev.) 246 = 1942 O.A. (Supp.) 272.**

——Ss. 83 and 85—*Refusal of incorrect notice of surrender sent by registered post—Incorrect notice served through Tahsildar—Suit under S. 85 to contest notice on technical plea—Maintainability—Limitation.*

When a notice of surrender containing correctly all the particulars required by S. 83 sent by registered post is refused, it is sufficient service of such notice. The fact that a similar notice served through Tahsildar contained wrong or incorrect particulars, cannot give the Zamindar an opportunity to contest the notice on the technical plea of containing incorrect particulars. There has been a proper service of a proper notice already and the commencement of the cause of action for a suit to contest the notice is the date of such service. (*Harper, S.M. and Shirreff, J.M.*) FORD AND MACDONALD *v.* MOHAMED ASHRAF ALI. **1942 O.W.N (B.R.) 50 = 1942 A.W.R. (Rev.) 87 = 1942 O. A. (Supp.) 100 = 1942 R.D 82.**

——S. 87—*Abandonment—Failure to prove arrangement with sub-tenant—Status of sub-tenant.*

Where the recorded tenants were found to have left the village 30 or 35 years ago and they failed to prove any arrangement between them and their former sub-tenant it was *held* that the sub-tenant must be held to be the tenant in chief. (*Shirreff. S. M.*) RAM BALI *v.* SHEONANDAN LAL. **1942 O A (Supp) 156 (1) = 1942 O.W.N. (B.R.) 245 = 1942 R. D. 334 = 1942 A. W.R. (Rev.) 136 (1).**

——S. 87 and Agra Tenancy Act, S. 107—*Abandonment—Landholder aware of arrangement of tenant leaving holding in charge of sub tenant—Absence of written notice to landholder—Abandonment, if could be presumed.*

Where it is clear that the landholder was fully aware of the arrangement by which the tenant left the holding in charge of the sub-tenant, and had also realised rent from both the tenant and sub-tenant, abandonment could not be presumed from the mere absence of a written notice of the arrangement to the landholder. (*Shirreff, S. M.*) GHANSHIAM RAI *v.* BIRBAL. **1942 A.W.R (Rev.) 275 (2) = 1942 O A (Supp) 301 (2) = 1942 R D. 427 = 1942 O.W.N. (B.R.) 338.**

——S. 87—*Abandonment—Question, if can be decided by occupier—Plea of adverse possession, relying on alleged abandonment—Maintainability.*

It is for the zamindar to treat a holding as abandoned and not for the actual occupier of the land to do so. Where the zamindar has always issued receipts of rents to an occupier as *marfat* on account of the tenant-in-chief who has not been heard of for over seven years, it shows that the zamindar did not treat the holding as abandoned. The occupier, a sub tenant cannot claim the period of his possession during that time to be counted towards a plea of adverse possession. (*Sathe, J.M.*) NAND KISHORE *v.* JANGJIT. **1942 A. W. R. (Rev.) 113 (2) = 1942 O.A (Supp.) 130 (2) = 1942 R.D. 95 = 1942 O.W N. (B R.) 63.**

——Ss. 87 and 180—*Abandonment—Starting point of limitation against Zamindar.*

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In cases of abandonment it is for the Zamindar to treat the holding as abandoned and not for the man in actual possession. Hence where the name of the last recorded tenant is expunged and the name of the person in actual possession is entered in the *patwari* papers as a tenant without fixation of rent, from that date the limitation against the Zamindar begins to run. (*Sathe. J.M.*) RAM SAROOP *v.* MAHENDRA SINGH. 1942 O.W.N. (B.R.) 14=1942 O.A. (Supp.) 20 (1)=1942 R.D. 14=1942 A.W.R. (Rev.) 20 (1).

——S. 87—*Abandonment—Zamindar remaining in possession for long time as his tenant's sub-tenant—Presumption, if any—Zamindar, if can be compelled to plead abandonment.*

Where a zamindar is in possession for over 30 years as his tenant's sub-tenant in lieu of interest on loan advanced to the tenant, he cannot be presumed to have ousted the tenant and particularly when he is willing to treat himself as the sub-tenant. It is for the zamindar to treat a holding as abandoned and the plea of abandonment cannot be forced on him at the instance of third party. (*Sathe, J.M.*) GOKUL *v.* LALA RAM 1942 A.W.R. (Rev.) 456=1942 O.A. (Supp.) 482=1942 O.W.N. (B.R.) 714.

——Ss. 87 and 180 and Agra Tenancy Act, S. 107—*Liability to ejectment of sub-tenant after surrender by tenant in chief—Tenant giving up cultivation for over 20 years and sub-tenant paying rent to zamindar direct.*

Where a tenant had given up cultivation for over 20 years and the sub-tenant had been paying during all that time rent to the zamindar direct at the same rate as the tenant in chief when he ceased cultivation and there was subsequently a surrender by the tenant, in a suit for the ejectment of the sub-tenant it was *held*.

Per *Shirreff, S M.*—that the tenant in chief had lost his interest in the holding by abandonment and the suit for ejectment was barred by limitation.

Per *Sathe, J.M.*—dissenting that it was for the zamindar to invoke the provisions of S. 107 of the Agra Tenancy Act and to treat the holding as abandoned and as he had not so done there was no abondonment and hence the rights of the sub-tenants continued till the surrender by the tenant and the former was liable to ejectment as a trespasser. (*Shirreff, S.M. and Sathe J.M.*) RAJ KISHORE RAI *v.* LACHHMI RAI. 1942 A.W.R. (Rev.) 245 (2)=1942 O.A. (Supp.) 271 (2)=1942 R.D. 358=1942 O.W.N. (B.R.) 269.

——S. 87 (1)—*Abandonment—Migration by tenant leaving another in charge of holding—Receipt of rent from both by zamindar—Absence of written notice—If justifies zamindar in treating the holding as abandoned.*

The mere absence of a written notice to the zamindar as required by S. 87 (1), U. P. Tenancy Act, cannot justify a zamindar in treating a holding as abandoned when in fact he has been receiving rent both from the tenant who migrated to another village and from the person left by him in charge of the holding. (*Shirreff S.M. and Sathe, J.M.*) RAM ASREV *v.* RUDRA PRATAP NARAIN SINGH. 1942 O.A. (Supp.) 477=1942 O.W.N. (B.R.) 695=1942 A.W.R. (Rev.) 451.

——S. 96—*Applicability—Tenants of waste lands becoming statutory tenants and subsequently hereditary tenants under the New Act—Earlier commutation of rent.*

Where certain tenants of waste lands became statutory tenants by a notification and subsequently hereditary tenants under the New Act, and had in 1345-F. got the rent commuted to cash rent which was higher than the circle rates and sued in 1347-F for abatement

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it was *held* that the plaintiffs were hereditary tenants whose rent had been agreed upon in accordance with the provisions of the Oudh Rent Act and that S. 96 of the U. P Tenancy Act applied to the case. (*Harper. S.M. and Shirreff, J.M.*) HAZARI *v.* JASJIT SINGH. 1942 O.A. (Supp.) 28=1942 A. W. R. (Rev.) 28=1942 O. W.N. (B.R.) 91=1942 R.D. 123.

——S. 98—*Agreement to enhance—Tenant admitting in agreement that correct rent was higher than recorded rent—Effect.*

An agreement by which the tenant agrees that the correct rent was higher than the recorded rent which was incorrect does not amount to an agreement to enhance the rent. It only amounts to admission that the correct rent was higher than the recorded one and it is rebuttable. (*Sathe, J.M.*) MUNESAR KURMI *v* MAHARAJI. 1942 R.D 719=1942 O. A. (Supp.) 408=1942 O. W.N. (B.R.) 591=1942 A.W.R. (Rev.) 382

——S. 98—Quabuliyat, *in effect an agreement to enhance rent—If null and void on the ground that it is not specific.*

Even though a *quabuliyat* does not specifically state that it was an agreement to enhance rent, its effect was to do so. There is no reason why such a *quabuliyat* should be considered to be null and void simply because it does not specifically mention that it was an agreement to enhance the rent. (*Sathe, J.M.*) ANRUP *v.* MAHABIR CHAUBE. 1942 R D 490=1942 O.W.N. (B R.) 401=1942 A.W,R (Rev.) 280 (1)=1942 O.A. (Supp.) 306 (1)

——S. 114 and Agra Tenancy Act (1926), S. 54—*Right to sue for abatement—Permanent lease under Agra Tenancy Act of 1901 providing against abatement or enhancement of rent.*

A permanent lessee under the Agra Tenancy Act of 1901 under a lease providing against abatement or enhancement of rent without any rights of transfer or of putting the land to any use as the lessee liked is not a lessee of a proprietary or sub-proprietary rights and hence could sue for enhancement under S. 54 of the Agra Tenancy Act of 1926 which if pending on 1st January, 1940 would be decided under S. 114 of the new Tenancy Act. (*Shirreff, S M. and Sathe, J.M.*) BERI RAI *v.* RAM NARESH RAI. 1942 O.W.N. (B.R.) 394=1942 O.A. (Supp.) 631=1942 A.W.R. (Rev.) 420

——S. 114—*Suit under—Maintainability—Existence in force of prior slump remissions—Nature and scope of such remissions.*

Remissions given by the order of Government are always temporary in nature and do not modify the legal rent in any way. Remissions only mean that the zamindar is not entitled to realise the amount remitted during the period for which remissions are to remain in force, the legal liabilities of the parties otherwise remaining the same. Hence the fact of the slump remissions of 1339-F remaining in force is not a bar to the institution of a suit under S. 114 for abatement. Nor could it be contended that the period of 10 years prescribed by S.96 (1) should elapse before such a suit can lie. (*Shirreff, S. M. and Sathe, J.M.*) DHANRAJ KURMI *v.* MST. INDRAJ KUNWARI. 1942 O.A. (Supp.) 375=1942 A.W.R. (Rev.) 349=1942 O.W.N. (B.R). 575=1942 R D. 703.

——S. 122 and C. P. Code (1908), O. 41, R. 4—*Appeal by some only in collective suit permitted by S. 122—Power of appellate Court to interfere with decree.*

Although a suit is a collective one as permitted by S. 122 of the U. P. Tenancy Act, the matter in dispute is separate in the case of each holding. On its dismissal

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if some only of the tenants file an appeal in respect of their holdings the appellate Court is not entitled to interfere with the decree passed by the trial Court against others who did not join in the appeal for O. 41. R. 4 only applies to a case where the decree appealed from proceeds on any ground common to all the plaintiffs. (*Shirreff, S. M. and Sathe, J. M.*) SARDAR HIRA SINGH *v.* GANGA BHAJAN. 1942 R. D. 587= 1942 O.W.N. (B.R.) 470=1942 A.W.R. (Rev.) 301= 1942 O.A. (Supp.) 327.

——S. 133 and United Provinces Land Revenue Act (1901), S. 89—*Application for commutation—Rejection as time barred and dismissal for default—If bars suit for commutation.*

Neither the rejection of an application for commutation of rent on the ground of its being barred by limitation nor its dismissal for default, can bar a regular suit for commutation of rent. O. 9, R. 9, C. P. Code, does not apply to it. (*Shirreff, S.M.*) BHARAT SINGH *v.* NANAK. 1942 O W.N. (B.R.) 430 (1)=1942 A.W R (Rev.) 310 (1)=1942 O A. (Supp.) 336 (1)=1942 R. D. 520 (1).

——S. 133—*Claim to reinstatement—Dispossessed lessee under lease by one of the co sharers collecting rent jointly—Validity of such lease.*

Where all the zamindars collect rents jointly in a patti one of them alone is not entitled to lease out the land to a tenant. A person though in possession under such lease, is in possession without title and if dispossessed cannot claim reinstatement under S. 183, U. P. Tenancy Act. (*Sathe, J.M.*) JAGANNATH *v.* MANNILAL. 1942 A.W.R. (Rev.) 243 (1)=1942 O A (Supp.) 269 (1)=1942 O.W.N. (B.R.) 168 (1)= 1942 R.D 234 (1).

——Ss 148 and 157 and Oudh Rent Act, S 61—*Prior ejectment if affected by a subsequent suit for arrears.*

A prior ejectment is not rendered irregular in any way by the zamindar filing a suit under S. 61 of the Oudh Rent Act after the tenant's physical ejectment on the spot. (*Sathe, J.M.*) BAWAR *v.* MAHESHWAR BUX SINGH. 1942 O W.N (B R.) 672=1942 O A. (Supp) 449= 1942 A.W.R. (Rev) 423.

——S. 148 and Oudh Rent Act. S. 61—*Suit for rent—Power of Court to decree in part and in favour of some only of the plaintiffs.*

A suit under S. 61 of the Oudh Rent Act can be decreed in favour of some only of the plaintiffs and even for a portion of the total rent of the holding according to their rights. (*Sathe, J.M.*) BAWAR *v.* MAHESHWAR BUX SINGH. 1942 O.W.N. (B.R.) 672= 1942 O. A. (Supp.) 449=1942 A.W R. (Rev.) 423.

——S. 158—*Applicability—Tenant ejected under S. 79, Agra Tenancy Act prior to 1st January, 1940.*

S. 158 of the U. P. Tenancy Act does not apply to the case of a tenant who was ejected under S 79 of the Agra Tenancy Act prior to 1st January, 1940 (*Shirreff, S.M. and Sathe, J.M.*) GANGA PRASAD *v.* DWARKA PRASAD. 1942 O.W N. (B.R.) 129=1942 R.D. 195= 1942 O A (Supp.) 80=1942 A W.R. (Rev.) 74.

——S. 163 (4), Proviso—*Restoration application after actual ejectment—Competency—Limitation.*

Though a tenant may have been ejected in pursuance of the *ex parte* order he can apply for restoration under the proviso to sub-S. (4) of S. 163, U.P. Tenancy Act if the facts justify such an application. (*Sathe, J.M.*) MANGRE CHAMAR *v.* JAGDISH DUTT RAM PANDE. 1942 O. W N. (B. R.) 666=1942 O.A. (Supp.) 441=1942 A.W.R. (Rev.) 415.

——S. 163 (4), Proviso—*Restoration application—Limitation.*

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As there is no limitation prescribed for the filing of a restoration application in the proviso to sub-S. (4) of S. 163, U. P. Tenancy Act, the limitation must be governed by Art. 164, Limitation Act. (*Sathe, J.M.*) MANGRE CHAMAR *v.* JAGDISH DUTT RAM PANDE. 1942 O. W. N. (B R.) 666=1942 O. A. (Supp.) 441=1942 A.W R. (Rev.) 415.

——S. 163 (4), Proviso and S. 274—*Dismissal of restoration application—Review—Competency.*

Order of dismissal of a restoration application under U. P. Tenancy Act, S. 163 (4) proviso can be reviewed, if it satisfies the conditions of O. 47, R. 1, C. P. Code. (*Sathe, J.M.*) MANGRE CHAMAR *v.* JAGDISH DUTT RAM PANDE. 1942 O.W.N. (B.R.) 666=1942 O A. (Supp.) 441=1942 A W R. (Rev.) 415.

——S. 163 (5)—*Mandatory nature of.*

If a tenant makes an objection that the arrears claimed are not correct, he is entitled under the law to have the allegations enquired into in a regular suit. The provisions in S. 163 (5) of the U P. Tenancy Act for conversion of application for ejectment into suit for arrears of rent must be regarded as mandatory. (*Shirreff, S. M. and Sathe, J.M.*) AMAR SINGH *v.* BINDESHRI. 1942 O A (Supp.) 122 (2)=1942 R D. 249= 1942 O. W. N. (B R.) 183=1942 A.W R (Rev.) 105 (2).

——S. 168—*Applicability.*

S. 168 of the U. P. Tenancy Act applies to ejectment in execution of a decree for arrears of rent and not to proceedings under S 163. (*Shirreff, S.M. and Sathe, J.M.*) AMAR SINGH *v.* BINDESHRI. 1942 O A. (Supp.) 122 (2)=1942 R D 249=1942 O. W. N. (B.R.) 183=1942 A W R (Rev.) 105 (2).

——S 168 (5)—*Applicability—Ejectment and obtaining of possession prior to New Act coming into force.*

Where the order for ejectment and the obtaining of possession were all over prior to the New Act coming into force, the order of ejectment is not liable to be revised under S. 168 (5) of the New Act (*Shirreff, J M. and Sathe A.M.*) TALEWAR *v.* JIWA RAM. 1942 R.D. 55=1942 A. W. R. (Rev.) 113 (1)=1942 O. A. (Supp.) 130 (1)=1942 O W N (B R.) 39.

——S. 170 (5) and Agra Tenancy Act S. 80 (3) proviso—*Extension of time under—If a matter of right.*

In the case of a decree for arrears of rent the judgment debtor is not entitled at all as a matter of right to any extension of time for payment of the decretal amount. (*Shirreff, S M. and Sathe, J M.*) BHUNESHWARI PRASAD NARAIN SINGH *v.* JAMUNA RAI. 1942 R D 438=1942 A.L J (Supp.) 37=1942 A W. R. (Rev.) 203=1942 O. A. (Supp.) 229=1942 O.W N. (B R.) 349.

——S. 171—*Ejectment—If to be from the whole holding—Illegal mortgage of some plots.*

Under S. 171 of the U. P. Tenancy Act ejectment only from that portion of the holding which has been illegally mortgaged or sub let can be ordered. The tenant cannot be ejected from the whole holding. (*Shirreff, S M. and Sathe, J.*) SHAMSHUL-NISA BEGUM *v.* JAGARNATH KOERI. 1942 R. D 303=1942 O W.N. (B R) 237=1942 A.W R. (Rev.) 241 (1)= 1942 O.A (Supp.) 267 (1).

——S. 171 and Agra Tenancy Act (1926), S. 29—*Illegal sub-letting in contravention of S. 29—What is.*

Where a tenant sub lets the whole or any portion of his holding within 5 years of any portion of such holding being held by a sub-tenant there is illegal subletting in contravention of S. 29, Agra Tenancy Act Hence when two plots are sub-let within 5 years of another plot being held by a sub tenant it amounts to

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illegal sub-letting in contravention of the Act. (*Shirreff, S. M. and Sathe, J. M.*) LAL BAHADUR JOHARI *v.* BANSIA. 1942 R.D. 739=1942 O.W.N. (B.R.) 611==1942 O.A. (Supp.) 452=1942 A.W.R. (Rev.) 426.

——S. 171—*Illegal transfer by one of the co-tenants—Liability of the others for ejectment.*

The other co-tenants of a holding should not be penalised for an illegal transfer by one of the co-tenants unless there is definite evidence to the effect that they had acquiesced in the illegal act of 'their brother tenant'. Acquiescence on their part would be deemed to be established if it is shown that they had allowed the transferee to obtain possession and that they had done nothing to have him ejected (*Sathe, J.M.*) MANDOL SINGH *v.* DEBI SINGH. 1942 O.W.N. (B.R.) 532=1942 O.A (Supp.) 366=1942 A.W.R. (Rev.) 340.

——Ss. 171 and 42—*Liability to ejectment—Tenant entitled to sub-let, sub-leasing in favour of zemindar's daughter-in-law—Absence of registration—If can be taken advantage of by zamindar.*

Where a tenant-in-chief who was entitled to sub-let, sub-leases a plot to the daughter-in-law of the zamindar but it is not registered as required by S. 42 of the U. P. Tenancy Act, the zamindar cannot take advantage of this and seek to eject the tenant-in-chief. He is not entitled to a decree because he was in '*pari delicto*' inasmuch as his daughter-in-law, that is himself was a party to the illegal sub-letting. (*Shirreff, S.M and Sathe, J.M.*) KHUSHALO *v.* CHUNNI LAL. 1942 R D 723=1942 O A (Supp.) 404=1942 O. W. N. (B.R.) 595=1942 A.W R. (Rev.) 378.

——S. 171 and Agra Tenancy Act, Ss. 82 and 83—*Resort to new Act to deprive tenant of right accrued under old Act—Steps taken to eject sub-tenant stayed by the Stay of Proceedings Act—Tenant, if can be sued under S. 171 once again.*

A landlord is not entitled to take advantage of the U. P. Tenancy Act to deprive a tenant of a right which accrued to him under the old Act. Where after the decree in a suit under S. 82 of the Agra Tenancy Act, the tenant is permitted to retain his holding provided he ejected his sub-tenants and he takes the necessary steps by filing a suit under S. 83 of that Act and would have succeeded in ejecting him but for the stay of proceedings by the Stay of Proceedings Act, he cannot be sued once again under S. 171 of the new Act and deprived of the benefit of S. 83 of the Agra Tenancy Act which had accrued to him under that Act. (*Shirreff, S. M.*) SHUKUL VIDYA SHANKAR *v.* LAJJA RAM. 1942 A. W.R. (Rev.) 318=1942 O.A (Supp.) 344=1942 O. W.N. (B R.) 473=1942 R D 590.

——S. 171—*Right to sue—Illegal sub-letting prior to new Act coming into force.*

A suit under S. 171 of the U. P. Tenancy Act is maintainable and is not premature even if the illegal sub-letting was prior to the new Act coming into force. (*Shirreff, S. M. and Sathe, J. M.*) BINDHYACHAL RAI *v.* DHARAMDAS SINGH. 1942 R.D. 337 (1)=1942 O W.N. (B.R.) 248 (1)=1942 A. W. R. (Rev.) 240 (1)=1942 O.A. (Supp.) 266 (1).

——S. 171—*Right to sue under—Illegal sub-letting if should have taken place after new Act came into force.*

A suit under S. 171 of the U. P. Tenancy Act is maintainable even though the illegal sub-letting was prior to the new Act coming into force. It is not necessary that the illegal sub-letting should have taken place after new Act came into force. (*Shirreff, S. M. and Sathe, J.M.*) RAM BAHAL SINGH *v.* SAKALDIP SINGH. 1942 R. D. 336=1942 O.W.N. (B. R.) 247=1942 A. W. R. (Rev.) 241 (2)=1942 O. A. (Supp.) 267 (2).

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——S. 171 and Agra Tenancy Act (1926), S. 83—*Scope and effect of S. 83, Agra Tenancy Act—If applicable to suit under S. 171 of the New Tenancy Act.*

The provisions of S. 83 of the Agra Tenancy Act only conferred a *locus penitentiae* on the tenant in chief and did not give him any rights or privileges which must be held to subsist even after the repeal of the old Act. It was *held* that inasmuch as the granting of this *locus penitentiae* was only discretionary on the Court and not obligatory in every case, S. 83 could not be applied to a suit under S. 171 of the New Act brought on a cause of action which arose prior to its enactment. (*Shirreff, J. M. and Sathe, A.M.*) ASA RAM *v.* JAGAT RAM. 1942 O.W.N. (B.R.) 30=1942 O.A. (Supp.) 13=1942 A. W.R. (Rev.) 13=1942 R.D. 46.

——S. 171—*Suit under—Competency—Absence of registered sub-lease according to S. 25 of the Agra Tenancy Act* (1901)—*Continuing cause of action.*

Where there is nothing to show that a sub-lease during the time when Act II of 1901 was in force, was by a registered instrument as prescribed by that Act, the sub-lease is as it were renewed annually and a fresh cause of action accrues at every fresh renewal and hence the zamindar has a right to sue the sub-lessee for ejectment under S. 171 of the U. P. Tenancy Act. (*Shirreff, S M.*) NABI-UN-FATIMA *v.* JAWAHAR MAL. 1942 A.W R. (Rev.)) 164 (1)=1942 O.A. (Supp.) 184 (1) =1942 O.W.N. (B.R.) 192=1942 R.D. 258.

——S. 171—*Suit under—Competency—Cause of action arising under old Act.*

A suit for ejectment under S. 171, U. P. Tenancy Act, will lie even if the cause of action had arisen while the Agra Tenancy Act (1926) was in force provided the action complained of was illegal under both the Agra Tenancy Act as well as the U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) RAM SEWAK *v.* BRIJ RANI. 1942 R D. 237 (1)=1942 O. A. (Supp.) 108 (1)=1942 O.W.N. (B. R.) 171 (1)=1942 A. W. R. (Rev.) 95 (1).

——S. 171—*Suit under—Competency—Illegal subletting not taking place under new Act.*

The fact that there was no illegal subletting under the new Act is no ground for holding that suit under S. 171 of the U. P. Tenancy Act was premature. (*Shirreff, S.M. and Sathe, J M.*) ABDUL WAHAB *v.* RAM SARAN. 1942 R.D. 499 (1)=1942 O.W.N. (B R.) 410=1942 A. W. R (Rev.) 293(1)=1942 O. A. (Supp.) 319 (1).

——S. 171—*Suit under—Competency—Illegal subletting under old Act.*

A suit under S. 171 of the U. P. Tenancy Act will lie even if the sub-letting took place while the old Act was in force provided that the sub-letting was in contravention of the provisions of both the old as well as the new Act. (*Shirreff, S.M. and Sathe, J.M.*) BADRI NARAIN *v.* JANGI. 1942 R D. 237 (2)=1942 O A. (Supp.) 107 (2)=1942 O.W.N. (B R.) 171 (2)=1942 A.W.R. (Rev.) 94 (2).

——S. 171—*Suit under—Facts to be proved by plaintiff.*

The plaintiff in a suit for ejectment for illegal mortgage under S. 171 of the U. P. Tenancy Act has to prove not only that the land was mortgaged but that it was in the possession of the mortgagee when the suit was filed. (*Sathe, J.M.*) CHOKAT SINGH *v.* CHULHI. 1942 O.A. (Supp.) 376 (2)=1942 A.W.R. (Rev) 350 (2)=1942 O.W.N. (B R.) 564=1942 R.D. 692.

——S. 171—*Suit under—Fresh cause of action—Necessity—Sub-letting illegal under old and new Act, commencing prior to new Act.*

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If illegal sub-letting started before the commencement of the new Tenancy Act and the sub-letting is illegal under the new Act also, no fresh cause of action is necessary for a suit for ejectment. (*Shirreff, S.M. and Sathe, J.M.*) HABIBA KHATOON *v.* DURGA. **1942 O.A. (Supp.) 106=1942 A.W.R. (Rev.) 93=1942 O. W.N. (B.R.) 235 (1)=1942 R.D. 301 (2).**

——**S. 171**—*Suit under—Maintainability—Cause of action arising before 1st January*, 1940.

A suit under S. 171 of the U. P. Tenancy Act is not premature merely because the cause of action (*i.e.*) the alleged sub-letting had arisen before 1st January, 1940. (*Sathe, J. M.*) SAMUJH *v.* BADRI PANDEY **1942 O.W.N. (B.R.) 549=1942 A.W.R. (Rev.) 409 (2)= 1942 O.A. (Supp.) 435 (2).**

——**S. 171**—*Suit under—Maintainability—Cause of action arising prior to New Act.*

A suit under S. 171 of the U. P. Tenancy Act would lie in respect of a cause of action which arose prior to the passing of the New Act. (*Shirreff, J.M. and Sathe, A.M.*) ASA RAM *v.* JAGAT RAM. **1942 O W. N. (B.R.) 30=1942 O A. (Supp.) 13=1942 A.W.R.. (Rev.) 13=1942 R.D. 46.**

——**S. 171**—*Suit under—Maintainability—Illegal sub-letting commencing under old Act.*

A suit under S. 171 of the U. P. Tenancy Act is not premature where the illegal sub letting had taken place under the old Act and not under the new one. (*Shirreff, S. M. and Sathe, J. M.*) RAJ GOVIND RAI *v.* AMBIKA RAI. **1942 R D. 307=1942 O W N. (B.R.) 241=1942 A.W.R. (Rev.) 240 (2)=1942 O. A. (Supp.) 266 (2).**

——**S. 171**—*Suit under—Maintainability—Illegal sub-letting not under new Act.*

A suit under S. 171 of the U. P. Tenancy Act is not premature because of the fact that the illegal sub-letting did not take place under the new Act. (*Shirreff, S M.*) SHUKUL VIDYA SHANKER *v.* LAJJARAM. **1942 A.W.R. (Rev.)318=1942 O.A (Supp.) 344=1942 O.W.N. (B.R.) 473=1942 R.D. 590.**

——**S. 171**—*Suit under—Maintainability—Illegal sub-letting prior to new Act.*

For the maintainability of a suit under S. 171, U. P. Tenancy Act, it is immaterial that the alleged illegal sub-letting has taken place prior to the U. P. Tenancy Act coming into force. (*Shirreff, S.M. and Sathe, J.M.*) RAGHUNATH RAI *v.* MAHADEO PRASAD. **1942 R.D 355=1942 O.W.N. (B.R.) 266=1942 A.W.R (Rev.) 238 (2)=1942 O.A. (Supp.) 264 (2).**

——**S. 171**—*Suit under—Maintainabilily—Illegal sub-letting prior to new Act,*

A suit under S. 171 of the U.P. Tenancy Act is maintainable even though the sub-letting commenced before the Act and it is not premature. (*Shirreff, S. M. and Sathe, J. M.*) DURGA CHARAN LAL *v.* DEO NANDAN SINGH. **1942 R. D. 292=1942 O. W. N. (B.R.) 226=1942 A.W.R. (Rev.) 240 (3)=1942 O.A. (Supp.) 266 (3).**

——**S. 171**—*Suit under—Maintainability—Illegal subletting starting prior to new Act.*

Where the alleged illegal subletting has started prior to the commencement of the new Act, a suit under S. 171 of the U. P. Tenancy Act is not on that ground premature. (*Shirreff, S.M. and Sathe, J.M.*) DHARAM DAS *v.* HAVILDAR SINGH. **1942 A. W.R. (Rev.) 364 (1)=1942 O.W.N. (B. R.) 513=1942 O. A. (Supp.) 390 (1).**

——**S. 171**—*Suit under on the basis of illegal mortgage—Though formal mortgage not proved, transfer in lieu of interest proved—Suit if could be decreed.*

Where a plaintiff sues for ejectment on the allegation of an illegal mortgage to a third person, though a formal mortgage is not proved to have been in fact executed but a transfer of possession in lieu of interest is proved, the suit could be decreed on the strength of that finding. (*Sathe. J.M.*) GUPTAR AHIR *v.* BALDEO PANDEY. **1942 A.W.R. (Rev.) 375=1942 O. A (Supp.) 401= 1942 O.W.N. (B.R.) 587=1942 R D. 715.**

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——**S. 171**—*Suit under—Prior institution of proceedings against sub-tenant, if a good plea in defence.*

S. 171 of the U. P. Tenancy Act only requires that the land in suit must be illegally transferred or sublet at the date of the institution of the suit. Hence the mere fact that proceedings have been taken by a tenant in chief for the ejectment of his sub-tenant or even the fact that an order for the ejectment of the sub-tenant had been passed before the suit under S. 171 was filed would not be a sufficient answer to the suit since the sub-tenant's rights would persist till he is ejected on the spot and the illegal subletting would continue in force till then. (*Shirreff, S.M. and Sathe, J. M.*) JAGANNATH PRASAD *v.* SARDAR SINGH. **1942 O. A. (Supp.) 350=1942 A.L.J. (Supp) 47=1942 O.W.N. (B R.) 514=1942 A.W.R. (Rev.) 324.**

——**S. 172 (1) (a)**—*Temporary use of land for a different purpose not causing damage—Use of grove-land for burning bricks on the surface—It would entail ejectment.*

The use of the land temporarily for a purpose which has not caused any permanent damage cannot be held to be inconsistent with the purpose for which it was let burning bricks on the surface of the land when it actually is not cultivated but is grove-land cannot entail ejectment under S. 172 (1) (*a*) of the U. P. Tenancy Act. (*Shirreff, S.M.*) RAM PIARI *v.* SHEO SHANKAR. **1942 O.A. (Supp.) 487 (3) = 1942 O.W.N. (B.R.) 663**

——**S. 172 (1), proviso and S. 296**—*Principles governing application of S. 296—Applicability of proviso to S. 172 (1) to suit filed under S. 84, Agra Tenancy Act and decided under new Act.*

In applying S. 296 of the U. P. Tenancy Act, all the provisions in the corresponding section of the new Act should be applied even if some of these provisions may be different from those contained in the corresponding section of the old Act. Hence if a suit, for the ejectment of a grove-holder on the ground of an act detrimental to the land he is holding brought under S. 84, Agra Tenancy Act, has to be decided under S. 172 of the new Act the proviso to that section also becomes applicable. (*Shirreff, S. M.*) BISHAMBHAR NATH *v.* BABU SINGH. **1942 O.W.N. (B.R.) 434=1942 A. W. R. (Rev.) 314=1942 O.A. (Supp.) 340=1942 R.D. 524.**

——**S. 180 and Agra Tenancy Act, S. 44**—*Admission to land by one of the co-sharers—Presumption of agency, if raised by the others not taking action for some years—Plea of, inconsistent with presumption—Effect.*

Where one of the co-sharers is claimed to have admitted a person to the land, from the mere fact that the other co-sharers did not take any action against that person for two or three years it cannot be presumed that the co-sharer who originally admitted that person acted on behalf of all the others. This is more so where the person admitted to the land has pleaded in his written statement in the suit for his ejectment that the land-holders consisted of a body of persons to all of whom he used to pay rent and from whom he received the land. (*Shirreff, S. M. and Sathe, J. M.*) BASUDEO RAI *v.* BINDESWARI RAI. **1942 A.W.R. (Rev.) 294 (2)= 1942 O.A. (Supp.) 320 (2)=1942 O.W.N. (B.R.) 463=1942 R.D. 680.**

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——S. 180—*Dismissal of suit under as time barred —Declarations as to status of defendant and future rent—Impropriety.*

Where a suit under S. 180 of the U. P. Tenancy Act against a trespasser is dismissed as time barred, though his status would be by virtue of S. 180 (2) only that of a hereditary tenant, a declaration as to his future status and the rent which he would have to pay as part of the order of dismissal, is uncalled for and is liable to be deleted in appeal. (*Shirreff, J.M. and Sathe, A.M.*) MAHABIR SINGH *v.* MAHABIR PRASAD. **1941 A.W.R. (Rev.) 1124 (2) = 1941 O.A. (Supp.) 905 (2).**

——Ss. 180 and 87—*Ejectment of trespasser after ejecting tenant—Starting point of limitation—Plea of abandonment, by tenant if can be raised by trespasser.*

In a suit to eject the trespasser after ejecting the tenant it is not open to the trespasser to plead that the holding was abandoned by the tenant prior to his ejectment. It is for the zamindar to treat the holding as abandoned. The limitation for the suit against the trespasser starts only from the date of ejectment of the tenant. (*Shirreff S.M. and Sathe, J.M.*) PARMESHWARI DAYAL *v.* TOTA. **1942 O.W.N. (B.R.) 531 = 1942 A.W.R. (Rev.) 407 = 1942 O.A. (Supp.) 433.**

——S. 180 and Agra Tenancy Act, S. 80—*Ejectment orders—Setting aside—Technical defect in service of notice—If can be pleaded when judgment debtor had knowledge of proceedings.*

Ejectment orders passed under S. 80 of the Agra Tenancy Act cannot be lightly set aside for any technical defect in the service of notices provided that the judgment-debtors had knowledge of the proceedings. Even if some of the judgment-debtors have knowledge, the knowledge of the remaining judgment debtors may also be presumed. (*Sathe, J.M.*) BALMUKAND *v.* BOHREY BAIJ NATH. **1942 O.W.N. (B.R.) 9 = 1942 O.A. (Supp.) 19 = 1942 A.W.R. (Rev.) 19 = 1942 R.D. 9 = 1942 A.L.J. (Supp.) 7.**

——Ss. 180 and 183 and Agra Tenancy Act (1926), Ss. 99 and 121—*Fresh lease after ejectment—Review of ejectment order—Position and rights of fresh lessee.*

Where an ejectment order is reviewed and the ejected tenant is ordered to be put back in possession, a fresh lessee to whom the land has been in the meanwhile leased can challenge the review order if it is brought about by collusion. He can sue for declaration of his rights and possession on that ground under Ss. 99 and 121, Agra Tenancy Act. If he was in possession he can be given a declaratory decree alone and if out of possession, it can be decreed to him. (*Shirreff, S.M.*) NATHAN *v.* TOHFA. **1942 O.W.N. (B.R.) 428 = 1942 A.W.R. (Rev.) 282 = 1942 O.A. (Supp.) 308 = 1942 R.D. 518.**

——S. 180—*Liability to ejectment—Co-sharer taking possession of land without consent of landholders.*

Before a co-sharer can take a plot into his khudkasht cultivation he must obtain the consent of all the landholders. A co-sharer who fails to obtain such consent is liable to ejectment at the instance of any one of the land-holders. (*Sathe, J.M.*) BACHAN SINGH *v.* TRIBENI. **1942 O.W.N. (B.R.) 544 = 1942 O.A. (Supp.) 365 = 1942 A.W.R. (Rev.) 339.**

——S. 180—*Liability to ejectment—Co sharer taking possession of land without consent of landholder.*

A co-sharer who takes possession of a piece of land without the consent of its landholder is a trespasser and is liable to ejectment as such unless it can be shown that he has been in possession for such a long time that the acquiescence of all the co-sharers and of the landholder to his possession may be presumed. (*Sathe, J. M.*)

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SHER SINGH *v.* GAJADHAR SINGH. **1942 R.D. 439 = 1942 A.W.R. (Rev.) 216 (1) = 1942 O.A. (Supp.) 242 (1) = 1942 O.W.N. (B.R.) 350.**

——S. 180—*Liability to ejectment—Co-sharer taking possession of lapsed holding without permission of lambardar.*

If a co-sharer takes possession of a holding which has lapsed without the permission of the landholder of the holding (*i.e.*) the lambardar or the collecting co-sharer as the case may be, he is a trespasser liable to ejectment, at the instance of the landholder. The fact that in a prior suit for profits by such a co sharer the lambardar was allowed a set off on the ground that the land in dispute was in his wrongful possession cannot affect the question of his liability to ejectment though it might affect the question of damages. (*Shirreff, S.M. and Sathe, J.M.*) GANGA SAHAI *v.* MAHESHWAR DAYAL **1942 R.D. 492 = 1942 O.W.N. (B.R.) 403 = 1942 A.W.R (Rev.) 276 = 1942 O.A. (Supp) 302 (2).**

——S. 180—*Liability to ejectment—Creditor in possession on advance of loan.*

Where on the advance of a loan by the defendant to the plaintiff the former was put in possession of a property and a *'rukka'* executed did not indicate as to whether possession was in lieu of interest and if it was to end on payment of the debt it was *held* that the loan transaction was separate from another transaction by which the parties agreed to cultivate the land jointly and that it could not be pleaded as a bar against plaintiff's claims to eject the defendant. (*Shirreff, S.M. and Sathe, J.M.*) MATHURA PRASAD *v.* NAND TEWARI. **1942 O.W.N. (B.R.) 642 = 1942 A.W.R. (Rev.) 390 (2) = 1942 O.A. (Supp.) 416 (2)**

——S. 180—*Liability to ejectment—Landlord obtaining possession under decree and losing it on its reversal —Admission of third party to land in the interval—Status of such person.*

Where a landlord obtains possession under a decree and subsequently on its reversal in appeal loses possession the person admitted by the landlord to land during the interval becomes a trespasser liable to ejectment. A man in wrongful possession cannot pass on to his transferee a title which he himself did not possess. The landlord's possession was wrongful from the time when he took possession and so he could not pass a good title to the person whom he admitted to land. (*Shirreff, S.M. and Sathe, J.M.*) RAGHUNATH PRASAD SINGH *v.* MAHD. NOOH. **1942 O.W.N. (B.R.) 519 (2) = 1942 A.W.R (Rev.) 337 = 1942 O.A. (Supp.) 363.**

——S. 180—*Liability to ejectment—Defendant in possession in lieu of interest—Decree obtained in respect of loan.*

Though the person put in possession of land in lieu of interest has subsequently obtained a decree in respect of that loan he cannot be ejected till the decree debt has been paid. (*Shirreff, S. M. and Sathe, J. M.*) RAJ BALI SINGH *v.* RAJPAT SINGH. **1942 A.W.R. (Rev.) 334 (1) = 1942 O.A. (Supp.) 360 (1) = 1942 O.W.N. (B.R.) 526.**

——S. 180—*Liability to ejectment—Lessee for low rent under mortgagee in possession.*

A lease by a mortgagee in possession at half the usual rental value being such as would not have been made in the ordinary course of management is not binding on the mortgagor after redemption and the lessee is liable to ejectment as holding without consent. (*Shirreff, S. M. and Sathe, J.M.*) RAMA KALI *v.* FAQIRA. **1942 O.A. (Supp.) 193 (1) = 1942 A.W.R. (Rev.) 173 (1) = 1942 O.W.N. (B.R.) 193 (2) = 1942 R.D. 259 (2).**

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——S. 180—*Liability to ejectment—Person let into possession in lieu of interest—Passing of money decree in respect of loan.*

Where a creditor is put in possession in lieu of interest on a loan, he has a right to be in possession till the loan is paid off. The mere fact that a decree has been passed on the loan does not affect the question. (*Shirreff, S.M. and Sathe, J.M.*) GAYA *v.* SHEODASS. **1942 O A (Supp.) 163=1942 O.W.N. (B.R.) 243=1942 R.D. 332-1942 A.W.R. (Rev.) 143.**

——S. 180—*Liability to ejectment—Person in possession in lieu of interest—Obtaining of money decree in respect of loan.*

Where a mortgagee is in possession in lieu of interest he is not liable to be ejected as a trespasser on a money decree being obtained in respect of the loan. He is entitled to retain possession until the mortgage-money has been paid off. (*Shirreff, S.M.*) JERAM *v.* HAR SARUP. **1942 O.W.N. (B.R.) 439 (1)=1942 A.W.R. (Rev.) 311 (1)=1942 O.A. (Supp) 337 (1)=1942 R.D. 529 (1).**

——S. 180—*Liability to ejectment—Person in possession with consent of tenant in chief denying his title.*

Where a person let into possession with the consent of the tenant in chief denies his title as such in an arrears of rent suit, his possession becomes adverse and he can be ejected as a trespasser. (*Shirreff, S.M. and Sathe, J.M.*) GANESH *v* SUNDAR. **1942 O. W. N. (B.R.) 411=1942 A. W. R. (Rev.) 288=1942 O. A. (Supp) 314=1942 R.D. 501.**

——S. 180—*Liability to ejectment—Person obtaining land from one not authorised to let—Acceptance of rent by such person—Effect.*

A person who is content to receive land from a person who is not entitled to settle it on behalf of his master must suffer the consequences if the real owner seeks his ejectment for want of valid title. The zaminder cannot be made to suffer for an illegal act of his servant. Where the Tahsildar accepted rent and issued receipts showing the name of the tenant as *marfat* and not as the legal tenant it would not amount to settlement of land unless it was shown that the Tahsildar had the legal power to settle the land on behalf of the zamindar. (*Shirreff, S.M. and Sathe, J.M.*) MAHOMED AMIR ALI KHAN *v.* BACHOOLAL. **1942 A. W. R. (Rev.) 204=1942 O.A. (Supp.) 230=1942 O. W. N. (B.R.) 363=1942 R D. 452.**

——S. 180—*Liability to ejectment—Prior decree for ejectment and execution against some of the co-tenants—Subsequent suit for ejectment against all.*

Where a decree for ejectment is passed against some of the co-tenants and executed against them in spite of the legal defect of one of the co tenants not having been impleaded who sued for a declaration that he was an occupancy tenant but he was found to be only a tenant of *sir*, in a later suit for ejectment against all on the ground of their having again forcibly taken possession, it was held that the execution of the earlier decree had not the effect of extinguishing the rights of the excluded co-tenant and that he remained in possession as tenant of *sir* and not as a trespasser and could not therefore be ejected though the rest could be ejected. (*Shirreff, S.M. and Sathe, J.M.*) ZAMIN HUSAIN *v.* RAJA RAM. **1942 O W.N. (B.R.) 427=1942 A. W. R. (Rev.) 317=1942 O.A (Supp.) 343 (2)=1942 R.D. 517.**

——S. 180—*Liability to ejectment—Tenant admitted by co-sharer when lambardar was not functioning—Absence of objection for 11 years—Suit at the instance of new lambardar.*

A tenant admitted by one of the co-sharers on behalf of the rest at a time when there was no lambardar and

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who is allowed to remain in possession without any objection for 11 years cannot be ejected as a trespasser by the new lambardar thereafter as the settlement is a valid one under S. 266, Agra Tenancy Act. (*Harper, S.M. and Sathe, J.M.*) DIN DAYAL *v.* SHABIR HUSAIN. **1942 O. W. N. (B.R.) 194=1942 A.W.R. (B.R.) 159=1942 O. A. (Supp.) 179=1942 R.D. 260.**

——Ss 180 and 29—*Liability to ejectment—Tenant of mortgaged Sir in possession—Expropriatary rights not claimed.*

Where a *Sir* holder mortgages his *Sir* with possession but fails to claim expropriatary rights and ultimately sells the *Sir* to the mortgagee, the tenant in possession of the *Sir* at the time of the mortgage must be deemed to have become a non-occupancy tenant from the date of the mortgage; and if he is in possession at the time of U. P. Tenancy Act coming into force ceases to be liable to ejectment. (*Sathe, J.M.*) ORI LAL *v.* NASARULLAH. **1942 R D. 718=1942 A.W R (Rev.) 427=1942 O.A. (Supp.) 453=1942 O. W. N. (B R.) 590.**

——S. 180 and United Provinces Land Revenue Act (1901), S. 36—*Pendency of proceedings under—Claim of ex-proprietary rights in ejectment suit—Procedure to be adopted.*

Where proceedings under S. 36 of the U. P. Land Revenue Act and a suit under S. 180 of the U. P. Tenancy Act are both pending and a claim to ex-proprietary rights are made in the latter suit, since that question can be settled finally only in the suit under S. 180 that suit must proceed and the proceedings under S. 36 of the U. P. Land Revenue Act must remain stayed until the disposal of that suit. (*Shirreff, S.M. and Sathe, J.M.*) SADRUDDIN *v.* MATADIN. **1942 O.W N. (B.R.) 425 (2)=1942 A.W.R. (Rev.) 309 (2)=1942 O.A. (Supp.) 335 (2)=1942 R.D. 515 (2).**

——S 180—*Presumption of tenant's knowledge of ejectment proceedings—Nature and limits of.*

Though there is a certain amount of presumption in favour of holding that tenants cannot possibly escape knowledge of proceedings going on against them when they are actually ejected on the spot, such a presumption is not an absolute one. It is weak if even the *dakhal dihani* itself was carried out *ex parte* and did not result in actual physical dispossession. (*Sathe, A. M.*) NAWAB SINGH *v.* SARUPA. **1942 O.W.N. (B.R.) 8=1942 O.A. (Supp.) 11 (2)=1942 A. W. R. Rev. 11 (2)=1942 R.D. 8.**

——S. 180 and Agra Tenancy Act (1926), S. 44—*Relief under—Suit by zamindar and tenant under fictitious lease.*

Where in a suit under S. 44 of the Agra Tenancy Act the zamindar and the tenant are plaintiffs, though the lease is found to be fictitious, relief can be given in favour of the zamindar against the trespasser for the trespass is against one of them in any case and that person is entitled to sue and obtain the necessary relief. (*Shirreff, S.M. and Sathe, J.M.*) JANAK SINGH *v.* PARASRAM. **1942 R. D. 347=1942 O. W. N. (B R.) 258=1942 A.W.R. (Rev.) 244=1942 O.A. (Supp.) 270.**

——S. 180—*Right to sue under—Person in possession for over twelve years whose possession started as that of a trespasser's.*

Even if a person's possession started as that of a trespasser's, he must be held to have perfected his title if he had been in adverse possession for 12 years and hence such a person would be entitled to sue under S. 180, U. P. Tenancy Act, any one who dispossessed him in his

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turn. (*Sathe, J. M.*) RAM SHANKER CHAUBEY *v.* RAM BAHORE AHIR. 1942 O.W.N. (B.R.) 540=1942 O.A. (Supp.) 364=1942 A.W.R. (Rev.) 338.

——S 180 and Agra Tenancy Act (1926), S. 44—*Right to sue under—Purchaser from co-sharer of un divided mahal.*

Where the transfer of a specific plot in an undivided mahal by a co-sharer is made without any objection from the others, the transferee is entitled to sue under S. 44 of the Agra Tenancy Act. Even if the transfer had given him only the position of a co-sharer in the mahal, he would still be entitled to sue under S. 180 of the U. P. Tenancy Act. (*Shirreff, S. M.*) HARGIAN *v.* SHEO DATT RAI. 1942 O.W N. (B.R.) 169=1942 R. D. 235=1942 A. W. R. (Rev.) 236=1942 O.A. (Supp.) 262.

——S. 180—*Right so sue under—Purchaser of specific plots in mahal held under Bhayachara tenure.*

Where plots situated in a mahal which is held in *Bhayachara* tenure is sold and the cosharers have been dealing with their property as their severalty and no objection is taken to the entry of the purchaser's name in the khewat with respect to the exact area of the plots and they are entered as 'in khudkasht possession of the purchaser' the purchaser is entitled to sue for ejectment under S. 44 of the Agra Tenancy Act any one dispossessing him. (*Shirreff, S.M. and Sathe, J.M.*) BHOORI *v.* LAL SINGH. 1942 O. W. N. (B. R.) 286=1942 O.A. (Supp.) 193 (2)=1942 R. D. 375=1942 A.W.R. (Rev.) 173 (2).

——S. 180—*Right to sue under—Zamindar, in respect of land let to tenant.*

Though the language of S. 180 of the U. P. Tenancy Act may seem to lend colour to the view that when once land is let to a tenant it is the tenant who is entitled to bring a suit against the trespasser and not the zamindar such an interpretation would lead to an absurd result. If a tenant does not choose to take action against a person who has committed a trespass against him, it is still open to the zamindar to take action against the trespasser on his own account if he considers that the trespass committed against the tenant is likely to affect his constructive possession over the land. (*Shirreff, S.M. and Sathe, J.M.*) CHANDRABHAN PRATAP BAHADUR SINGH *v.* HALAI. 1942 O.A. (Supp.) 461=1942 A. W.R. (Rev.) 435=1942 O.W.N. (B.R.) 681.

——Ss. 180 and 286—*Scope of decision of suit under S. 180—Question of title, if within—Plea of a colourable pretext of proprietorship—Suit if to be dismissed on that ground—Proper procedure.*

Where in a suit under S. 180, U. P. Tenancy Act, the defendant is found to be holding under a colourable pretext of proprietorship, that is no ground for dismissing the suit. Questions of title have also to be decided in such a suit. If such question of title is not decided by any competent Court the question should be referred to Civil Court under S. 286. (*Shirreff, S. M. and Sathe, J.M.*) SHANKARI SINGH *v.* GOBHARDAN SINGH. 1942 O.A. (Supp.) 105=1942 O. W.N. (B.R.) 145=1942 A.L.J. (Supp.) 23=1942 R.D. 211=1942 A.W R. (Rev.) 92.

——S. 180—*Scope of—Suits under if confined only to ejectment of those admittedly trespassers.*

S. 180 of the U. P. Tenancy Act is not meant for the ejectment of only those people who are admittedly trespassers. It cannot be said that it is not meant for the ejectment of persons with a colourable pretext of title. In suits under this section the question of title has to be investigated and if it is found that the defendant has not title, that suit should be decreed against him. (*Shirreff, S.M, and Sathe J.M.*) RAGHUNATH PRASAD SINGH

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v. MOHD NOOH. 1942 O.W.N. (B.R.) 519 (2)=1942 A.W.R. (Rev.) 337=1942 O.A. (Supp) 363.

——S. 180 and Agra Tenancy Act (1926), S. 44—Sir—*Status of tenants of—Effect of—Claiming or not claiming exproprietary rights on sale of proprietary rights.*

If exproprietary rights are claimed by a vendor of proprietory rights and he subsequently surrenders them; tenants of his *Sir* land become sub-tenants on the declaration of the exproprietary tenancy and become trespassers on the extinction of the exproprietary rights. But if a vendor does not claim exproprietary rights at all the tenants of his *Sir* land become non-occupancy tenants of the whole coparcenary body automatically under the operation of the law. (*Sathe, J.M.*) MAHADEO PRASAD *v.* NIHORE. 1942 A.W.R. (Rev.) 357=1942 O.W.N. (B.R.) 507 (2)=1942 O A. (Supp.) 383.

——Ss. 180 and 183—*Suit against defendant whose possession was not with connivance of zamindar—Decree if to be under S.* 180 *or S.* 183.

A suit against a defendant whose possession was not with the connivance of the zamindar, who, in fact, supports the plaintiff, should be decreed under S 180 and not under S. 183, U. P. Tenancy Act (*Sathe, J.M.*) JHURAHOO *v.* DHARMA. 1942 O.A.(Supp.) 489 (1)=1942 O.W.N. (B.R.) 659.

——Ss 180 and 244—*Suit for ejectment—Enhancement only available relief—No prayer for it—Relief in second appeal.*

Where in a suit for ejectment it is found that the plaintiff is only entitled to enhancement and no request for such a relief is made there is no purpose in granting it in second appeal as the procedure under S. 244 of the Tenancy Act is practically the same as that in a fresh suit. (*Shirreff, S. M.*) SUKHRAM DUBE *v.* RAM SUCHIT. 1942 O.W.N. (B. R.) 40 (2)=1942 R. D. 56 (2)=1942 A. W. R. (Rev.) 86 (2)=1942 O. A. (Supp) 99 (2).

——S. 180—*Suit for ejectment—Limitation—Absence of contract of tenancy—Person in possession over 12 years under licence.*

Where there had been no contract of tenancy but the defendant had been allowed for some 20 years to utilize the plot in question adjoining his cultivation for agricultural purposes, the limitation prescribed by the U. P. Tenancy Act applies to the suit for ejectment of such defendant. (*Harper, S.M. and Sathe, J.M.*) NATHA RAM *v.* JHAMMAN SINGH. 1942 O.A. (Supp.) 121 (2)=1942 A.W.R. (Rev.) 85.

——S. 180—*Suit for ejectment of trespasser—Bar of limitation—Period of possession during subsistence of usufructuary mortgage—Counting against mortgagor.*

In any suit for ejectment of trespassers by a mortgagor after redemption of a usufructuary mortgage, the period during which such trespassers remained in possession during the currency of the said mortgagee could not be counted against the mortgagor for purposes of limitation. (*Harper, S.M. and Shirreff, J.M.*) IQBAL HUSAIN *v.* GANPAT. 1942 A.W.R. (Rev.) 79=1942 R D. 80=1942 O. A. (Supp.) 85=1942 O. W. N. (B.R.) 48.

——S. 180—*Suit to eject co-sharer converting land into* khudkasht *on extinction of tenancy—Consent of plaintiff—Presumption if any.*

Where a co-sharer in the patti on extinction of tenancy rights takes possession of the land and converts it into his khudkasht and is sought to be ejected by the co-sharer lambardar, he cannot rely on any presumption of consent of the plaintiff from the fact of possession

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for a number of years. The consent of the plaintiff is a question of fact and depends for its decision on the facts of each case. There is no legal presumption one way or other. (*Sathe, J.M.*) TIRKHA RAM *v.* HUKAM SINGH. 1942 O.W.N. (B.R.) 20 (2)=1942 A. W. R. (Rev.) 21=1942 O A. (Supp.) 21= 1942 R. D. 36 (2)=1942 A.L.J. (Supp.) 17.

——S. 180—*Suit under by proprietor of new patti formed in partition—Limitation—Starting point.*

For the purpose of determining the starting point of limitation for a suit for ejectment of the old proprietor by the proprietor of a new patti formed in partition the proper date is the date from which the partition takes effect for it is only from that date that the proprietor of the new patti has the right to sue as proprietor. (*Shirreff, S.M.*) MUNNI *v.* MANPHOOL KHAN. 1942 O.A. (Supp) 251=1942 A.W.R. (Rev.) 225=1942 O.W. N. (B.R.) 377=1942 R.D. 466.

——S. 180—*Suit under—Maintainability— Hereditary tenant seeking to eject his mortgagee after new Act.*

A tenant who enters into a void transaction cannot seek the help of the Court in repudiating the same transaction. Hence a hereditary tenant who had mortgaged a plot cannot after the U P. Tenancy Act came into force maintain a suit to eject the mortgagee from that plot under S. 180 of the U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) MATA PRASAD *v.* LALTA. 1942 O. A. (Supp) 258 (1)=1942 A W. R (Rev.) 232 (1)=1942 O.W.N. (B.R.) 380=1942 R.D. 469.

——S. 180—*Suit under—Onus of proving plea of tenancy—Evidence of defendant—Sufficiency.*

Though the onus of proving the plea of settlement with him is on the defendant in a suit under S. 180 as there is no minimum evidence prescribed by law for the proof of any issue, it may be decided on the strength of the oath of the defendant that he took the land himself 10 or 11 years prior to the suit. (*Sathe, J.M*) SRI BISAL *v.* BHURA. 1942 O. W. N (B.R) 166=1942 R.D. 232=1942 A.W.R. (Rev.) 161 (2)=1942 O A. (Supp) 181 (2).

——S. 180—*Suit under—Onus of proving title.*

In ejectment suits against alleged trespassers the burden of proving title lies on the defendant. (*Shirreff S.M. and Sathe, J.M.*) GANESH *v.* SUNDAR. 1942 O.W.N. (B R.) 411=1942 A W R. (Rev.) 288=1942 O.A. (Supp.) 314=1942 R D 501.

——S. 180—*Suit under—Plea of holding under patta—Onus.*

Where the defendant in a suit under S. 180 of the U. P. Tenancy Act pleads that he is holding the land in question under a patta, the onus of proving that such patta was a bogus one lies heavily on the plaintiff himself and the onus is not satisfactorily discharged by merely throwing certain doubts on the defendant's case. (*Shirreff, S.M. and Sathe, J.M*) KHARAG SINGH *v.* SHEODAN SINGH. 1942 O A. (Supp.) 245=1942 A.W.R. (Rev.) 219=1942 O.W.N. (B R.) 398=1942 R.D. 487.

——Ss. 180, 175 and 244—*Suit under S. 180—Defendant found to be non occupancy tenant—Decree under S. 175 by application of S. 244 when justified.*

Where in a suit under S. 180 of the U. P. Tenancy Act, it is found that the defendant was a non-occupancy tenant, the suit could be decreed under S. 175 by the application of S. 244 without any fresh application if the plaintiff had in his plaint asked for any other relief to which the Court might find him to be entitled apart from ejectment. (*Shirreff, S. M. and Sathe, J. M.*) UMA SHANKAR SINGH *v.* JADDU SINGH. 1942 R.D.

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565=1942 O.A. (Supp.) 298=1942 O. W. N. (B. R.) 448=1942 A.W.R. (Rev.) 272.

——Ss. 180, 183 (1) and 47 (4)—*Suit under S. 180 premature by reason of S. 47 (4)—Termination of defendant's right to retain possession during appeal—Suit, if can be decreed by the appellate Court.*

A suit under S. 180 of the U. P. Tenancy Act which was premature when it was filed by reason of the defendant being entitled to retain possession beyond the date of suit by reason of S. 47 (4) of the Act, can be decreed by the appellate Court if before the date of its judgment, the defendant's right to retain possession comes to an end. The proviso to S. 183 (1) shows that the legislature desired that multiplicity of suits should be avoided as far as possible. (*Shirreff, J.M. and Sathe, A.M.*) ASA RAM *v.* GANGA DEI. 1941 R.D. 1107= 1941 O A. (Supp.) 934=1941 A W.R. (Rev.) 1165

——Ss. 180 (2) and 296—*Applicability of S. 180 (2) to decrees under S. 44, Agra Tenancy Act, barred on 1st January, 1940.*

The provisions of Cl. (2) of S. 180, Agra Tenancy Act, have no application to decrees which were obtained under S. 44, Agra Tenancy Act and which were not executed within the period of limitation for their execution prescribed by that Act. S. 296 of the U. P. Tenancy Act cannot render S. 180 (2) applicable to such a case when there is nothing in cl. (2) itself to show that it has retrospective effect. (*Sathe, A.M.*) BASHIR AHMAD KHAN *v.* KUNDAN LAL. 1941 O. A. (Supp) 933=1941 A.W.R. (Rev.) 1164=1942 O.W. N. (B.R.) 17=1942 R.D 33.

——S. 180 (2)– Relief on the basis of—If can be given in suit under S. 59. *See* U. P. TENANCY ACT, SS. 59 AND 180 (2). 1942 A.W.R. (Rev.) 354 (2).

——S. 183—*Right to sue under—Declaration of ex-proprietary rights—Necessity.*

It is only when his ex-proprietary rights are declared in proceedings under S. 36 of the Land Revenue Act that a transferor is entitled to sue for possession under S 183 of the U. P. Tenancy Act if he is not in possession. Where in simultaneous proceedings under S. 36 of the Land Revenue Act and under S. 183 of the U. P. Tenancy Act, the question of title is finally negatived in the former proceeding, it is obvious that no decree could be given in the suit under S. 183. (*Sathe, J.M.*) SHEO BARAN SINGH *v.* SUBEDAR BANSGOPAL. 1942 O. A. (Supp.) 465 (1) = 1942 A.W.R. (Rev.) 439 (1)=1942 O W N. (B.R.) 650.

——S. 183—*Suit for possession under—Question of date of dispossession—Importance.*

The question of the date of dispossession is all important in the case of a suit under S. 183, U.P. Tenancy Act, for possession and Courts should discuss the evidence on the point before giving a finding. (*Sathe, A M.*) SRIPAL SHUKLA *v.* SHAMBHU DATT. 1941 O A. (Supp.) 964 (1)=1941 A.W R. (Rev) 1216 (1).

——S. 183 and Agra Tenancy Act, S. 99—*Suit for possession under S. 99—Plaintiff's claim to be either ex-proprietary or occupancy tenant not proved—Plaintiff found to be tenant of* sir *land who had not surrendered—Dismissal of suit, if proper—Relief to which plaintiff entitled.*

Where a plaintiff in a suit for possession under S. 99 of the Agra Tenancy Act claimed that he was either an ex proprietary or occupancy tenant and that he was dispossessed by the defendants and asked for restoration of possession and damages it was found that he was neither an ex-proprietary or occupancy tenant but a tenant of *sir* who had not surrendered, it was held that in any event on the findings the suit could not be dismissed and the plaintiff was entitled to possession and

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damages. If the suit had been decided prior to the U. P. Tenancy Act came into force, the plaintiff would have been entitled only to damages as he would be liable to ejectment within the agricultural year. As the suit was disposed of after the Act came into force the plaintiff was entitled to retain possession of the land for five years even in the capacity of tenant of *sir* land under S. 20 of the U. P. Tenancy Act. (*Shirreff, S. M. and Sathe, J. M.*) RAM NIDHAN SINGH *v.* RAM CHARITAR SAHU. 1942 A.W.R. (Rev.) 321=1942 O.A. (Supp.) 347=1942 O.W.N. (B.R.) 461=1942 R.D. 578.

——S 183—*Suit under—Maintainability—Tenant prevented from dealing with sub-tenants, if can sue zamindar—Damages—Basis of calculation.*

Where a tenant is prevented by the zamindar from dealing with his sub tenants who are in possession of the land and he is thereby kept out of possession, he can sue the zamindar, under S. 183 of the U. P. Tenancy Act. In such a suit the damages should be calculated on the rental value of the land and not on the value of any special crop. (*Shirreff, S. M. and Sathe, J. M.*) PEMRAJ *v.* CHHADAMMI LAL. 1942 O.W.N. (B.R) 440=1942 A.W.R. (Rev.) 283=1942 O. A. (Supp.) 309=1942 R.D. 530.

——S. 183—*Suit under—Maintainability—Tenant's remedy under S. 99, Agra Tenancy Act, barred by limitation.*

When a tenant entitled to sue for possession under S.99, Agra Tenancy Act fails to sue for that remedy within the period of 6 months allowed, his remedy is barred. It could not be revived by the enactment of the U. P. Tenancy Act and hence such a tenant would not be entitled to take advantage of the 3 years period of limitation provided for a suit under S. 183 of the U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) NANHOO *v.* HIRA LAL. 1942 R.D. 352=1942 A. W. R. (Rev.) 242=1942 O.A. (Supp.) 268=1942 O. W. N. (B.R) 263.

——S. 183—Suit under on cause of action under Oudh Rent Act—Expiry of limitation prior to 1st January, 1940—Law of limitation applicable. *See* U.P. TENANCY ACT, SS. 296, 254 AND 183. 1942 A. W. R. (Rev.) 298.

——S. 183—*Suit under—Proof of tenancy—Necessity.*

It is incumbent on a plaintiff in a suit under S. 183, U. P. Tenancy Act, to prove that he was a tenant before he could succeed in his prayer for possession. (*Sathe, J.M.*) RAM BADH TEWARI *v.* RAM PRASAD SINGH. 1942 O. W. N. (B.R) 126=1942 O. A. (Supp.) 86 (2)=1942 A.W.R. (Rev.) 80 (2)=1942 R.D. 170 (2).

—— S. 183—*Suit under, in respect of cause of action under the old Act—Limitation.*

Where the cause of action in respect of a suit under S. 183 of the new Act arose before the new Act, the limitation for such a suit is three years if the limitation in respect of such a suit under the old Act had not expired before the coming into force of the new Act. (*Sathe, J.M.*) TRIBHAWAN DUTT DUBEY *v.* KANHAYA BUX LAL. 1942 A.W.R. (Rev.) 453=1942 O. A. (Supp.) 479=1942 O W.N. (B.R.) 660.

——Ss. 183 (1), proviso and 20—*Effect of proviso to S. 183 (1)—Suit under S. 99, Agra Tenancy Act, pending when new Act came into force—Law to be applied.*

The effect of the pointed reference in proviso to S. 183 (1) of the U. P. Tenancy Act to the other provisions of the Act is that those provisions will have to be read into the section and applied along with the proviso. In the case of a suit under S. 99 of the Agra Tenancy Act pending when the new Act came into force, S. 20

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read along with S. 183 (1) of the latter Act should be applied. (*Shirreff, S.M. and Sathe, J.M.*) MAITHYL SHARAN GUPTA *v.* RAM DAYAL. 1942 O.A (Supp.) 71=1942 O W.N. (B.R.) 112=1942 A. W. R. (Rev.) 65=1942 R.D. 144.

——S. 189—*Favourable rate of rent—Ascertainment of land revenue—Fairer method.*

It is fairer and equitable to ascertain the land revenue payable on the holding by ascertaining the rent of the holding at standard settlement rates and then working out the land revenue by applying the percentage of the total land revenue to the total assets of the mahal. This method should be followed wherever practicable. It is only when it is not practicable that the rough method of ascertaining the land revenue payable on the holding by applying the incidence of total land revenue of the mahal on the assessed area should be adopted. (*Sathe, J.M.*) RANI BHUNESHWARI KAJ LAKSHMI DEVI *v.* MATHURA PRASAD. 1942 A W.R. (Rev.) 149=1942 O A. (Supp.) 169=1942 O.W.N. (B. R.) 293=1942 R.D. 382.

——S. 205 and Agra Tenancy Act, S. 196—*Mortgagee in possession, if can lease land for planting a grove.*

Mortgagees in possession are not landlords within the meaning of the definition of landlord in the Agra Tenancy Act and S. 196 of that Act does not give him the right of leasing land for the purpose of planting a grove without the consent of the mortgagor. (*Shirreff (S.M. and Sathe, J.M.*) GHASI RAM *v.* SARUP NARAIN. 1942 R.D. 569=1942 A.W.R. (Rev.) 315=1942 O.A. (Supp) 341=1942 O.W N. (B.R.) 452.

——S. 206 (c)—*Construction—If affects past transactions.*

S. 206 (*c*) of the U. P. Tenancy Act cannot be construed as affecting past transfers, that is, as meaning that whenever the question of the validity of the sale of a grove prior to the enforcement of the U. P. Tenancy Act comes before a Court, it is incumbent on the latter to hold that the sale is valid, even though under custom which was in force at the time of the sale it was invalid. (*Bennett, J.*) AMJAD ALI *v.* RAJA SIR EJAZ RASUL KHAN. 17 Luck. 456=198 I C. 107=14 R.O 373=1941 O. W. N. 1328=1941 A. W. R. (Rev.) 1152=1941 O.A. 1013=A I.R. 1942 Oudh 120

——S. 210 and Agra Tenancy Act (1926), S. 200—*Effect of use of the word 'only' in section—Omission to execute lease by lessor if fatal to creation of tekadari rights.*

The language of S. 200 of the Agra Tenancy Act (S. 210 of the U. P. Tenancy Act) is very precise. It says that a theka may be made only by a written instrument executed by the landlord. The presence of the word 'only' in the section makes the section mandatory. Hence the omission to execute a lease by the lessor is fatal to the creation of tekadari rights. (*Shirreff, S.M. and Sathe, J.M.*) MIHILAL *v.* MUTTRA PRASAD. 1942 O.A. (Supp.) 239=1942 A. W. R. (Rev.) 213=1942 O.W.N. (B.R.) 389=1942 R.D. 478.

——S. 210 and Evidence Act (1872), S. 115—*Omission to execute lease—Effect—Conduct of lessees creating an estoppel.*

Though an omission to execute a lease on the part of the lessor is a fatal defect to the creation of thekadari rights, if the lessees by their action persuaded the plaintiffs to believe that they had taken a theka of the land in dispute from the plaintiffs and to act upon that belief and the theka has been given effect to, then the lessees would be clearly estopped from denying the existence of the theka under S. 115 of the Evidence Act. (*Sathe, J.M.*) DORI LAL *v.* ROSHAN LAL. 1942 O.A.

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(Supp.) 237=1942 A.W.R. (Rev.) 211= 1942 O. W. N. (B.R.) 892=1942 R.D.481.

——S. 224—*Relief against defendants jointly—Relief against some—Availability.*

In a suit against three persons jointly for arrears of revenue without specifying the amounts payable by each separately, where it is found that one of the defendants holds only *abadi* land over which no land revenue is payable, no relief could be given as against the remaining defendants only because the plaintiff claimed relief jointly against all the defendants and did not claim any separate relief against each defendant severally. (*Sathe, A.M.*) HARI RAM *v.* DHARAM SINGH. 1942 O. A. (Supp.) 42 (1)=1942 O.W N. (B R.) 33 (1)=1942 A.W.R. (Rev.) 42 (1)=1942 R D. 49 (1).

——S. 230—Suit by heirs of co-sharer for arrears of profits accrued due—Maintainability. *See* U. P. TENANCY ACT, SS. 3 (1) AND 230. 1942 R.D. 262=1942 O.W.N. (B.R.) 196.

——S. 230—*Suit for profits—Limitation—Last day, a holiday—Filed next day along with claim for 3 more years—Permissibility.*

Where the 31st of July, 1938, being the last day up to which the suit for profits for 1342 F could be filed was a holiday the suit was filed the next day along with claim for profits for 1343, 44 and 45 F, which had become due by that time, it was held that the claim for 1342-F. was not barred. (*Sathe, J.M.*) SURAJ NARAIN SHUKLA *v.* SARJOO PRASAD. 1942 O. A. (Supp.) 211=1942 O.W.N. (B.R.) 341=1942 A.W.R. (Rev) 191=1942 R.D. 430.

——S. 231—*Suit for profits and accounts—Excess collections found to be made by different sets of defendants—Proper decree—Decree against one of the sets of defendants alone, when justified.*

When different sets of defendants are found to have made excess collections, the plaintiff in a suit for profits and accounts should be given a decree against all such sets of defendants in proportion to their excess collections. A decree against one set of defendants alone is not justified unless the understanding between the co-sharers is shown to be that the excess was to be so collected. (*Shirreff S.M. and Sathe, J.M.*) GAJADHAR *v.* JAGDISH PURI. 1942 O.W.N. (B.R.) 76=1942 O. A. (Supp.) 51=1942 A.W.R. (Rev.) 51=1942 R .D. 108.

——S. 236 (a)—*Collection of excess knowingly—Circumstances—Execution for arrears after accepting full payment of rent.*

Execution for arrears of rent after accepting a money order in full payment of rent for the period concerned, is a collection of rent in excess knowingly and compensation is payable under S. 236, U. P. Tenancy Act. (*Shirreff, S. M. and Sathe, J. M.*) BHAGWANDAS DASS *v.* RAM BALI. 1942 A.W.R. (Rev.) 327=1942 O.W.N. (B.R.) 487=1942 O.A (Supp.) 353.

——S. 242 and Oudh Rent Act, S. 108 (10)—*Scope and effect of S. 242—Suit under S. 108 (10), O. R. Act pending when new Act came to force, how to be dealt with.*

S. 242, U. P. Tenancy Act, bars Civil Courts from hearing and disposing of even pending suits if they were of the nature specified in Sch. IV of the U. P. Tenancy Act. Hence a suit under S. 108 (10) of the O. R. Act pending when the new Act came into force cannot be dismissed on the ground that dispossession of the plaintiff was only by some only of the co-sharers forming the coparcenary body, because such a finding if arrived at before 1st January 1940 would have entailed a return of the plaint to be presented to the Civil Court and which is now barred by S. 242. So the suit would have to be tried and decided by the Revenue Court. (*Shirreff, S.M. and Sathe, J.M.*) RAM NATH SINGH *v.* BALBHADDAR SINGH 1942 O.A. (Supp.) 443=1942 A.W.R. (Rev.) 417=1942 O.W.N. (B.R.) 664.

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——S. 242—*Scope of—If takes away power to dispose of pending cases also.*

S. 242 of the U. P. Tenancy Act forbids not only the institution of new suits of the nature described therein in Civil Courts, but also takes away the power of Civil Courts to hear and dispose of pending suits. (*Sathe, J.M.*) MADHO PRASAD SINGH *v.* RAMPATTI. 1942 O.A. (Supp.) 216=1942 O W.N. (B.R.) 327=1942 R.D. 416=1942 A.W.R. (Rev.) 196

——Ss. 244, 180 and 183—*Conversion of suit under S. 180 into one under S. 183—If should be allowed.*

There is no legal bar to prevent an application by a plaintiff to convert a suit under S. 180 to one under S. 183, U. P. Tenancy Act. In fact it should be granted in view of S. 244 of the U. P. Tenancy Act. (*Shirreff, S. M. and Sathe, J. M.*) BEHARI LONIA *v.* SARABJIT TEWARI. 1942 A W.R. (Rev.) 334 (2)= 1942 O.W.N. (B.R.) 528=1942 O.A. (Supp.) 360 (2).

——S. 244—*Scope and effect of.*

S. 244 of the U. P. Tenancy Act widens the scope of alternative relief which can be granted but at the same time tightens the procedure, as it requires an application by the plaintiff and a framing of issues. (*Harper, S.M. and Shireff, J.M.*) PATRU LONIA *v.* PIRTHI PAL. 1941 O.A. (Supp.) 959=1941 A.W.R. (Rev.) 1211.

——S. 246—*Co-sharer brothers holding in separate possession by private arrangement—Collection of rent by one—Others if precluded from suing for arrears.*

Where by a private arrangement between the co-sharer brothers their holdings are held in separate possession, all of them are landholders. The fact that only one of them has been collecting the rents would not preclude the others from suing for arrears of rent, for any arrangement that had been entered into between them could be put an end to by them and claiming arrears is one of the modes of putting an end to such arrangement. (*Shirreff, S M. and Sathe, J. M.*) BISHAMBHAR SINGH *v.* SHYMA. 1942 O.W.N. (B.R.) 517=1942 A W.R. (Rev.) 406 (1)=1942 O. A. (Supp.) 432 (1).

——Ss. 246 and 294—*Non-joinder of a joint tenant—Objection for first time in revision when that tenant is also dead, if can be taken.*

An objection as to non-joinder of a joint tenant in an application for reinstatement cannot be taken for the first time in revision when that joint tenant has as a matter of fact died after the filing of the application leaving the applicant as his only heir. (*Shirreff, S. M. and Sathe, J.M.*) SUMERI *v.* SHIB LAL SINGH. 1942 A.W R. (Rev.) 332=1942 O.A. (Supp.) 358= 1942 O.W.N (B R.) 670 (2).

——S. 247—*Intervener—Right of appeal.*

Though a defendant is impleaded as such at his own request in the course of a suit, he would still have a right of appeal if the decree actually passed in the suit directly affects him. (*Sathe, J.M.*) JAGESHWAR DIXIT *v.* MST. MAHDEI KUER. 1942 O.A. (Supp.) 475=1942 O W.N. (B.R.) 710=1942 A.W.R. (Rev.) 449.

——S. 251—*Liability to sale under—Holding of occupancy tenant who had acquired permanent lease with heritable and transferable rights under 1926 Act.*

Where a person had already acquired occupancy rights before he acquired permanent, heritable and transferable rights under the 1926 Act, though the acquisition of those additional rights cannot derogate from the occu-

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pancy rights that he had already acquired, his holding would be liable to sale under S. 251 of the U. P. Tenancy Act in satisfaction of a decree for arrears of rent. (*Shirreff, S.M. and Sathe, J.M.*) SHRI NATH SHAH *v.* RAM NATH TEWARI. **1942 O.A. (Supp.) 478 = 1942 O.W.N. (B.R.) 700 = 1942 A.W.R. (Rev.) 452.**

——**S. 263**—*Power of summary dismissal of appeal under U. P. Tenancy Act—If confined to Board of Revenue only.*

The power of summary dismissal of an appeal under the U. P. Tenancy Act given to the Board of Revenue by S. 263 of the Act has not been given to any subordinate Court by the Act. Hence a summary dismissal of an appeal by the Commissioner on the ground that it was time barred, is an irregularity and the order should be set aside. (*Shirreff, S.M. and Sathe, J.M.*) SANSKRIT PATHASALA *v.* SADALU. **1942 R.D. 442 = 1942 A.W.R. (Rev.) 202 = 1942 O.A. (Supp.) 228 = 1942 O.W.N. (B.R.) 353.**

——**Ss. 265 and 289 (2) and Agra Tenancy Act, Ss. 226 and 242**—*Suit for profits under S. 226, Agra Tenancy Act—Decree for Rs. 380 though suit valued at Rs. 100—Appeal to District Judge—Competency—Dismissal as incompetent—Fit case for reference to High Court.*

Where a suit under S. 226 of the Agra Tenancy Act for profits was decreed on 31st August, 1939, for Rs. 380 though the plaintiff had valued his claim at Rs. 100 and the defendant's appeal to the Civil Judge was dismissed on the ground that the valuation of the suit did not exceed Rs. 200, it was held on reference in revision that the valuation of the suit should have been taken to be the value found by the trial Court and that therefore an appeal lay to the District Judge under the Agra Tenancy Act as the value was over Rs. 200. It was held further that as by the time the Civil Judge's order was passed the U. P. Tenancy Act had come into force and the requisite value was only 'exceeding Rs. 50', the reason given by the Civil Judge for rejecting the appeal was not correct and that it was hence a fit case for reference to the High Court under S. 289 (2) of the U. P. Tenancy Act with the recommendation that the District Judge be directed to admit the appeal and rehear it. (*Shirreff, S.M. and Sathe, J.M.*) ABDUL MAJID *v.* NAND LAL. **1942 O.W.N. (B.R.) 442 = 1942 R.D. 532 = 1942 A.W.R. (Rev.) 317 (1) = 1942 O.A. (Supp.) 343 (1).**

——**S. 265 (1) (a) and Agra Tenancy Act (1926), S. 242**—*Right of appeal—Governing date—New Act coming into force before filing of appeal.*

The right of appeal is governed by the date of institution of the suit and not by the date of the filing of the appeal. Where a suit valued at something less than Rs. 200 was instituted while the Agra Tenancy Act was in force and though the new Tenancy Act had come into force prior to the filing of an appeal, no appeal would lie to the District Judge under S. 242 of the Agra Tenancy Act. (*Shirreff, S.M.*) BISHAMBHAR NATH *v.* BABU SINGH. **1942 O.W.N. (B.R.) 434 = 1942 A.W.R. (Rev.) 314 = 1942 O.A. (Supp.) 340 = 1942 R.D. 524.**

——**S. 267**—*Acceptance of appeal and remand on the question of damages—Further appeal, if lies.*

Where a Collector sitting as a commissioner in accepting the appeals in his Court in suits under S. 44 of the Agra Tenancy Act, remands them for a decision on the question of damages as there was no finding on the question, there is apart from the remand, a decree within the meaning of S. 2 (2), C.P. Code, and hence an appeal lies to the Board under S. 267, U. P. Tenancy Act. (*Shirreff, J.M.*) MATI CHAUBEY *v.* MANKI.

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1942 O.A. (Supp.) 29 (2) = 1942 A.W.R. (Rev.) 29 (2).

——**S. 267**—*Finding as to adverse possession—Interference in second appeal.*

The commissioner's finding that the defendants are in adverse possession from a particular date is one of fact and must be accepted in second appeal. (*Sathe, J.M.*) DULARI *v.* DARSHAN SINGH. **1942 O.W.N (B.R.) 25 = 1942 A.W.R. (Rev.) 71 (1) = 1942 O.A. (Supp.) 77 (1) = 1942 R.D. 41.**

——**S. 267**—*Findings not unsupported by evidence—Interference in second appeal.*

Where findings of fact are not without support of evidence on the record, they cannot be interfered with in second appeal. (*Sathe, J.M.*) DEBI PRASAD *v.* JHUNA. **1942 A.W.R. (Rev.) 125 = 1942 O.A. (Supp.) 142. 1942 O.W.N. (B.R.) 342 = 1942 R.D. 431.**

——**Ss. 267 and 171**—*Finding of fact—Binding nature—Finding as to transferee being in possession.*

A finding that a transferee is in possession is a finding of fact and must be accepted in second appeal. (*Sathe, J.M.*) RIYASAT *v.* KULLAKAR. **1942 R.D. 712 (1) = 1942 O.A. (Supp.) 407 = 1942 O.W.N. (B.R.) 584 (1) = 1942 A.W.R. (Rev.) 381.**

——**S. 267**—*Finding of fact—Existence of agreement as to mutual transfer of each other's interests in the different properties—Interference in second appeal.*

A finding as to the existence of an agreement between co-sharers in tenancy as to mutual transfer of each other's interests in the different properties, is one of fact and hence would not in second appeal be interfered with. (*Sathe, J.M.*) GUDAR *v.* FARZAND ALI. **1942 R.D. 710 = 1942 O.W.N. (B.R.) 582 = 1942 A.W.R. (Rev.) 439 (2) = 1942 O.A. (Supp.) 465 (2).**

——**S. 267**—*Finding of fact—Interference in second appeal—When justified.*

Where the findings of fact are without any basis of evidence on record, they are fit to be interfered with in second appeal. (*Shirreff, S.M. and Sathe, J.M.*) BRIJ NARAIN SINGH *v.* PADARATH KURMI. **1942 O.W.N. (B.R.) 229 = 1942 O.A. (Supp.) 156 (2) = 1942 R.D. 295 = 1942 A.W.R. (Rev.) 136 (2) = 1942 A.L.J. (Supp.) 28.**

——**S. 267**—*Finding of fact—Interference when not justified.*

A second appellate Court is not justified in questioning the conclusions of fact arrived at by the lower appellate Court from the evidence which it has set forth in its judgment unless it is shown that in arriving at its conclusion the lower appellate Court has committed an irregularity or illegality which merits such interference. (*Sathe, J.M.*) GANESH MISIR *v.* SRI THAKUR RAM JANKI. **1942 O.W.N. (B.R.) 538 = 1942 A.W.R. (Rev.) 401 = 1942 O.A. (Supp.) 427.**

——**S. 267**—*Plea of abandonment in second appeal—Power of Court.*

A plea of abandonment cannot be disposed of in second appeal on merits where no issue on it had been framed by the trial Court. But where an issue on the civil death of that tenant had been raised, the second appellate Court can frame an issue on the plea of abandonment and send it to the lower Court for a finding on it. (*Sathe, J.M.*) INDERDEO SINGH *v.* CHABILA PATHAK. **1942 O.A. (Supp.) 145 (1) = 1942 A.W.R. (Rev.) 128 (1) = 1942 O.W.N. (B.R.) 244 = 1942 R.D. 333.**

——**S. 267**—*Plea of admission to tenancy in ejectment suit—Proof—Mere unrebutted statement of defendant—Sufficiency.*

Where in a suit for ejectment a plea of admission to tenancy was taken up and the only evidence produced

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was the unrebutted statement of the defendant which was believed by the trial Court and disbelieved by the Commissioner it was held,

Per *Sathe, J.M.*, that since no minimum evidence was required for proving settlement of land and as the only evidence on record was that produced by the defendant and as forcible possession on the defendant's part of many *sir* plots was improbable, the Commissioner's finding that settlement of land had not been proved could not be maintained even though it was one of fact.

Per *Shirreff, S. M.*—That inherent improbability is a somewhat hypothetical ground for rejecting a finding of fact which could not be said to be in conflict with the evidence. (*Shirreff, S.M. and Sathe, J.M.*) MAHABIR v. SHEO DAS PATHAK. 1942 O. W. N. (B R) 417= 1942 A.W.R (Rev.) 284=1942 O A. (Supp.) 310= 1942 R D. 507.

——Ss. 267 and 94—*Question of fact—Finding as to correct rent.*

The question what the correct rent settled was, is a question of fact and where there is evidence to support the concurrent finding of both the lower Courts, the second appellate Court would not be justified in setting it aside in second appeal (*Sathe, J.M.*) MUNESAR KURMI v. MAHARAJ. 1942 R D. 719=1942 O.A. (Supp.) 408=1942 O.W.N. (B R.) 591=1942 A W. R. (Rev.) 382.

——S. 267—*Second appeal—Finding of fact—Acceptance of.*

Where a finding that a settlement has not been satisfactorily proved is arrived at after a due consideration of the evidence on record, it cannot be disturbed in second appeal and must be accepted. (*Sathe, J.M.*) RAM AUDH KURMI v. ANGAD SINGH. 1942 O W.N (B. R.) 142=1942 O A. (Supp) 120 (1)=1942 R.D. 208 =1942 A.W.R. (Rev.) 104 (1).

——S. 267—*Second appeal—Finding of fact against evidence—If can be upheld.*

A finding of fact against the weight of evidence is not one which can be maintained in second appeal. (*Harper, S.M. and Shirreff, J.M.*) IQBAL HUSAIN v. GANPAT 1942 A.W.R. (Rev.) 79=1942 O.A. (Supp.) 85=1942 O.W.N. (B R.) 48=1942 R.D. 80.

——Ss. 267 and 59—*Second appeal—Finding of fact—Declaratory suit—Binding nature.*

Where on a plea of co tenancy being raised in defence to a suit for declaration of sole tenancy it is found that the holding in question is not ancestral, it is a finding of fact and must be accepted in second appeal. (*Sathe, J. M.*) MAIKUWA v. PAGALWA. 1942 O.W.N. (B.R.) 634=1942 O.A. (Supp.) 426=1942 A.W.R. (Rev.) 400.

——S. 267—*Second appeal—Finding of fact—Settlement of holding jointly with two persons—Interference.*

The question whether a holding is settled jointly with two brothers or not is a question of fact and when there is a concurrent finding of both Courts that it was jointly settled with them though it was entered in the name of one of them alone must be accepted in second appeal unless it can be shown that the finding has been arrived at without any basis of evidence or in other words that it is perverse. (*Sathe, J.M.*) ALI ABBAS v. KHUSHTARI BIBI. 1942 O.A. (Supp.) 214=1942 O W N. (B R.) 347=1942 R.D. 436=1942 A W.R. (Rev.) 194.

——S. 267—*Second appeal—If lies—Order accepting appeal in suit under S. 44, Agra Tenancy Act and remanding case.*

Where the Collector accepts an appeal in a suit under S. 44, Agra Tenancy Act and remands it for trial on the question of damages left undecided by the trial Court, the order apart from remand is a decree under S. 2 (2),

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C. P. Code and an appeal lies against it to the Board under S. 267, U. P. Tenancy Act. (*Shirreff, J.M.*) MOTI CHAUBEY v. MST. MANKI. 1942 O.W N. (B. R.) 98 (2)=1942 R.D. 130 (2).

——S. 267—*Second appeal—Interference—Evidence balanced—Finding of fact.*

Where the evidence on record is somewhat balanced a finding of fact as to date of dispossession cannot be said to be so perverse as to require interference in second appeal. (*Sathe A.M.*) SRIPAL SHUKLA v SHAMBHU DATT. 1941 O A. (Supp.) 964 (1)=1941 A.W. R. (Rev.) 1216 (1).

——S 267—*Second appeal—Interference—Finding not unsupported by evidence—Possibility of mistake in considering documents.*

Where the finding of an additional Commissioner is not without any support whatsoever of evidence on record, the fact that he may have made certain mistakes in considering and interpreting certain documents, is no ground for interference with that finding in second appeal. (*Sathe J.M.*) LOCHAN SINGH v. NITANT SINGH 1942 O A. (Supp.) 55 (1)=1942 O.W.N. (B R) 89=1942 A.W.R. (Rev) 55 (1)=1942 R. D. 121.

——S. 267—*Second appeal—Interference—Finding of fact.*

The Board will not interfere in second appeal on points of fact merely because that had it been sitting as a Court of first instance or first appeal it might have come to a different conclusion. (*Sathe, A.M.*) RATAN LAL v. JOGRAM SINGH. 1941 O.A. (Supp.) 965= 1941 A.W.R. (Rev.) 1217.

——S. 267—*Second appeal—Interference with concurrent findings of fact.*

A concurrent finding of fact that the land was never let to a plaintiff under S. 183 of the U. P. Tenancy Act though based on oral evidence and against the entry in the patwari papers, cannot be interfered with in second appeal. (*Sathe, A.M.*) DUBARI PASI v. PATESHWAR SINGH. 1941 A.W.R. (Rev.) 1123 (1)=1941 O.A. (Supp.) 904 (1).

——S. 267—*Second appeal—Interference with concurrent findings—Possibility of a different conclusion by second appellate Court—If a valid ground.*

The mere possibility that a second appellate Court if it had been sitting as a Court of first instance or as a Court of first appeal it might have come to a different conclusion, would not justify it in rejecting the concurrent findings of facts arrived at by the two lower Courts. (*Sathe. J.M.*) CHUNNI KUAR v. KALIKA. 1942 A.W.R. (Rev.) 122 (1)=1942 R.D. 241=1942 O.W.N. (B.R.) 175=1942 O.A. (Supp.) 139 (1).

——S. 267—*Second appeal—Interference with findings of fact.*

The fact that the Board might have, if it were sitting as a Court of first instance or of first appeal considered the evidence insufficient to prove a plaintiff's case, is no reason why it should interfere with the considered finding of fact to the contrary in second appeal. (*Sathe, J.M.*) SOMAI v. CHANDRA BALI PANDEY. 1942 A. W R. (Rev.) 410 (1)=1942 O.A. (Supp.) 436 (1)= 1942 O.W.N. (B.R.) 534.

——S. 267—*Second appeal — Interference with finding of fact—If justified.*

A finding that a lease was never executed till a particular date is a finding of fact and though ordinarily would be accepted in second appeal, it could be interfered with in second appeal. (*Shirreff, J.M. and Sathe, A M.*) GOLA v. OM PRAKASH. 1942 O W N. (B.R.) 16=1942 O A. (Supp). 14 (2)=1942 A.W.R. (Rev.) 14 (2)=1942 R.D. 16.

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——S. 267—*Second appeal—Powers of Court—Material issue not considered by lower appellate Court—Procedure to be followed—Hearing on facts when justified.*

Ordinarily if the first appellate Court neglects to consider a material issue, the appeal should be remanded to it for fresh disposal after considering material issues. But where both parties agree to argue the appeal on facts in the appellate Court, it would be justified in hearing the appeal on the merits of the case so that the matter might be decided once and for all expeditiously. (*Shirreff, S.M. and Sathe, J.M.*) RAGHUNATH RAI *v.* MAHADEO PRASAD. 1942 R.D. 355=1942 O.W.N. (B.R.) 266=1942 A.W.R. (Rev.) 238 (2)=1942 O. A. (Supp.) 264 (2).

——S. 271 (2)—*Appeal from Additional Commissioner's remand order, if lies—Re-opening of question of law decided.*

An order of remand is not a decree but only an order. No appeal lies from an Additional Commissioner's remand order and hence it is open to either party to reopen the question of law in second appeal against the final order. (*Sathe, J. M.*) TRIBHAWAN DUTT DUBEY *v.* KANHAYA BUX LAL. 1942 A.W.R. (Rev.) 453=1942 O.A. (Supp.) 479=1942 O.W.N. (B.R.) 660.

——S. 271 (2)—*Dismissal of appeal in default—When appealable.*

Under S. 271 (2) of the U. P. Tenancy Act appeals lie from orders of dismissal of appeal in default of appearance only if made by an Assistant Collector of the 1st class or a Collector and as such no appeal lies from such an order passed by an Additional Commissioner. (*Shirreff, S.M.*) LAL BAHADUR *v.* MAN KUER. 1942 A.W.R. (Rev.) 293 (2)=1942 O.A. (Supp.) 319 (2)=1942 O.W.N. (B.R.) 402=1942 R.D. 491.

——S. 272—*Second appeal—Competency—Order in appeal against order under S. 144, C. P. Code.*

No second appeal lies under S. 272 of the U. P. Tenancy Act against an order passed in appeal against an order under S. 144, C. P. Code. (*Shirreff, S. M.*) MAHOMED YAQUB *v.* SHAHZADE BEGUM. 1942 O.W.N. (B.R.) 202 (2)=1942 R.D. 268 (2)=1942 A.W.R. (Rev.) 165 (2)=1942 O.A. (Supp.) 185 (2).

——Ss. 272 and 294—*Second appeal in proceedings under S. 294—If lies.*

In proceedings under S. 294 U. P. Tenancy Act no second appeal lies under S. 272 of the Act. (*Sathe, A.M.*) SHIB LAL *v.* RAI SHAMSHER JANG. 1942 O.W.N. (B.R.) 1 (2)=1942 O.A. (Supp.) 14 (1)=1942 A.W.R. (Rev.) 14 (1)=1942 R.D. 1 (2).

——Ss. 273 and 274—*Review—Mistaken view of law—Competency.*

There can be no review on a mistaken view of law. (*Harper, S.M. and Sathe, J.M.*) NATHA RAM *v.* JHAMMAN SINGH. 1942 O.A. (Supp.) 121 (2)=1942 A.W.R. (Rev.) 85.

——S. 273—*Review—Scope of powers—Practice as to exercise of powers—Review on an alleged mistake of law.*

It is not the practice of the Board to review its own orders on account of any alleged mistake of law although S. 273 of the U. P. Tenancy Act gives unfettered powers of review. Such a practice is in accordance with O. 47, C. P. Code. (*Shirreff, S.M. and Sathe, J.M.*) DUNI CHAND *v.* RAM SINGH. 1942 A.W.R. (Rev.) 126=1942 R.D. 252=1942 O.W.N. (B.R.) 186=1942 O.A. (Supp.) 143.

——S. 275—*'Case decided'—Order of remand.*

Where there is a remand without any decision in any way on any issue between the parties, the order is not open to revision. (*Harper, S.M.*) SADHO KUAR *v.* UMA CHARAN. 1942 O.W.N. (B.R.) 124=1942 R.D. 169 1942 O.A. (Supp.) 134=1942 A.W.R. (Rev.) 117 (1)

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——S. 275—*'Case'—'Decided case'—Restoration proceedings, if separate cases—Restoration if a 'decided case'.*

Per *Harper, S.M.*—Proceedings for the revival of a suit are not part of the suit but are separate cases. When restoration is ordered under O. 9, R. 13, C. P. Code, the separate case started by such proceedings is duly decided and it becomes a 'decided case'. (*Harper, S.M. and Sathe, J.M.*) DAYA SHANKAR *v.* LALTA PRASAD. 1942 A.W.R. (Rev.) 1=1942 O.A. (Supp.) 1=1942 O.W.N. (B.R.) 53=1942 R.D. 85=1942 A.L.J. (Supp.) 8.

——Ss. 275 and 286—*Case decided—Refusal to refer issue to Civil Court.*

An order of a Revenue officer refusing to refer an issue on the question of proprietary right to the civil Court, is not a final order deciding the case and hence it cannot be interfered with in revision. (*Shirreff, S.M.*) KALYAN DAS *v.* DATA RAM. 1942 O.A. 485 (1)=1942 O.W.N. (B.R.) 662 (1).

——S. 275—*Findings of fact—Interference—Absence of evidence.*

The Board is ordinarily reluctant to interfere in revision with findings of fact of an appellate Court. But where the appellate Court's order is not based on the evidence and leads to inequitable results, it is necessary to interfere with it in revision inasmuch as the appellate Court has acted in the exercise of its jurisdiction with material irregularity. (*Harper, S.M. and Shirreff, J.M.*) RAM SUNDER MISIR *v.* PALKI. 1942 A.W.R. (Rev.) 27=1942 O.A. (Supp.) 27=1942 R.D. 372=1942 O.W.N. (B.R.) 283.

——S. 275—*Mere technical defect—If justifies revision—Material injustice by reason of irregularity—Necessity.*

Where an appeal against an order for transfer of possession in execution of an ejectment order under S. 82, Agra Tenancy Act, is allowed *ex parte* on the decree-holder's agent refusing to take service of notice, though the absence of fresh notice is an objection of considerable force yet a revision of that order will not be allowed merely on a technical defect. The applicant must show that he has suffered material injustice by the irregularity committed in the lower appellate Court. (*Sathe, J.M.*) INDER NARAIN *v.* RAM RAJ. 1942 O.W.N. (B.R.) 44=1942 O.A. (Supp.) 34=1942 R.D. 76=1942 A.W.R. (Rev.) 34.

——S. 275—*Mistake of facts—Absence of any injustice—Interference.*

In the absence of any injustice, a mistake of facts made by the lower Court does not warrant interference in revision. (*Sathe, J.M.*) MURTA DEI *v.* SURESH DUTT SINGH. 1942 O.W.N. (B.R.) 536=1942 A.W.R. (Rev.) 411=1942 O.A. (Supp.) 437.

——S. 275—Order permitting withdrawal of suit by appellate Court—Revision. *See* C. P. CODE, O. 23, R. 1 AND U. P. TENANCY ACT, S. 275. 1941 A.W.R. (Rev.) 1156=1941 R.D. 1115.

——S. 275—*Revision—Bar of—Failure to avail remedy of appeal—Entertainment of revision—Competency.*

The only bar contained in S. 275 of the U. P. Tenancy Act is against revision applications in respect of orders which are appealable to the Board or the District Judge. It is discretionary with the Board to entertain a revision application even if the party concerned has failed to avail himself of the remedy of filing an appeal. But where an applicant fails to avail himself of the regular

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remedy of appeal open to him, it is not desirable to entertain an application for revision by him after the expiry of the period of limitation for filing the appeal. (*Sathe, A.M.*) JAGDAMBIKA PRATAP NARAIN SINGH *v.* JAGANNATH. **1941 O.A. (Supp.) 947=1941 A. W.R. (Rev.) 1196.**

——**S. 275**—*Revision directly to Board—Competency.*

Though a revision has to be filed first before the commissioner and not to the Board direct, yet where an infructuous appeal had been filed before the Commissioner, such an objection cannot hold good. (*Sathe, J. M.*) MURTA DEI *v.* SURESH DUTT SINGH. **1942 O. W.N (B.R.) 536=1942 A.W.R. (Rev.) 411=1942 O. A. (Supp) 437.**

——**S. 275**—*Revision—Exercise of discretion in extending time for filing review application—Interference*

Where a Collector sitting with the powers of an appellate Court having authority to apply S. 5 of the Limitation Act chooses to extend the time for the filing of an application for review it cannot be termed an irregularity and hence cannot be interfered with in revision. (*Sathe, J. M.*) RAJ RAJI KUNWAR *v.* TURSI. **1942 A.W.R. (Rev.) 205 (2)=1942 O.A. (Supp.) 231 (2)=1942 O.W.N. (B.R.) 367=1942 R.D. 456.**

——**S 275**—*Revision—Failure to show sympathy—If a ground.*

Where neither illegality nor irregularity in the trial Court's order could be shown in respect of an order of dismissal of a suit for profits for default, a revision of such an order could not be asked for on the ground that the party deserved sympathy and that the case should have been adjourned to another date (*Sathe, J.M.*) AMBIKA PRASAD *v.* MAHENDRAMAN SINGH. **1942 O W N. (B.R.) 901=942 A.W.R.(Rev.) 96=1942 O. A. (Supp.) 109=1942 R D. 122.**

——**S. 275**—*Revision—Grounds.*

S. 275 of the U. P. Tenancy Act provides for revision in three cases. The cases included in Cls. (*a*) and (*b*) of the section provide for those cases where a question of jurisdiction is involved But the cases included in Cl. (*c*) of the section are those where admittedly the Court had jurisdiction but where in the exercise of it the Court acted with some illegality or material irregularity. (*Shirreff, J.M. and Sathe, A.M.*) RAM LAL *v.* PARAS RAM. **1941 R.D 1123=1941 O.A. (Supp) 945 (2)=1941 A.W.R. (Rev.) 1194 (2).**

——**S. 275**—*Revision—Interference—Dismissal of rent suit on plea of payment to third party—Appeal and revision—Compromise without intervener as party—Orders in the case, if can be revised.*

Where the plea of a defendant in the suit for arrears of rent, as to payment to third party *bona fide*, is accepted and the suit dismissed and on an appeal being dismissed a revision is filed and during its pendency a compromise is entered into between plaintiff and defendant to which the intervener was not a party, that is no ground for asking the order in the case being set aside in revision. (*Shirreff, S. M. and Sathe, J.M.*) MISRI LAL *v.* HIMANCHAL. **1942 O.W N. (B R.) 193 (1)= 1942 R.D. 259 (1)=1942 A.W.R. (Rev) 161 (1)= 1942 O A. (Supp.) 181 (1).**

——**S. 275**—*Revision— Interference— Finding of fact.*

The finding of a Deputy Commissioner that it was not proved that a particular area was let to a particular person, is a finding of fact and must be accepted and cannot be interfered with in revision. (*Sathe, J.M*) SPECIAL MANAGER, COURT OF WARDS AMETHI ESTATE *v.* SIRTAJI. **1942 O.W.N. (B.R.) 152=1942**

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O.A. (Supp.) 117=1942 R.D. 218=1942 A.W.R (Rev.) 101 (2).

——**S. 275**—*Revision—Interference—Mistaken finding of fact.*

A mistaken finding of fact based on evidence cannot be a ground for revision. (*Shirreff, S.M.*) RAM KUNWAR *v.* NASIB KHAN. **1942 O W.N. (B.R.) 425 (1)=1942 A.W.R. (Rev.) 311 (2)=1942 O.A. (Supp.) 337 (2)=1942 R.D. 515 (1).**

——**S. 275**—*Revision—Interference— Quantum of compensation under S. 144, C. P. Code.*

The finding as to the equitable amount of compensation for purposes of restitution under S. 144, C. P. Code, is a finding of fact and cannot be interfered with in revision. (*Shirreff, S.M.*) MAHOMED YAQUB *v.* SHAHZADI BEGUM. **1942 O.W N (B.R.) 202 (2)= 1942 R.D. 268 (2)=1942 A.W.R. (Rev.) 165 (2)= 1942 O A. (Supp.) 185 (2)**

——**S. 275**—*Revision—Interference — Question of irregularity in the assumption of jurisdiction by Assistant Collector—Absence of prejudice.*

Where jurisdiction is assumed by an Assistant Collector not invested with such powers under S. 238 of the Agra Tenancy Act and an appeal is preferred to a Collector and decided by him though according to S. 248 (3) of the Agra Tenancy Act it ought to have been filed before the District Judge and decided by him, where there is no prejudice to the parties, it is not necessary for the Board to interfere in revision. (*Shirreff, J.M.*) MEWA RAM *v.* MEDAI LAL. **1942 O W.N. (B.R.) 176=1942 R.D. 242=1942 A.W.R. (Rev.) 165 (1)= 1942 O.A. (Supp.) 185 (1).**

——**S. 275**—*Revision — Interference—Refusal of lower Courts to restore proceedings.*

It is competent for the Board to interfere in cases where restoration applications are dismissed on the ground that the reasons given in the affidavit are unconvincing. (*Shirreff, S.M.*) BYOPAR SAHAYAK BANK, LTD., MEERUT *v.* BHAGWAN DAS. **1942 O.W.N. (B.R.) 149=1942 R.D. 215=1942 O.A. (Supp.) 121 (1)=1942 A.W R. (Rev.) 105 (1).**

——**S. 275**—*Revision—Limitation—Practice.*

It is the practice of the Board not to entertain usually revisions filed after the lapse of four months. (*Sathe, J.M.*) MURTA DEI *v.* SURESH DUTT SINGH. **1942 A.W.R (Rev.) 411=1942 O.A (Supp.) 437=1942 O.W.N. (B.R.) 536.**

——**Ss. 275 and 296**—*Revision—Order quashing proceedings on application by one not competent to apply.*

An order quashing proceedings under S. 296, U. P. Tenancy Act on the application by one not competent to apply, is irregular and hence could be set aside under S 275 by the Board when it is brought to its notice. (*Shirreff, S. M and Sathe, J. M.*) CHHANGA SHUKUL *v.* BAJRANGI SINGH. **1942 O A. (Supp) 255= 1942 A W R. (Rev.) 229=1942 O.W.N. (B R.) 376 =1942 R D. 465.**

——**S. 275**—*Revision—Point of fact—Interference.*

Fine distinctions on points of fact do not justify interference in revision. (*Sathe, J.M.*) SADA NAND *v.* BALBHADRA. **1942 O A. (Supp) 81 (2)=1942 A. W.R. (Rev.) 75 (2)=1942 O.W.N. (B.R.) 133= 1942 R.D 199.**

——**S. 275**—*Revision—Question of fact—Sufficiency of service—Interference.*

The question whether the service of a notice was sufficient or defective is a question of fact and hence it cannot be interfered with in revision. (*Sathe J. M.*) KAJ RAJI KUNWAR *v.* TURSI. **1942 A.W.R (Rev.)**

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205 (2)=1942 O A. (Supp.) 231 (2)=1942 O.W.N. (B.R) 867=1942 R D. 456

——S. 275—*Sale of immovable property through a Kurkamin—Irregularity—Revision.*

Where the irregularity in the matter of a sale of immovable property through a Kurkamin as movable property is brought to the notice of the Board, it will interfere in revision. (*Shirreff, S.M. and Sathe, J.M.*) MST. GANJO KUNWAR *v.* SHEO PRASAD SINGH. 1942 O W N. (B.R.) 228=1942 O A. (Supp.) 153 (2)=1942 R.D. 294=1942 A.W R. (Rev.) 133 (2).

——S. 275 (c)—*Illegality or material irregularity—Error of law or wrong exercise of discretion—Competency of revision.*

An error of law or wrong exercise of discretion does not amount to an illegality or material illegality under S. 275 (*c*) and hence could not be a ground for a revision. (*Harper, S M*) SADHO KUAR *v.* UMA CHARAN. 1942 O W N. (B R.) 124=1942 R.D 169 =1942 O A (Supp) 134=1942 A.W R (Rev.) 117 (1).

——S. 276—Applicability. *See* 1941 Dig., Col. 1219. JAGANNATH SINGH *v.* SITA RAM. 16 Luck. 775.

——S. 276—Applicability—Suit when Oudh Rent Act is in force—Order complained against passed after new Act came into force—Law applicable. *See* 1941 Dig., Col. 1219. JAGANNATH SINGH *v.* SITARAM. 16 Luck. 775

——S. 276—*Restoration of arrears of rent suit—Competency of Revision to Board when appeal from suit lies to District Judge.*

Per *Harper, S M*—Though an appeal from a decision in a suit for arrears of rent for more than Rs. 200 lies to the District Judge, an order under O. 9, R. 13 for restoration of such a suit is revisable by the Board. (*Harper, S.M. and Sathe, A.M.*) DAYA SHANKAR *v.* LALTA PRASAD 1942 A.W R (Rev) 1=1942 O. A. (Supp.) 1=1942 O.W N. (B.R.) 53=1942 R.D. 85=1942 A.L.J. (Supp) 8.

——S. 286—*Question of proprietary right—If negatived by the absence of the name of person concerned from the khewat.*

From the mere absence from the khewat of the name of a defendant in suit for arrears of rent who pleads that he is a mortgagee of proprietary rights, it cannot be said that no question of proprietary right arises. (*Shirreff, S.M. and Sathe, J.M.*) RAJDEO TEWARI *v.* SWAMI CHARAN. 1942 O.W.N. (B.R.) 670 (1)= 1942 O.A. (Supp.) 485 (2).

——S. 286 and Agra Tenancy Act, S. 271—*Question of proprietary title—Partition subsequent to mortgage—Allotment to different person—Question of binding nature of mortgage.*

Where subsequent to a mortgage there is a partition both in the Civil and Revenue Courts and the mortgag ed plot is allotted to the son of the mortgagor and he brings a suit to eject the mortgagee when the latter raises the plea as to his mortgage the question as to the binding nature of the mortgage is one of proprietary title and should be referred to the Civil Court under S. 286, U. P. Tenancy Act. (*Shirreff, S.M. and Sathe, J.M.*) DHONDHAI *v.* SHEO KUMAR SINGH. 1942 O.A. (Supp) 202=1942 R D 408=1942 O.W.N. (B.R.) 319=1942 A.W.R. (Rev.) 182

——S. 286 (1). Expl.—*Applicability of the Expl.—Plea of under-proprietorship in defence to suit under S. 180—Reference to Civil Court—Necessity.*

The explanation to S. 286 (1) of the U. P. Tenancy Act relates to cases where the defendant raises flimsy and untenable pleas as to existence of proprietary rights in order to delay the case. Where in a suit under S.180 the defendant pleads that he is '*britdar*' which means an under-proprietor, and it is denied by the plaintiff, there is obviously a question of proprietary title involved which it is obligatory on the trial Court to refer to a Civil Court. The Expl. to S. 286 (1) has no application to such a case. (*Shirreff, J.M. and Sathe, A.M.*) SANKATA BUX SINGH *v.* MATA BADAL. 1941 A. W.R (Rev) 1122=1941 O.A. (Supp) 903.

U. P. TENANCY ACT (1939), S 294.

——S. 288—*Applicability—Suit disposed of and pending appeal—'Suit' meaning of.*

The word 'suit' in S. 288, U. P. Tenancy Act means suit only and does not include appeal. Hence S. 288 cannot apply to a suit which had been already decided before it was enacted and the decree was pending appeal. (*Ghulam Hasan and Agarwal, JJ.*) NOOR MOHAMMAD *v* SULEMAN KHAN 203 I.C 236=15 R.C 166 =1942 O A. 430=1942 O W N 520=1942 A.W.R. (C C.) 322 (2)=A.I R 1943 Oudh 35.

——S 294—*Applicability—Ejectment and delivery of possession in 1936—Appeal—Restoration—Revision—Restoration to Zamindar by way of restitution—Right to reinstatement under S. 294.*

Where the actual delivery of possession in the ejectment proceedings had taken place in 1936 (*i.e.*) before the date specified in S. 294 of the U. P. Tenancy Act but on appeal was restored to the tenant and finally as a result of revision to the Board possession was restored to the Zamindar by way of restitution, the case does not come within the scope of S. 294 and the tenant is not entitled to reinstatement. The order under S. 144, C. P. Code merely restored the *status quo* and hence confirmed the fact that the tenant had been duly ejected in 1936 (*i.e.*) before the date specified in S. 294 of the Act. (*Shirreff S. M.*) BAKHTAWARI *v* KAMLA KANT 1942 A.W R. (Rev.) 263 (1)=1942 O A. (Supp) 289 (1)=1942 R D. 373=1942 O.W.N. (B. R) 284.

——S. 294—*Applicability—Proceedings regarding suit for ejectment under S. 44 of the Agra Tenancy Act.*

The proceedings in relation to a suit for ejectment under S. 44 of the Agra Tenancy Act are not governed by S. 294 of the United Provinces Tenancy Act. (*Sathe, A M.*) SHIB LAL *v.* RAI SHAMSHER JANG. 1942 O W.N (B.R.) 1 (2)=1942 O.A. (Supp.) 14 (1)= 1942 A.W.R. (Rev.) 14 (1)=1942 R.D. 1 (2).

——S. 294—*Applicability—Tenant ejected under Ss. 79 and 80 of the Agra Tenancy Act.*

S. 294 of the U. P. Tenancy Act applies to tenants ejected under Ss. 79 and 80 of the Agra Tenancy Act (*i.e.*) ejected in execution of a decree for arrears of rent as much as to tenants ejected under S. 81 of the Agra Tenancy Act (*i.e.*) in default for payment of arrears, for, both amount to the same thing. (*Shirreff, S. M. and Sathe, J.M.*) SUMFRI *v.* SHIB LAL SINGH 1942 O A. (Supp) 358=1942 O.W.N (B.R.) 670 (2)= 1942 A.W R. (Rev.) 332.

——S. 294—*Application for reinstatement—Duty of impleading parties if on the applicant—Failure to implead person in cultivatory possession—If would entail rejection of application.*

The very wording of S. 294 (1) of the U. P. Tenancy Act shows that it does not contemplate any formal impleadment of parties. Though it is desirable to have persons who are in cultivatory possession as parties in view of Cl. (3) of the section, the duty of making them parties is not definitely put on the applicant himself. Hence his omission to implead such persons cannot make his application liable to be rejected. (*Shirreff S M. and Sathe, J.M.*) DULLI SINGH *v.* BHUNESH-

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WARI RAJ LAXMI DEVI. 1942 O.A. (Supp) 248=1942 A.W.R. (Rev.) 222=1942 R.D. 503=1942 O.W.N. (B.R.) 413.

——S. 294—*Application for reinstatement—Maintainability—Some only of tenants who held the holding jointly applying.*

Where only two out of seven tenants who held the holding jointly prior to their ejectment apply for reinstatement to the holding, the application is void *ab initio*. (*Shirreff, S. M. and Sathe, J. M.*) RAM SINGH *v.* SHIAM NATH. 1942 R.D. 335=1942 O.W.N. (B.R.) 246=1942 A.W.R. (Rev.) 261 (1)=1942 O.A. (Supp.) 287 (1).

——Ss. 294 and 246—*Application for restoration by one of several ejected co-tenants—Validity—Curability.*

Where several co-tenants are ejected an application for restoration under S. 294 by one co-tenant only is irregular *ab initio* in view of the provisions of S. 246 of the Act and an objection on this ground even if raised at a late stage cannot be overlooked under O. 1, R. 13 C. P. Code (*Sathe, J.M.*) SANWANLIA *v.* JADU NATH SINGH. 1942 A.W.R. (Rev.) 73=1942 R.D. 146=1942 O.A. (Supp.) 79=1942 O.W.N. (B.R.) 114.

——S. 294—*Application under—Failure to file copies of and of the Khatauni—Rejection of application, if justified.*

The mere failure of an applicant under S. 294 of the U. P. Tenancy Act either to file copies of the application for service on the other side or a copy of the *Khatauni* does not justify a dismissal of the application under S. 294. (*Shirreff, S.M and Sathe, J.M.*) KALYAN SINGH *v.* BHUP NARAIN. 1942 O.A. (Supp.) 399=1942 O.W.N. (B.R.) 576=1942 R.D. 704=1942 A.W.R. (Rev.) 373.

——S. 294—*Benefit of—To whom available—Actual ejectment after 1st April, 1937 though decree prior thereto—Tenants ejected under Ss. 79 and 80 of the Agra Tenancy Act—If can claim same rights as those ejected under S. 81.*

Though an ejectment order is passed before 1st April, 1937, if the tenant is ejected actually after that date, he is entitled to the benefit of S. 294, U. P. Tenancy Act. A tenant who is ejected for non-satisfaction of a decree for arrears of rent under Ss. 79 and 80, Agra Tenancy Act is also ejected for non payment of arrears of rent as a tenant ejected by notice under S. 81. Hence a tenant ejected under Ss. 79 and 80 of the Agra Tenancy Act is entitled to the benefits of S. 294, U. P. Tenancy Act like those ejected under S. 81. (*Sathe, A.M.*) JEET RAM *v.* KARAM SINGH. 1941 R.D. 1132=1941 O.A. (Supp.) 936 (2)=1941 A.W.R. (Rev.) 1167 (2).

——S. 294—Proceedings under—Second appeal—If lies. *See* UNITED PROVINCES TENANCY ACT, Ss 272, 294. 1942 A.W.R. (Rev.) 14 (1).

——S. 294—*Reinstatement—Pendency of suit under S. 44, Agra Tenancy Act—Proper order to pass.*

Where a suit under S. 44 of the Agra Tenancy Act necessitated by the tenant continuing in possession after ejectment for arrears of rent is pending when the New Act came into force and the tenant applies under S. 294 of the New Act for reinstatement though it may be the correct procedure to pass a decree for his ejectment it is unnecessary. A decree for damages for the period in unlawful possession till the date of reinstatement would be quite sufficient. (*Sathe, J.M.*) PRABHU LALL *v.* MOHAN LALL. 1942 A.W.R. (Rev.) 29 (1)=1942 O.A. (Supp.) 29 (1)=1942 O.W.N. (B.R.) 19=1942 R.D. 35.

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——S. 294—*Reinstatement, right to—Some only of the ejected tenants applying—If and when entitled to relief.*

Where there is no definite ground for holding that the applicants who are only some of the ejected tenants made the application on behalf of all the co-tenants, it is not admissible in view of the provisions of S. 246 (1) of the U. P. Tenancy Act. Before it is held that the persons who put in the application are acting as the agents for all the claimants strictest proof should be required. (*Shirreff S.M. and Sathe, J.M.*) KALYAN MAL *v.* RAM KISHORE LAL. 1942 R.D. 575=1942 A.W.R. (Rev.) 320 (1)=1942 O.A. (Supp.) 346 (1)=1942 O.W.N. (B.R.) 458.

——S. 294—*Reinstatement under—Ejectment for arrears both prior to and after* 1344-*F.*

Under S. 294 of the U. P. Tenancy Act it is only if the tenant has been ejected for arrears prior to *rabi* 1344 F that he is entitled to reinstatement. Hence where the arrears in respect of which a decree for ejectment was passed is not only on account of certain arrears of 1344-F but also on account of the full arrears for 1345-F, the tenant could not get the benefit of S. 294 because even if the amount decreed on account of 1344 F is excluded altogether the decree on account of the rent of 1345-F must stand and so also the judgment debtor's ejectment on that account. (*Shirreff, S.M. and Sathe, J.M.*) CHANDRA BHAN DUTT RAM PANDEY *v.* RAJDEI. 1942 R.D. 726=1942 A.W.R. (Rev.) 399 (1)=1942 O.W.N. (B.R.) 598=1942 O.A. (Supp.) 425 (1).

——Ss. 294 and 246—*Right of heir of two out of three ejected co-tenants to apply alone for reinstatement—Absconding of the third not shown to be for 5 years prior to June,* 1940.

Though the heir of two out of three ejected co-tenants is entitled to apply for reinstatement as heir of the deceased co-tenants, if the third co-tenant who is absconding is not shown to have absconded for 5 years prior to June 1940, the heir of the deceased co-tenants alone cannot apply for reinstatement because the absconding tenant has still rights in respect of the holding which are capable of being reviewed by an application under S. 294 of the U. P. Tenancy Act, unless of course he proves that he is acting as the agent of that absconding co-tenant. (*Shirreff, S.M.*) RAM NARESH *v.* SHYAMA BIBI. 1942 A.W.R. (Rev.) 443=1942 O.A. (Supp.) 469 (1)=1942 O.W.N. (B.R.) 630.

——S. 294—*Right to apply under—If taken away by decree under S. 44, Agra Tenancy Act passed on misapprehension.*

Where subsequent to the disposal of an application for review of an order of ejectment and on a mistaken view as to its effect a decree is passed under S. 44 of the Agra Tenancy Act, that could not take away the right of the tenant to apply under S. 294, U. P. Tenany Act. (*Sathe, J.M.*) SANWANLIA *v.* JADU NATH SINGH. 1942 A.W.R. (Rev.) 73=1942 R.D. 146=1942 O.A. (Supp.) 79=1942 O.W.N. (B.R.) 114.

——Ss. 294 and 3 (1)—*Right to apply under S. 294—Heirs of ejected tenant.*

In view of S. 3 (1) of the U. P. Tenancy Act the word "tenant" used in S. 294 of the same Act includes also his heirs and successors and hence such persons can apply for reinstatement under S. 294 of the Act. (*Shirreff, S. M.*) RAM CHARAN LALA *v.* SHEO BARAN SINGH. 1942 A.W.R. (Rev.) 238 (1)=1942 O.A. (Supp.) 264 (1)=1942 O.W.N. (B.R.) 217 (1)=1942 R.D. 283 (1).

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——Ss. 294 and 3 (1)—*Right to apply under S.* 294 —*Heirs of ejected tenant.*

In view of S. 3 (1) of the U. P. Tenancy Act the word 'tenant' used in S. 294 of the same Act includes also his heirs and successors and hence such persons can apply for reinstatement under S. 275. (*Shirreff, S.M and Sathe, J.M*) GANGADHAR *v.* SURAJPAL SINGH. 1942 O.W N. (B R) 157=1942 O A. (Supp.) 124 (2) =194 2R.D 283=1942 A.W.R. (Rev.) 107 (2)

——Ss. 294 and 3 (1)—*Right to apply under S.* 294 —*Heirs of tenant.*

In view of S. 3 (1) of the U. P. Tenancy Act and Cl. (4) of S. 294 of the same Act, the heir of a tenant is entitled to apply for reinstatement under S. 294 of the Act. (*Shirreff, S. M. and Sathe, J.M.*) RAM WATI *v.* RAM SUNDER KANORIA. 1942 R.D. 283 (2)=1942 O.W.N. (B.R.) 217 (2)=1942 A.W.R. (Rev.) 169 (1) 1942 O.A. (Supp.) 189 (1).

——S. 294—*Right to apply under—Transferee from sub-tenant.*

The provisions of S. 294, U. P. Tenancy Act cannot be availed of by the transferees of a tenant-in-chief for it is only the tenant that can apply for restitution. *Sathe, J M.*) NIHAL SINGH *v.* SHRIPAT. 1942 O. A. (Supp) 236=1942 A.W.R. (Rev.). 210=1942 O. W N (B R.)) 374=1942 R.D. 463.

——S. 294—*Right to reinstatement—Application by some only of heirs of ejected tenant.*

Where an application for reinstatement was made by some only of the heirs of an ejected tenant and no objection as to the non joinder of the others was taken by the Zamindar it was held that the application could be presumed to be on hehalf of all the heirs and that the omission of one of them was a formal defect which could have been amended if objection had been taken at the proper time. (*Shirreff S.M*) MABUDYAR *v.* JAGMOHAN SINGH. 1942 O.W.N. (B.R.) 431=1942 A.W.R. (Rev.) 313=1942 O.A. (Supp.) 339=1942 R.D 521.

——S. 294—*Right to reinstatement—Delivery of possession after 1st April, 1937 though order of ejectment prior thereto.*

Where though the order of ejectment was prior to 1st of April, 1937, if actual possession was delivered after that date, the tenant is entitled to reinstatement under S. 294. U P. Tenancy Act. (*Shirreff. S. M. and. Sathe, J. M.*) GIRDHARI *v* GANGA BAN. 1942 O. W.N. (B R) 297 (2)=1942 R D. 386 (2)=1942 A. W.R. (Rev.) 262 (2)=1942 O.A (Supp.) 288 (2).

——S. 294—*Right to reinstatement—Heirs of ejected tenant.*

The heirs of an ejected tenant are entitled to reinstatement under S. 294, U. P. Tenancy Act. (*Shirreff, S.M.*) MABUDYAR *v.* JAGMOHAN SINGH. 1942 O. W.N. (B R.) 431=1942 A.W.R. (Rev.) 313=1942 O.A. (Supp.) 339=1942 R D. 521.

——S 294—*Right to reinstatement under—One of the co tenants continuing in possession even after second ejectment under S.* 44, *Agra Tenancy Act.*

Where after the ejectment of two co tenants under S. 79, Agra Tenancy Act, one of the two who still continued in possession is again ejected under S. 44, Agra Tenancy Act, but he still continued in possession, both are entitled to reinstatement on their application under S. 294, U. P. Tenancy Act.. (*Shirreff S.M and Sathe, J M.*) GOPI *v.* PT. SHIAM LAL. 1942 O.A. (Supp.) 481 (1)=1942 O.W.N. (B.R.) 729=1942 A. W.R. (Rev.) 455 (1)

——S 294—*Right to reinstatement under—Person ejected under Ss.* 79 *and* 80 *of the Agra Tenancy Act and not under S.* 81.

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As ejectment under Ss. 79 and 80, Agra Tenancy Act (*i.e.*) in execution of a decree for arrears of rent and ejectment in default of payment of arrears under S. 81 of the Agra Tenancy Act amount to the same thing, the tenant is entitled to reinstatement in either case under S. 294, U. P. Tenancy Act. (*Shirreff, S. M. and Sathe, J.M.*) SUMERI *v.* SHIB LAL SINGH. 1942 O.W N. (B.R.) 670 (2)=1942 O.A. (Supp.) 358=1942 A.W.R. (Rev.) 332.

——S. 294—*Right to reinstatement—Tenant though ejected prior to 1st April, 1937, put in possession on review—Successful appeal against review order—Restitution after 1st April, 1937.*

Where a tenant was actually ejected before 1st April, 1937, but was put back in possession on review of the ejectment order and on a successful appeal against the review order the landholder was put in possession by way of restitution under S. 144, C.P. Code, after the 1st April, 1937, it was held that the tenant was not entitled to reinstatement under S. 294 of the U. P. Tenancy Act for the order under S. 144, C. P. Code, only restored the *status quo* and therefore confirmed the ejectment of the tenant prior to 1st April, 1937. (*Shirreff S.M.*) HIRA SINGH *v.* RAGHUBIR KUNWAR. 1942 R.D. 514=1942 O.W.N. (B.R.) 424=1942 A. W.R. (Rev.) 308=1942 O.A. (Supp.) 334.

——S. 294—*Right to reinstatement under—Ejected tenant re-ejected on taking forcible possession.*

A tenant who is once ejected for non-payment of arrears of rent and is reejected under S. 44, Agra Tenancy Act on his taking forcible possession is not entitled to claim reinstatement under S. 294 of the U. P. Tenancy Act. (*Shirreff, S.M*) KONAI *v.* BANARSI DAS. 1942 A W R. (Rev.) 368 (1)=1942 O.W.N. (B.R.) 516=1942 O.A. (Supp.) 394 (1).

——S. 294—*Right to reinstatement under—Ejectment prior to date mentioned in S.* 294—*Restoration of possession on appeal and its deprivation under S.* 144 *C. P. Code on success in revision after new Act.*

Where an ejectment was in fact before the date mentioned in S. 294, U. P. Tenancy Act but the tenant is restored to possession on his succeeding in appeal and is once again deprived of his possession which is finally restored to the Zamindar on his succeeding in revision after the new Tenancy Act came into force, the order restoring possession by way of restitution merely restores the *status quo* and confirms the earlier ejectment and hence such a tenant is not entitled to claim the benefit of S. 294 of the new Act. (*Shirreff, S. M.*) RAM MANOHAR *v.* BAIJ NATH. 1942 A W.R (Rev.) 360= 1942 O.W.N. (B.R.) 507 (1)=1942 O.A. (Supp) 386.

——S. 294—*Right to reinstatement under—Order for ejectment passed prior to first of April, 1937 set aside on review—Actual ejectment after that date.*

Where an order for ejectment obtained prior to 1st of April 1937 is set aside on review and the tenant is directed to pay the decretal amount before a certain date on penalty of positive ejectment and he is actually ejected after 1st April 1937 on his failing to pay the decretal amount he is entitled to reinstatement under S. 294 inasmuch as the first *dakhal diham* was only a paper transaction and the tenant continued to remain in possession till he was actually ejected on a date later than 1st of April 1937. (*Shirreff S.M and Sathe, J. M.*) JHANJAN SINGH *v.* HIDAYAT ULLAH KHAN. 1942 O.A (Supp) 367=1942 A.W.R. (Rev.) 341= 1942 O.W.N. (B.R.) 551.

——S 294—*Subsequent ejectment under S.* 44, *Agra Tenancy Act—If a bar to reinstatement.*

A subsequent ejectment under S. 44, Agra Tenancy Act, will not be a bar to reinstatement under S. 294 of

U. P. TENANCY ACT (1939), S. 294.

the U. P. Tenancy Act provided it was in consequence and continuation of the previous ejectment. (*Shirreff, S.M. and Sathe, J.M.*) GANGADHAR *v.* SURAJPAL SINGH. 1942 O.W.N. (B.R.) 157 = 1942 O.A. (Supp.) 124 (2) = 1942 R.D. 223 = 1942 A.W.R. (Rev.) 107 (2).

——S. 294 (1), proviso—'*Continuously so let*'—*Meaning of—Proviso, if would apply when land is let continuously but to different persons.*

The phrase 'continuously so let' in the proviso to sub-S. (1) of S. 294, U. P. Tenancy Act merely means that the land must have been continuously let to other persons from 1345-F. It does not require that the land must have been let to the same persons from 1345-F onwards. The proviso will apply even if the tenant to whom the land had been let in 1345F- is changed afterwards provided that the land has always remained let to some tenant or other from 1345-F up to the date of the application under S. 294. (*Shirreff, S.M. and Sathe, J.M.*) INDRA BIKRAM SINGH *v.* RAM PHAL. 1942 A.W.R. (Rev.) 421 = 1942 O.A. (Supp.) 447 = 1942 O.W.N (B.R.) 623.

——S. 294 (1) Proviso—'*Let*'—*If would include exchange.*

The word 'letting' has nowhere been defined but in common parlance it means 'leasing'. There is no comprehensive definition of 'lease' in the U. P. Tenancy Act, but according to the definition of lease in the T. P. Act, S. 105, the essential ingredients are that the land should be transferred for a certain time or in perpetuity and that it should be transferred in consideration of a price or a periodical payment. Where certain plots from which a tenant was ejected was taken by the zamindar and given to other tenants from whom he took away other plots in exchange, it was held that it satisfied the conditions of a lease and that hence the plots in question were 'let' within the meaning of the proviso to sub-S. (1) of S. 294, U. P. Tenancy Act. (*Shirreff, S.M. and Sathe. J.M.*) INDRA BIKRAM SINGH *v.* RAM PHAL. 1942 A.W.R. (Rev.) 421 = 1942 O.A. (Supp.) 447 = 1942 O.W.N (B.R.) 623.

——S. 295—Right to reinstatement—Sub-tenant ceasing to be sub-tenant when new Act came into force. *See* U. P. TENANCY ACT, SS. 47 AND 295 AND OUDH RENT ACT, S. 61. 1942 A.W.R (Rev.) 228.

——S. 296—*Applicability — Applications under S. 18, Agra Tenancy Act.*

Application under S. 18 of the Agra Tenancy Act for the recording of occupancy rights are not governed by S. 296 of the U. P. Tenancy Act. (*Sathe, J.M.*) MIR IBRAHIM *v.* SUBHAN KHAN. 1942 O.A. (Supp.) 373 (1) = 1942 A.W.R. (Rev.) 347 (1) = 1942 O.W.N. (B.R.) 563 = 1942 R.D. 691.

——S. 296 and Agra Tenancy Act, Ss. 81 and 93—*Applicability of S. 296 of New Tenancy Act—Application after New Act for possession on failure of tenant to appear in answer to notice under S. 81, Agra Tenancy Act—Proper procedure.*

Where the landholder applies for possession after the passing of the new Act on the tenant failing to appear in answer to notice under S. 81 of the Agra Tenancy Act, the proceedings have to be continued under the old Act and a notice as required by S. 93 of that Act would have to be issued. S. 296 of the new Act has no application for it applies only to suits and decrees and not to applications. (*Shirreff, S.M. and Sathe, J.M.*) MST. SURAJ KUNWAR *v.* ALAM SINGH. 1942 O.A. (Supp.) 65 = 1942 A.W.R. (Rev.) 59

——Ss. 296 and 114 and Agra Tenancy Act, S. 54—*Corresponding provision—Test to find out—S. 114 in the new Act if corresponds to S. 54 of old Act*

U. P. TENANCY ACT (1939), S. 296.

The quashing of proceedings contemplated by S. 296 of the U. P. Tenancy Act has relevance where reliefs permissible under the old Act are not now permissible at all under the new Act, as for example, distraint of crops. The correspondence between sections in the old and the new Act to be sought for under S. 296 is the correspondence in the relief allowed by sections and not in the grounds on which such relief can be claimed. These grounds may vary. But if the new Act provides substantially for the same relief as the old Act, it must be held that there is a corresponding provision in the new Act and a pending suit should be disposed of in accordance with the terms of the corresponding section of the new Act. In this light S. 114 of the U.P. Tenancy Act must be held to be the section corresponding to S. 54 of the Agra Tenancy Act. Hence a suit filed under S. 54 of the Agra Tenancy Act is not liable to be dismissed, but must under S. 296 of the U. P. Tenancy Act be decided in accordance with the terms of the former section (*i.e.*) S. 114 of the U.P. Tenancy Act (*Shirreff, S. M. and Sathe, J. M.*) RAMA SHANKAR OJHA *v.* MAHARAJA BAHADUR RAM RAM VIJAI PRASAD SINGH. 1942 O.A. (Supp.) 297 = 1942 R.D. 567 = 1942 O.W.N. (B.R.) 450 = 1942 A.W.R. (Rev.) 271.

——Ss. 296 and 148—*Corresponding section—Procedure to be followed—Suit for arrears of rent under old Act against sub-tenant—Continuation after new Act—Procedure—Effect.*

In cases to which S. 296 of the United Provinces Tenancy Act applies correspondence is to be sought only between the section of the old Act under which the suit was filed and the section corresponding to it in the new Act. Where a suit held under S. 132 of the Agra Tenancy Act against a sub-tenant remains pending at the time of the coming into force of the new Act, it has to be decided according to S. 148 of the new Act which corresponds to S. 132 of the old Act. The other provisions of the Act which make leases between sub-tenants and sub-tenants illegal cannot be made applicable to such a suit. (*Sathe, J.M.*) KISHAN SINGH *v.* EWAZ SINGH. 1942 O.A. (Supp.) 37 = 1942 A.W.R. (Rev.) 37 = 1942 O.W.N. (B.R.) 68 = 1942 R.D. 100.

——S. 296—*Decree under S. 61 of the Oudh Rent Act—If can be executed after new Act.*

A decree under S. 61 of the Oudh Rent Act can be executed under the provisions of the new Act namely, Ss. 181 and 182. (*Shirreff, S.M and Sathe, J. M.*) MAHABIR PRASAD *v.* RAM ANAND. 1942 O.W.N (B.R.) 503 = 1942 A.W.R. (Rev.) 402 = 1942 O.A (Supp.) 428.

——Ss. 296, 254 and 183—*Limitation for suits based on causes of action which arose prior to new Act—Suit under S. 183 on cause of action under Oudh Rent Act—Expiry of limitation prior to new Act—Law of limitation applicable.*

Suits and execution proceedings pending on 1—1—1940 will be governed by the provisions of the new Act with reference to limitation. Suits and applications filed after 1—1—1940 on an earlier cause of action would be barred if their respective periods of limitation under the older Acts had expired prior to that date. But if they are not barred on that date the periods of limitation would be governed by the provisions of new Act. But where the period of limitation under the new Act is less than that fixed under the old Act, the limitation fixed by the old Act will have its full run and the suit or application would be considered to be time barred only if it is filed after the expiry of the old limitation. A suit under S. 183 on a cause of

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action under the old Oudh Rent Act in respect of which the limitation under that Act had expired before 1—1—1940 would be governed as regards limitation by the provisions of the new Act. (*Sathe, J.M.*) HARGULAL *v.* SHEO RATAN. **1942 R D. 600=1942 O A. (Supp.) 324=1942 A.W.R. (Rev.) 298=1942 O.W. N. (B.R.) 483.**

——Ss. 296 114 and 96—*Pendency of suit under S. 54 Agra Tenancy Act when new Act came into force —Disposal—Provisions of law applicable.*

A suit filed under S. 54 of the Agra Tenancy Act and pending when the new Act came into force though it may be disposed of under S. 114 of the new Act, the other provisions of the new Act would not be applicable and hence it would be governed by S. 67 of the old Act and not by S. 96 of the new Act. (*Shirreff, S.M and Sathe, J.M.*) SHREE NATH LAL *v* RAM RAJ SINGH **1942 R D. 708=1942 A.W.R. (Rev) 386=1942 O. W.N. (B R) 580=1942 O.A. (Supp.) 412.**

——S. 296 and Agra Tenancy Act (1926), S. 24—*Question of succession in suits pending when new Act came into force—Law applicable—Daughter's son—Proof of co-sharing—Necessity.*

Questions of succession in a suit pending on 1st January, 1940 will be governed by the provisions of the law as it stood when the succession opened (*i.e.*) Agra Tenancy Act. Hence where daughter's son claims to be in possession in suit for ejectment relating to occupancy holdings, he cannot succeed unless he proves co-sharing in cultivation with the last holder. (*Shirreff, S.M. and Sathe, J.M*) RASOOL AHMAD *v.* BHAGWAN DIN. **1942 O.W.N. (B R) 178=1942 R.D. 244=1942 A. W.R (B.R.) 160=1942 O.A. (Supp.) 180.**

——Ss 296 and 35—*Succession to occupancy holding pending when new Act came into force—Proof of co-sharing -Necessity.*

Where a suit relating to succession to occupancy holding is pending on 1st January, 1940, it is necessary in the case of a daughter's son to prove co sharing. (*Shirreff, S.M. and Sathe, J M.*) TUMANDAR KHAN *v.* NAWAB KHAN. **1942 O A (Supp.) 120 (2)=1942 A.W R. (Rev) 104 (2)=1942 O.W.N. (B.R.) 351=1942 R D. 440.**

——Ss. 296. 16 and 59—*Suit for declaration of tenancy rights in* sir *land under old Act—Pendency after new Act—Law applicable—Relief under S. 16 new Act—Proper remedy.*

A suit for declaration of tenancy rights in *sir* land filed under Tenancy Act of 1926 which is pending when the new Tenancy Act comes into force must under S.296 of the new Tenancy Act be decided according to S. 59 of the latter Act, but the other provisions of the new Act, cannot apply to it. Hence if the plaintiffs in the suit claim hereditary rights under S. 16 of the new Act they will have to institute separate proceedings for establishing their rights. (*Shirreff, S. M. and Sathe, J. M.*) LACHMI NARAINDAS *v* GOVIND BHAR. **1942 R.D. 367=1942 O A (Supp) 173 (2)=1942 O.W N. (B.R.) 278=1942 A W.R. (Rev.) 153 (2).**

——Sch. II, List 2 and C. P. Code, O. 8, R. 6—*Claim to set-off in suits under Tenancy Act—Conditions entitling set off—Mortgagee of fixed rate holding also lessee of occupancy holding of mortgagor—Suit for rent—Plea of set off for interest if open.*

The omission of item 10 of Sch. II of List 2 of Agra Tenancy Act from List 2 of Sch. II of the U. P. Tenancy Act has resulted in permitting set-off in suits under U. P. Tenancy Act according to the provisions of the C. P. Code. In a suit for arrears of rent against the lessee of occupancy holding the latter who also happens to be the mortgagee of the fixed rate holding of the lessor cannot claim to set off the rent due for interest due. (*Sathe, J.M.*) BAHADUR SINGH *v* RAJ BAHADUR SINGH. **1942 R D 510=1942 O.W.N. (B.R.) 420=1942 A.W.R. (Rev.) 291=1942 O.A. (Supp.) 317.**

USURIOUS LOANS ACT (1918), S. 3.

——Sch. IV, Group B, Serial No 18—*Knowledge of unauthorised occupation—Presumption as to, from entry in* patwari *papers.*

From the fact that certain persons' names were entered in the *patwari* papers it may be presumed, that the zamindar had knowledge of those persons' unauthorised occupation. (*Sathe, A.M.*) KRISHNA MURARI *v* MAHADEO **1941 O.A. (Supp.) 966=1941 A.W. R. (Rev.) 1218.**

UNITED PROVINCES TOWN IMPROVEMENT ACT (VIII OF 1919, as applied to Province of Delhi) S. 49—Application to trust for permission to erect or re-erect—Trust neither refusing nor granting permission within reasonable time—S. 193 (4), Punjab Municipal Act—If applies. *See* 1941 Dig Col. 1226. MAHOMED ISHAQ *v.* EMPEROR. **14 R.L. 193=43 Cr. L.J. 108.**

——S. 58 and Para 10 of Sch. I, and Land Acquisition Act (I of 1894), S. 23 (1) (a)—*Criterion for determination of compensation—Prior decisions as to amount and sale deeds of neighbouring plots—Evidentiary value.*

The only matter which is to be taken into consideration by the Land Acquisition Officer and the tribunal in applying S. 23 of the Land Acquisition Act as modified by para. 10 of Sch. I to the U. P. Town Improvements Act which adds a sub-S. (3) to S. 23 of the above Act, is the use to which the land was put and the income which was derived by the owner of the property by means of that use. As exemplars do not come into the scheme for the determination of compensation under the Land Acquisition Act neither prior decisions of the tribunal nor the sale deeds, even if they related to pieces of land which abut on or even form part of the land which is sought to be acquired, have any evidentiary value. (*Varma and Yorke, JJ.*) DEBI DIN *v.* SECRETARY OF STATE. **200 I.C. 634=15 R.A. 20=1942 A.W.R. (H. C) 79=1942 O.W.N 131=1942 A.L.W. 148=1942 A.L.J 141=A.I.R. 1942 All. 186.**

USURIOUS LOANS ACT (X OF 1918, as amended by C.P. Usurious Loans Amendment Act, 1934), Ss. 2(3) and 3—Applicability of the Act—Powers under the Act, Small Cause Courts, if can exercise—Refund, if can be ordered. *See* 1941 Dig. Col. 1227. KHISTY *v.* SUBBA RAO. **I.L.R. 1942 Nag. 177=201 I.C. 77=15 R.N. 31.**

——S 3—Court, if can act *suo motu. See* 1941 Dig. Col. 1228. SITARAM *v.* BAJYA. **I.L.R. (1942) Nag. 456.**

——S 3—*Proper rate of interest—Determination—Position of debtor and not creditor, relevant consideration—Procedure to be followed when interest found excesssive—Propriety of compensation by way of lessening future interest.*

It is the position of debtors, not of the creditor which should be considered when estimating the risk in taking a loan. Under S. 3 of the Usurious Loans Act, it is compulsory for the Court on coming to a finding that the interest is usurious to reopen the transactions and to find out what is really due at the proper rate of interest from the defendant to the plaintiff. The section does not provide for any compensation by way of lessening future interest and such a procedure is not a proper one for the Court to adopt. (*Ghulam Hasan and Madeley, JJ.*) MOHAMMAD HUSSAIN *v.* HANOMAN PRASAD. **198 I.C. 651=14 R.O. 423=1942 A.W.R.**

USURIOUS LOANS ACT (1918), S. 3.

(O.C.) 58=1942 O.A. 36=1942 O.W.N. 63=A.I.R. 1942 Oudh. 273.

——(as amended in Madras), S. 3, Expl. 1—"*Agriculturist*"—*Meaning of.*

The word "agriculturist" in the Madras Amendment to Explanation I of S. 3 of the usurious Loans Act is used in its ordinary sense of a person following the call of agriculture. (*Wadsworth and Patanjali Sastri, JJ.*) INDIRA DEVI *v.* AUDINARAYANA MURTHY. 52 L. W. 636=1942 M.W.N. 752=A.I.R. 1943 Mad. 35=(1942) 2 M.L.J. 486.

——S. 3 (1) (i) and (ii)—*Applicability and scope.*

There is redundancy or overlapping in Cls.(*i*) and (*ii*) of S. 3 (1) of the Usurious Loans Act, and the operation of Cl. (*ii*) cannot on that ground be restricted to cases where the parties have entered into a subsequent agreement purporting to close previous dealings and to create a new obligation. (*Patanjali Sastri, J.*) SUBBA ROW *v.* LAKSHMI NARASIMHAM. 203 I.C. 504=1942 M.W.N. 463=15 R.M. 650=A.I.R. 1942 Mad. 600=55 L.W. 479=(1942) 2 M.L.J. 170.

VENDOR AND PURCHASER—Assignment of rights of vendor under contract of sale—Vendor to incur expenses before production or delivery of goods under contract—Claim by assignee against purchaser for purchase price—Purchaser, if entitled to credit for payments made by him to obtain delivery. *See* 1941 Dig., Col. 1229. PORT ROYAL PULP AND PAPER CO., LTD. *v.* ROYAL BANK OF CANADA. 197 I.C. 384=14 R.P.C. 99=8 B.R. 242=1942 A.W.R. (P.C.) 5.

VENDOR AND VENDEE—Sale deed—Undertaking by vendor to discharge mortgage on property sold—Failure—Sale of property in suit on mortgage—Dispossession of vendee—Suit by latter for damages—Measure of damages—Starting point of limitation. *See* LIMITATION ACT, ART. 116. (1942) 2 M.L.J. 617.

WAJIB-UL-ARZ—*Construction*—Ghair kuf—*Exclusion from inheritance.*

Where the wajib ul-arz uses the words *Ghair kuf* in relation to persons excluded from inheritance, the words apply only to a wife or concubine and not to any other female member of the family of the deceased. (*Bennett J.*) INDRA PAL *v.* SAT PRASAD. 17 Luck. 655=199 I.C. 673=14 R.O. 511=1942 R.D. 316=1942 O.A. 96=1942 A.W.R. (C.C.) 117=1942 O.W.N. 153=A.I.R. 1942 Oudh 322.

——*Construction*—*Rules*—'Makan Jadeed' and 'Uftada'—*Meaning.*

The rules for interpretation of statutes do not apply to the interpretation of a *wajib-ul arz*. It is not law but merely a record of custom. The words should not be taken in isolation and analysed as if they are legal terms used in a statute. The words '*Makan Jadeed*' and '*Uftada*' in the context in which they were found in the *wajib ul-arz* before their Lordships were construed to mean 'putting up a new house' and vacant land, respectively. (*Bennett and Madeley, JJ.*) MUSTAFA ALI KHAN *v.* BHAGANA. 201 I.C. 303=15 R.O. 72=1942 A.W.R. (C.C.) 265=1942 O.A. 293=1942 O.W.N. 390=A.I.R. 1942 Oudh 414.

——*Custom recorded in—Enforceability—Absence of continuity.*

A custom in order to be a rule having the force of law must fulfil certain conditions, one of which is continuity. Hence where a custom as to the appointment of lambardar lacks continuity in the sense that it had been broken more than once, it cannot be enforced. (*Shirreff, S.M.*) BHARAT SINGH *v.* RAM SANEHI. 1942 O.A. (Supp.) 485 (3)=1942 O.W.N. (B.R.) 649.

WILL.

——*Evidentiary value—Record of custom clear as to tenant losing rights in grove on ejectment from tenanc land—Absence of verification by t·nants—It can affect.*

Where the wajib-ul-arz of a village sets out in clear and unambiguous words the existence of a custom as to the tenants losing rights in grove on their ejectment from tenancy land, it must be taken that the existence of the custom has been proved. The contention that a wajib-ul-arz loses its evidentiary value in cases where it records a custom prejudicial to the tenants which is not agreed to by them is apparently based on the theory that the custom is unreasonable. But as the custom recorded is not unreasonable, a Court is not justified on rejecting the wajib-ul-arz as of no evidentiary value because of the absence of verification by the tenants (*Ghulam Hasan, J.*) BAJRANG BAHADUR SINGH *v.* RAM NEWAZ. 202 I.C. 743=15 R.O. 144=1942 O.W.N. 574=1942 A.W.R. (C.C.) 328 (2)=1942 O.A. 448=A.I.R. 1943 Oudh 29.

——*Instructions in settlement circular as to preparation with reference to groves—Intention as to applicability to future groves.*

Where the settlement circular gives directions that the *wajib ul-arz* should show under what conditions the privilege of planting and cutting groves has to be exercised in future, the intention is that the conditions in that particular *wabjib-ul-arz* should apply not only to all existing groves but also to all groves that should afterwards come into existence. (*Bennett, J.*) AMJAD ALI *v.* EJAZ RASUL KHAN. 17 Luck. 456=198 I.C. 107=14 R.O. 373=1941 O.W.N. 1328=1941 A.W.R. (Rev.) 1152=1941 O.A. 1013=A.I.R. 1942 Oudh 120.

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See (1) MAHOMEDAN LAW—WAKFS.
(2) BENGAL WAKF ACT (XIII OF 1934).
(3) MUSSALMAN WAKF ACT.

WAR RISKS (GOODS) INSURANCE ORDINANCE (IX OF 1940), S. (7) (2)—*Applicability—Firm—Failure to insure goods—Liability—"Person".*

There is no warrant for holding that Ordinance IX of 1940 does not apply to firms but only to private individuals trading as such. A firm, whether registered or not, would be a "person" as defined by the General Clauses Act. It must therefore be held that the ordinance does make it incumbent on firms to insure their goods and not only on private individuals trading as such. A firm failing to insure its goods therefore contravenes S 7 and is guilty under S. 7 (2). (*Horwill, J.*) KISHANLAL ROOPCHAND & CO., *In re.* 204 I.C. 348=1942 M.W.N. 756 (1)=A.I.R. 1943 Mad. 56=55 L.W. 691=(1942) 2 M.L.J. 574.

WILLS. *See also* (1) H. L. WILLS.
(2) M. L. WILLS.
(3) SUCCESSION ACT.

WILL—*Bequest—Defeasance clause—Condition precedent and condition subsequent—Non compliance—When operates as forfeiture—Clause* in terrorem—*Gift over—If necessary to operate as forfeiture—English law and Indian law—Distinction.*

Under the English law, certain conditions, if attached to a legacy of a specific personal estate or a legacy charged on personal estate only, may be void against the donee as made *in terrorem*, that is to say, as a mere idle threat to induce the donee to comply with the condition, but not to affect the bequest, unless the testator shows an intention that the condition is effective, such as by making a different disposition of the subject-matter of the gift in the event of non-compliance of the condition, *i.e.*, by a gift over. In cases where such a condition is a condition subse-

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quent, a gift over on non-compliance with the conditions is essential to, and sufficient for, the validity of the condition. Such a gift over may be specified, or may be made by a direction that on non-compliance the gift is to fall into residue, but not by a mere residuary gift alone. In cases also where such a condition is a condition precedent, the testator may show that the condition is not *in terrorem* by a gift over on non-compliance with the condition, and in this case a mere residuary gift would be sufficient. But under the Indian Law as provided in S. 134 of the Succession Act of 1925, a gift may be coupled with a condition that on the happening or not happening of a specified uncertain event it shall cease, and to effectuate the defeasance, a gift over is not necessary as required by English law. Under S. 134, if the condition subsequent is valid, if accompanied by a gift over, it will be equally valid without the gift over, while in English law it is treated as *in terrorem*. The condition referred to S. 134 is a condition subsequent which terminates an interest. It is not a conditional limitation which creates an interest in a third person. (*Lobo, J.*) GOPALDAS *v.* HEMANDAS. I.L.R. (1942) Kar. 392=A.I.R. 1942 Sind 145.

———*Charitable endowment—Scheme different from that provided in will—Sanction by Court.*

A testator by his will provided for the establishment of a charitable out-door dispensary in his ancestral house and directed that the income derived from certain medical books of which he was the author and from his immovable properties should be spent towards the expenses of the said dispensary. The immovable properties left by the testator were in a very bad state of repair and would have required a large sum, which would have to be raised by loan, before they could be expected to bring in any income. The testator's medical publications had become obsolete and no income was derived from them. A scheme was proposed under which the testators' properties should be sold and a small plot should be purchased in the vicinity and a charitable dispensary should be constructed thereon and conducted from out of the income of the surplus sale proceeds which should be invested.

Held, that the divergence between the provisions of the will and the proposed scheme was not so great as to forbid the Court from sanctioning the scheme. (*Panckridge, J.*) RADHA GOBINDA KAR *v.* NALINI MOHAN KAR. 46 C.W.N. 106

———*Construction—Absolute interest — Words "I leave in charge of"—Meaning of.*

The relevant paragraphs of the will were as follows: "(1) I leave my house in the Horse Road in the charge of Madame Amina, Meriam Ali and my son Mama Ali. The said house is never to be sold but the rent received therefrom is to be divided equally between the said Madame Amina, Meriam Ali and my son Mama Ali. (2) I leave the land known as Ali's land behind the mosque at Zongo in the charge also of Madame Amina, Meriam Ali and Mama Ali".

Held on considering the will as a whole that the words "I leave in the charge of" in para. 1 and in para. 2 were equivalent to "I devise absolutely to". (*Lord Romer.*) ABIBA ALI *v.* ALHAJI MAMA ALI. 203 I.C. 561=9 B.R. 95=56 L.W. 1=15 R.P.C. 55=A.I.R. 1942 P.C. 69 (P.C.).

———*Construction—Absolute or life estate—Bequest to wife—Use of word 'malik'.*

The paramount intention of the testator must be determined from a reading of the will as a whole. The use of the word malik (owner) in a will must always be interpreted in relation to the context and in particular cases the circumstances or context may be sufficient to show that absolute estate was not intended. A will made by a Hindu testator devised his property in the following words: "On my death my wife be an owner and possessor like myself of the entire movable and immovable property owned by me. During her lifetime my children will have no connexion with my property whatever, and she will be at liberty to manage it in any manner she likes. My wife, however, shall have no right to alienate my property without any legal necessity."

Held, that the testator's intention was to confer a life estate on his wife since her power of alienation was expressly taken away by the testator and the will provided for the disposition of the property after his wife's death. (*Young, C.J. and Sale, J.*) RAM RAKHI *v.* PEOPLES BANK OF NORTHERN INDIA LTD. 199 I.C. 677=14 R.L. 415=A.I.R. 1942 Lah. 42.

———*Construction—Devise of rent indefinitely.*

A devise of the rent of land for an indefinite time is equivalent to a devise of the land itself. (*Lord Romer.*) ABIBA ALI *v.* ALHAJI MAMA ALI. 203 I.C. 561=9 B.R. 95=15 R.P.C. 55=56 L.W. 1=A.I.R. 1942 P.C. 69 (P.C.).

———Construction—Duty of Court to refer to will as a whole. *See* 1941 Dig. Col. 1231. MADHAVA RAO *v.* ADMINISTRATOR GENERAL, MADRAS. 201 I.C. 143=15 R.M. 243=A.I.R. 1942 Mad. 17=(1941) 2 M.L.J. 677.

———*Construction—Intention of testator—Language used sufficient to confer absolute estate—Such estate inconsistent with testator's dominant intention—Effect of.*

On reading the whole of a will the dominant intention of the testator as expressed therein appeared to be two: (1) exclusion of his son from his properties and (2) that his estate in its entirety was to pass intact to his widow and grandsons in succession and in case of the death of the grandsons during the lifetime of the widow to certain specified objects.

Held, that the first dominant intention was made effective by the disposition of his entire estate to persons other than his son and that the second dominant intention could not be given effect to if the estate conferred on the widow be an absolute estate and that consequently the widow had only a life estate although the expressions used in the will would ordinarily be sufficient to confer an absolute estate on her. (*Mitter and Khundkar, JJ.*) KHAJEH HABIBULLAH *v.* ANANGA MOHAN ROY. I.L.R. (1942) 2 Cal. 363=202 I.C. 90=75 C.L.J. 279=15 R.C. 286=46 C.W.N. 719=A.I.R 1942 Cal. 571.

———*Construction—Intention of testator—Relevancy of when language of will is clear and unambiguous.*

It serves no purpose to speculate about the intention of the testator when the language in which the will is worded involves no ambiguity of any kind. (*Lobo, J.*) GOPALDAS *v.* HEMANDAS. I.L.R. (1942) Kar. 392=A.I.R. 1942 Sind 145.

———Construction—Power given to trustees to co-opt others in cases of vacancy—Surviving trustee, if can act alone. *See* 1941 Dig., Col. 1232. SOM GIRI *v.* RAM RATAN GIRI. I.L.R. (1941) All 711=197 I.C. 696=14 R.A. 238.

———Construction—Property bequeathed to wife and his children by her—Wife and children, whether take as tenants in common—Wife representing children in prior litigation—Sale in execution of decree therein if will bind children—Incidents of tavazhi inconsistent with provisions in will—Inference—Malabar law. *See* 1941 Dig., Col. 1233. KRISHNA MENON *v.* DEVU AMMA. 201 I.C. 301=15 R.M. 304=A.I.R. 1942 Mad. 36=(1941) 2 M.L.J. 287.

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———Construction—Will by Hindu in 1899—Gift to unborn person—Validity—Gift to brothers one of whom was not born at death of testator—Validity. *See* HINDU LAW—WILL. I.L.R. (1942) Kar. 392.

———*Executor—Assent to legacy—Vesting of property.*

In the case of a legacy to a deity, the property, the subject-matter of the legacy, vests in the deity after the executor assents to the legacy. If the executor thereafter acts under the will, he does so as a person having the secular management. (*Ameer Ali, J.*) SRIDHAR JIV *v.* SOSHI MUKHI DASI. I.L.R. (1942) 1 Cal. 365.

———*Executor—Suit by and against—Probate not obtained.*

It is well settled that an executor who has not obtained probate can file a suit as plaintiff but he must obtain probate before the decree or even earlier if he is called to prove his representative character at an earlier stage. But an executor who has not obtained probate can be effectively sued as defendant *only* when he had intermeddled with the estate of the testator. (*Mitter and Khundkar, JJ.*) KHAJEH HABIBULLAH *v.* ANANGA MOHAN ROY. I.L.R. (1942) 2 Cal. 363=202 I.C. 90 =75 C.L.J. 279=15 R.C. 286=46 C.W.N. 719=A. I.R. 1942 Cal 571.

———*Probate—Propounding of subsequent will after grant of probate—Proper procedure—Application or suit.*

Where a person propounds a subsequent will after the probate of a will has already been granted, the proper procedure for him is to apply for probate of that will and to pray at the same time for revocation of the will of which probate has already been issued. In such application he must observe all the rules which are laid down by the Original Side Rules of the High Court when an ordinary application is made for probate. (*Mc Nair, J.*) JAGANNATH DAS, *In the goods of*. 46 C. W.N. 843.

———*Proof of—Oral will—Nature of proof required.*

An oral will must be proved in a very strict manner. The person relying on it must prove "with the utmost precision the words on which he relies, with every circumstance of time and place." (*Collister, Bajpai and Hamilton, JJ.*) GANESH PRASAD *v.* HAZARI LAL. 202 I.C. 350=15 R.A. 142=1942 A.L.J. 289=1942 A.W.R. (H.C.) 133=A.I.R. 1942 All. 201 (F.B.).

———*Provision in will made in fulfilment of contract—Redistribution of estate—Power of Court—New Zealand Family Protection Act* (1908), *S.* 33.

S. 33 of the New Zealand Family Protection Act applies if the testator dies leaving a will without making adequate provision therein for the proper maintenance and support of the testator's wife, etc. If these conditions are fulfilled, the Court has jurisdiction at its discretion to order that such additional provision as the Court thinks fit shall be made for the inadequately provided wife out of the testator's estate. There is nothing in the section which restricts the Court's power to redistribute the estate in cases where the provisions in the will are a fulfilment of a contract entered into *inter vivos*. (*Lord Chancellor*) AMY DILLON *v.* PUBLIC TRUSTEE OF NEW ZEALAND. 14 R.P.C. 95=1941 A.W.R. (P.C.) 71=8 B.R. 283=197 I.C. 371 (P.C.).

———*Revocation—Joint testators—One of them dying—Survivor, whether can revoke will.*

Where two persons make a joint will and one of them dies, the survivor can revoke the will unless he had taken some benefit under it (*Nawal Kishore, C.J. and Sukhdeonarain, J.*) HEERACHAND *v.* CHANDANI 1942 M.L.R. 31 (Civ.).

———*Suit based on—Non production of will—Doubt as to its terms—Effect.*

WORDS AND PHRASES.

In a suit based on a will the Court cannot be expected to construe it, when it is neither produced nor are its terms known. But when both parties agree in stating that a will was in fact executed and acted upon, the case cannot be treated as one of intestate succession. The onus of proving title is on the plaintiff and when owing to the non-production of the will it is not proved the suit has to be dismissed. (*Allsop and Varma, JJ.*) CHANDRAWATI *v.* SRI KRISHNADWARKA DHISHJI. 1942 A.L.W. 242=1942 O.W.N. 309.

WIRELESS TELEGRAPHY ACT (XVII OF 1933), S. 6 (1)—*Prosecution in respect of period between expiry of a license and its renewal after days of grace—License issued actually covering the period in question—Offence if committed.*

Where a person was prosecuted under S. 6 (1) of the Wireless Telegraphy Act in respect of a period between the expiry of a license and its renewal after the allowed 14 days of grace it was *held* that the offence did not consist in possessing a set without a license but in possessing one 'except under *and in accordance with a license issued under this Act*' and that as the Act when read with the rules states that the license shall be valid for a period of 12 calendar months beginning from the first day of the month of issue if the person charged was issued a license covering the period in question he could not be said to have contravened the section. What might have been an illegal possession would be cured by the subsequent issue of a license validating that possession. (*Pollock and Bose, JJ.*) PROVINCIAL GOVERNMENT, CENTRAL PROVINCES AND BERAR *v.* WILAYAT HUSAIN. 204 I.C. 307=1942 N.L.J. 575.

WORDS AND PHRASES—'Belong"—The word "belong" denotes ownership. *See* BOMBAY MUNICIPAL BOROUGHS ACT. 44 Bom.L.R. 354.

———Emanation—Meaning—Servant or agent to be used in preference to 'emanation'. *See* 1941 Dig., Col. 1235. INTERNATIONAL RAILWAY CO. *v.* NIAGARA PARKS COMMISSION. 8 B.R. 197=14 R.P.C. 83.

———Manbrit *and* Birt Jijmani—*Distinction between.*

A *Manbrit* essentially differs from a *Birt Jijmani*. In the *Manbrit* the relation between jijman and purohit is a temporary one and there is no fixity or hereditary character about it. But in *Birt Jijmani*, especially those relating to Hindu pilgrimages, though it is open to parties to break away the old connections and establish a new one by custom and usage of the country as a matter of practice and as a general rule the connection between purohit and jijman is both permanent and hereditary. (*Iqbal Ahmad, C.J. and Dar, J.*) SARDA KUNWAR *v.* GAJANAND. 202 I.C. 653=15 R.A. 181 =1942 A.L.J. 346=1942 A.L.W. 444=1942 A.W.R. (H.C.) 185=A.I.R. 1942 A. 320.

———*Meaning—Dictionaries—Reference to—Permissibility.*

There can be no doubt that dictionaries may properly be referred to in order to ascertain not only the meaning of a word, but also the use to which the thing (if it be a thing) denoted by the word is commonly put. (*Lord Russell.*) COCO COLA CO. OF CANADA LTD. *v.* PEPSICOLA CO. OF CANADA LTD. 15 R.P.C. 23=8 B.R. 889=202 I.C. 203=A.I.R. 1942 P.C. 40 (P.C.).

———National law of propositus—Meaning. *See* 1941 Dig. Col. 1236. J.E. KOTIA *v.* NAHAS. 197 I.C. 555=14 R.P.C. 110=8 B.R. 285 (P.C.).

———*Public place—Market, if one.*

A market is one of the most public places imaginable, a place to which the public have by right access at all times at which it is open. (*Davies.*) JHUNTA *v.* EMPEROR. 1941 A.M.L.J. 96.

WORDS AND PHRASES.

——"Purusha santhathi"—If includes illegitimate sons. *See* HINDU LAW—IMPARTIBLE ESTATES. (1942) 1 M.L.J. 132 (P.C.).

——'Qurq tahsil'—Meaning. *See* HINDU LAW—WIDOW—ALIENATION— NECESSITY. 1942 A.W.R. (H.C.) 71.

——"Rebus" sic stantibus"—Applicability in valuation of property. *See* CALCUTTA MUNICIPAL ACT, S. 127 (*a*). 46 C.W.N. 637.

WORKMEN'S COMPENSATION ACT (VIII OF 1923, as amended in 1933), S. 2 (1) (d)—*"Dependent"—Father—When dependent—Burden of proof.*

S. 2 (1) (*d*) of the Workmen's Compensation Act, as amended in 1933, includes in the term "dependent" without any further qualification, only the wife, minor legitimate son, unmarried legitimate daughter or widowed mother. For a father of a deceased workman to be adjudged a dependent, he must show under S. 2 (2) that he was wholly or in part dependent on the earnings of his son at the time of his death. (*King and Happell, JJ.*) VENKATARAMAYYA *v.* BABA SAHIB. 55 L.W. 206=1942 M.W.N. 248=A.I.R. 1942 Mad. 401=(1942) 1 M.L.J. 406.

——S. 2 (1) (d)—*"Dependent" — Step-mother—Position of—"Mother" and "parent"—If include step-mother or step parent.*

A step-mother is not a dependent within the meaning of S. 2 (1) (*d*) of the Workmen's Compensation Act. Neither the term "mother" nor the term "parent" would include a step mother or step-parent and having regard to the language used by the Legislature, it cannot be held that a step-mother is a "dependent". (*Agarwala and Meredith, JJ.*) DIRJI *v.* GOALIN. 21 Pat. 173=198 I.C. 529=8 B.R. 437=14 R.P. 476 =22 P.L.T. 1023=A.I.R. 1942 Pat. 33.

——S. 3—*"Out of and in the course of employment"—Meaning of.*

It does not follow that because a man is injured during the time of his employment, the accident arose out of or in the course of such employment. (*Harries, C. J. and Manohar Lall, J.*) POWELL *v.* PANCHU MOKADAM. 21 Pat. 218=201 I.C. 302=8 B.R. 781 =1942 P.W.N. 193=15 R.P. 43=A.I.R. 1942 Pat. 453.

——S. 3—*"Out of and in the course of his employment"—Meaning of—Burden of proof—Workman sleeping on barge for night in course of employment—Death by drowning—Inference as to cause of accident.*

Where an application is made for compensation on the ground of the death of a workman, the burden is on the applicant to prove that the accident arose out of the employment as well as in the course of the employment. Where it is found on evidence that a workman was sleeping for the night on a barge which was tied up alongside a steamer in the dock in the course of his employment, it is necessarily a risk inherent in the discharge of his duty in so sleeping that he may fall off the barge into water. If such workman is found dead and his body floating in the dock, the most natural inference is that the accident occurred because for some reason or other in the middle of the night the workman fell off the barge either in his sleep or when half awake and struck his head in the process. When the evidence further establishes that there was a storm on that night and that he was a good swimmer, and when there is absolutely no evidence to suggest suicide or homicide, the most natural and necessary inference is that he met with an accident which arose out of his duty in sleeping on the barge. (*Beaumont, C. J. and Sen, J.*) VISHRAM YESU *v.* DADABHOY HORMASJI. I.L.R. 1942 Bom. 225=201 I.C. 458=15 R.B. 93=44 Bom.L.R. 285=A.I.R. 1942 Bom. 175.

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——S. 3 (5) (a)—Applicability—Claim for compensation—Dismissal *in limine*—Suit for damages—If barred. *See* 1941 Dig., Col. 1237. ALAGAPPA MUDALIAR *v.* VEERAPPAN CHETTIAR. 201 I.C. 94=15 R.M. 211=A.I.R. 1942 Mad. 116=(1941) 2 M.L.J. 665.

——S. 10 (1)—"Claim for compensation"—Meaning of—Formal claim—If condition precedent to taking of proceedings. *See* 1941 Dig., Col. 1238. ALAGAPPA MUDALIAR *v.* VEERAPPAN CHETTIAR. 201 I.C. 94 =15 R.M. 211=A.I.R. 1942 Mad. 116=(1941) 2 M.L.J. 665.

——S. 12—Applicability and construction—Selling agent agreeing to take delivery of goods from manufacturer's godowns—Employment of contractor for such work—Workmen employed by contractor in such work —Accident resulting in death—Liability of selling agent for compensation. *See* 1941 Dig., Col. 1239. BAI KOKILABAI *v.* KESHAVLAL MANGALDAS. I.L.R. (1942) Bom. 139=43 Cr.L.J. 315=198 I.C. 163=14 R.B. 285=A.I.R. 1942 Bom. 18 (F.B.).

——S. 25—*Scope—Mandatory nature of—Non-compliance—Effect—Order passed without taking evidence but after considering report of subordinate and statements not made on oath—Sustainability.*

S. 25 of the Workmen's Compensation Act is mandatory and the provisions of that section and the preceding sections make it clear that the commissioner must hear evidence adduced by the parties and decide the dispute, whatever it may be, upon such evidence. The Act enjoins that he and he alone can decide the matters referred to in the Act, and there is nothing in Act which entitles him to delegate his powers and to order one of his subordinates to do the work for him or to make reports so as to make his work lighter and easier. He is constituted the tribunal under the Act to hear and determine the cases in the manner provided by the Act, and he is bound to do so and to follow the terms of the Act. If the commissioner fails to comply with the mandatory provisions of the Act and hears no evidence but only considers a report submitted by his subordinate or statements not taken on oath, there is no hearing of the case in the judicial sense and the order passed in such proceedings cannot be sustained (*Harries, C.J. and Manohar Lall, J.*) POWELL *v.* PANCHU MOKADAM. 21 Pat. 218=201 I.C. 309=8 B.R. 781=1942 P.W.N. 193= 15 R.P. 43=A.I.R. 1942 Pat. 453

——S. 30—Claim made beyond time fixed by S. 10 (1)—Condonation of delay—Subsequent dismissal on ground of limitation without enquiry into merits—Legality—Remedy of applicant. *See* 1941 Dig., Col. 1239. ALAGAPPA MUDALIAR *v.* VEERAPPAN CHETTIAR. 201 I.C. 94=15 R.M. 211=A.I.R. 1942 Mad. 116=(1941) 2 M.L.J. 665.

ZAILDAR—*Appointment—Lambardar and non-Lambardar belonging to predominant tribe—Preference.*

It is not an inflexible rule that the Zaildar must necessarily belong to the largest and most predominant tribe in the Zail. This is only one of several matters which have to be taken into account in making an appointment of Zaildar. As between a lambardar candidate and a non-lambardar candidate belonging to the predominant tribe in the Zail, the former is to be preferred to the office of Zaildar. (*Mitchell, F.C.*) BOGHA *v.* RATAN SINGH. 21 L.L.T. 19.

——*Appointment— Non-Lambardar candidate —If can appeal against Collector's order.*

In a case of an appointment of Zaildar, a person who is not a lambardar and whose candidature has not been

approved by the Commissioner has no *locus standi* to appeal to the Commissioner against the order of a Collector appointing as Zaildar a candidate who is either a lambardar or whose candidature has been duly approved by the Commissioner under Land Revenue Rule 4, as such a person has no *locus standi* to appear even before the Collector as a candidate for the appointment and his hearing by the Collector is a concession only. It is only when the circumstances of a case are exceptional that the Commissioner may give a hearing to a candidate who is not technically qualified, and at that hearing accord the necessary technical qualification if the circumstances call for such action. (*Mitchell, F.C.*)
HANMANT DAS *v.* HARI SINGH. **21 L.L.T. 8.**

——*Appointment—Principles—Preferential right of lambardars—Residence in Zail—If necessary*

The field of selection for Zaildars should not be widened by the inclusion of non-lambardars without good reason, and the Commissioner should not accord

approval, as a matter of course to a non-lambardar's candidature, but only after satisfying himself that none of the lambardar candidates are really suitable. No doubt a non-lambardar whose candidature has been sanctioned by the Commissioner has a right to be considered, but lambardars still have a preferential right to the appointment. It is clearly the intention of Land Revenue Rules 4 and 5 that a Zaildar should be resident of the Zail. Though this rule can be relaxed, there must be very special reasons for so doing. This is because, the principle underlying the rules is that the Zaildar should be the representative of the hereditary owners of the Zail by virtue (among other things) of being one of them, and it is undesirable to appoint a man whose ancestral home and primary claims as a Zaildar are in another Zail. (*Penny and Hearn, F.Cs.*)
IRSHAD AHMAD KHAN *v.* AGHA SHER ZAMAN KHAN **21 L.L.T. 47.**

II—SELECT ENGLISH CASES.

ALIENS—*Company incorporated and carrying on business territory since occupied by enemy—If enemy aliens—Right to continue arbitration proceedings previously stated in England—Effect on retainer of solicitor.*

The modern rule of international law is that while the occupying power exercises a military authority over the occupied territory, it does not by the mere fact of occupation exercise sovereignty over it. The mere fact that a person or company is continuing to trade within territory (like Netherlands) occupied by the enemy does not impress that person with the character of an alien enemy at common law to the extent that British subjects may not lawfully have dealings with him and access to the Kings Courts is not denied to him. There may well be cases where the occupying enemy or some or all of the inhabitants of the occupied territory. To act that it may be a fair inference that all the inhabitants or some of them have acquired an enemy character and each case must be decided on the facts available to the Court. On the facts of the present case the company had not such an enemy character as to extend it from acting through solicitors in England or from presenting a claim as claimant in an arbitration or from appearing as "actor" in the Kings Courts. *Re* N. V. SCHEEPVEERT AND SOVFRACHT. **(1941) 3 All.E.R. 419 (C.A.).**

ARBITRATION—One of the parties a company is incorporated and carrying on business in territory since occupied by enemy—Continuation of arbitration proceedings—Right to. *See* ALIENS. **(1941) 3 All. E. R. 419 (C.A.).**

ARBITRATION ACT (1889), S. 4—*Repudiation of contract containing arbitration clause—Suit for damages for breach of contract—Stay of—Right to at instance of repudiating party.*

What is commonly called repudiation or total breach of contract, whether acquiesced in by the other party or not, does not abrogate a contract, though it may relieve the injured party of the duty of further fulfilling the obligations which he has by a contract undertaken to the repudiating party. The contract is not put out of existence though all further performance of the obligations undertaken by each party in favour of the other may cease. It survives for the purpose of measuring the claims arising out of the breach; and the arbitration clause survives for determining the mode of their settlement. The purposes of the contract have failed but the arbitration clause is not one of the purposes of the contract. The doctrine of approbate and reprobate does not apply to prevent a party to a contract who had declined to proceed further with the performance of his obligations to the other party from invoking an arbitration clause in the contract for the purpose of settling all questions to which his declinature has given rise. Accordingly where a suit is filed for damages for breach by repudiation of a contract containing an arbitration clause, the repudiating party can ask for the stay of the legal proceedings and take advantage of the arbitration clause. HEYMAN *v.* DARVINS, LTD. **(1942) A.C. 356=(1942) 1 All.E.R. 337 (H.L.).**

BANKRUPTCY.

——**S. 6 (b)**—*One party appointing arbitrator and giving notice to the other requiring the appointment of the other arbitrator within seven days—Default—Necessity to again appoint sole arbitrator.*

One of the parties after a reference to arbitration appointed his arbitrator and as the other party had failed to appoint an arbitrator on his behalf served on him a notice requiring him within seven days from the service of the notice to name an arbitrator to act on his behalf in the matters submitted, failing which the matter would stand referred to the arbitrator appointed by himself as the sole arbitrator. After the seven days had expired the arbitrator proceeded to act alone in the reference. On the question of the validity of the award by him,

Held, that the notice was a mere statement to the other party that, as a matter of law, the result will be that one arbitrator is a sole arbitrator and it is not an appointment as sole arbitrator under S. 6 (*b*) of the Arbitration Act the party giving the notice has to expressly appoint his arbitrator as sole arbitrator in the submission. DRUMMOND *v.* HAMER. **(1942) 1 K.B. 352=(1942) 1 All. E.R. 398 (K.B.D.).**

BANKRUPTCY—*Debtor a lunatic not so found—If could be adjudicated bankrupt without concurrence of the Court in lunacy—Appointment of receiver in lunacy and vesting of possession and control of lunatic's properties—Relation back of title of trustee in bankruptcy to an anterior date—If can oust receiver's possession.*

On 8th January, 1941, the petitioning creditors recovered judgment against the debtor. On 21st January, 1941, a bankruptcy notice was served on the debtor which was not complied with and therefore the debtor committed an act of bankruptcy on 28th January. In the meantime on 22nd January, 1941, the debtor's mother had applied to the Court in lunacy for the appointment of a receiver. On 30th January, a bankruptcy petition was presented. On 18th February, an order was made in Lunacy appointing an *ad interim* receiver until the hearing of the mother's application. On 4th March, the Master in Lunacy made an order appointing a receiver and on 17th March, 1941, a receiving order was made. In an application to discharge the receiving order,

Held, (1) A lunatic not so found could be adjudicated bankrupt and without the concurrence of the Court in Lunacy, (*ii*) Although the trustees title would relate back to 28th January, the title of the trustees in bankruptcy to the property belonging to the debtor on that date is no better than the title of the debtor himself. The possession and control of the debtor's property given to the receiver in lunacy cannot be ousted by the trustee in bankruptcy. *Re* A DEBTOR (NO. I OF 1941). **(1941) 3 All.E.R. 12 (Ch.D.).**

——*Order directing bankrupt to pay £5 per month out of his salary "during the bankruptcy" and "until the Court shall make an order to the contrary"—Subse-*

BANKRUPTCY ACT (1914), S. 69.

quent order of discharge expressly continuing the order for monthly payment—Validity.

An order was made on 1st March, 1938. Under [S. 51 (1) of the Bankruptcy Act] that the sum of £5 monthly should be paid to the trustee out of the bankrupt's salary "during the bankruptcy" and "until the Court shall make an order to the contrary." On 10th March, 1938, the Court granted the debtor an immediate discharge but directed that the order under S. 51 (1) dated 1st March, 1938, be expressly continued on a special case stated to test the validity of the order continuing the appropriation out of the bankrupt's salary.

Held that, (1) orders made under S. 51 need not be limited to property vested in the trustee under the other provisions of the Bankruptcy Act. (2) The discharge of a bankrupt does not put an end to the bankruptcy and therefore it cannot be held that "during the bankruptcy" refer to a period which comes to an end the moment the bankrupt gets his discharge. (3) In any event what the Court did in effect by the order of March 10, whether or not it was entirely necessary was to impose on the discharge of the bankrupt the condition that the order of March 1 should continue in operation. (4) The order of March 10 was therefore valid and effective. *Re* A DEBTOR (NO. 6 OF 1934). **(1941) 3 All E.R. 289 (Ch.D.).**

BANKRUPTCY ACT (1914), S. 69—*Surplus assets after payment in full to proving creditors—If can be subjected to a charging order in favour of creditors who did not prove.*

The word "creditors" in S. 69 of the Bankruptcy Act must be read as meaning only creditors who have proved in the bankruptcy and not those who after notice do not come in and prove their debts in the bankruptcy. Therefore, on all the creditors who have proved in the bankruptcy being paid in full with interest and costs, the balance of assets in the hands of the trustee is held in trust for the bankrupt and consequently is a fund in respect of which a charging order can be made at the instance of a non-proving creditor who had obtained a judgment after the adjudication of the bankrupt. *Re* WARD. **(1942) Ch. 294=(1942) 1 All. E.R. 513 (Ch.D.).**

BILL OF EXCHANGE—*Bills drawn in Poland and accepted in London expressed to be payable in Dutch currency at named Bank in Amsterdam—If general or local acceptance.*

Bills were drawn in Poland and were accepted in London by a Bank, and they were expressed to be payable in Amsterdam, at a named Bank there, in Dutch currency. In an action upon the bills,

Held that in the absence of an express statement that the bills were payable "only at the place specified and not elsewhere" the acceptance was not a local acceptance. The currency in which the bills is payable and the place of payment specified on the face of the bill do not indicate that the parties intended payment to be made at the specified place and there only. (1941) 2 All. E.R. 647, Affirm. BANK POLSKI v. MULDER AND CO. **(1942) 1 K.B. 497=(1942) 1 All. E.R. 396 (C.A.).**

CHARITY—*Establishment of fund for helping educated woman and girls to become self-supporting—If valid charitable trust.*

The object of a loan fund was stated to be: "The fund exists solely for the purpose of helping educated women and girls to become self-supporting, and has no commercial object in view."

Held, in so far as it is educational it is a good charity. The implication of the gift to enable the recipients to become self-supporting is a sufficient indication that they stand on the poverty side of the borderline, in the sense

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that they cannot be self-supporting in whatever enterprise they embarked without the assistance of the fund. Accordingly the trusts of the fund are valid charitable trusts. *Re* CENTRAL EMPLOYMENT BUREAU. **(1942) 1 All. E.R. 232 (Ch.D.).**

COMPANIES—*Directors' fiduciary capacity—Acquisition by directors of shares in subsidiary company—Profit made by resale of such shares—Liability to account for to the company.*

The directors of the Regal (a company) with a view to the future development or sale of their company, were anxious to extend the sphere of its operations by the acquisition of other cinemas. In Hastings and St. Leonards there were two small ones called the Elite and Deluxe. Negotiations began both for their acquisition or control by lease or otherwise and for the disposal of Regal itself. A subsidiary company was created for the purpose with a capital of £5,000 in £1 shares. The directors were the same as those of Regal with the addition of one Garton. It was thought that only £2,000 of the capital was to be issued and that it would be subscribed by Regal who would control it. The five directors and a solicitor of the company subscribed 500 shares each and the capital of the new company was fully subscribed, the shares duly paid for and allotted. These shares were afterwards sold at substantial profits.

Held: At all material times the directors of the main company were in a fiduciary position and they used and acted upon their exclusive knowledge acquired as such directors. They sought no authority from the company and by reason of their position and action made large profits. Accordingly they are liable to account to the company for the profits so made. But not so the solicitor and the non-director in the main company. REGAL (HASTINGS), LTD. *v.* GULLIVER. **(1942) 1 All. E.R. 378 (H.L.).**

——*Shares—Transfer of shares—Refusal to register—Tests of* bona fides.

Where the articles of association of a company confer a discretion on directors with regard to the acceptance of transfers of shares, the directors must exercise their discretion *bona fide*, in what they consider—not what a court may consider—to be in the interests of the company and not for any collateral purpose. A court will be averse to drawing inferences as to the *bona fides* or *mala fides* of persons merely on affidavit evidence. Where the directors have *bona fide* considered the interests of the company and come to the conclusion that it would be undesirable to register the transfer of some shares, the court cannot interfere. *Re* SMITH AND FAWCETT, LTD. **(1942) Ch. 304=(1942) 1 All. E.R. 542 (C.A.).**

——*Winding up—Surplus assets—Rights of preference shareholders—Extent and nature of.*

Once a company has gone into liquidation, everything the company has, after it has satisfied its debts, is to be regarded as surplus assets and to be distributed amongst the members without regard to the particular provisions in the articles dealing with the payment of dividends which *prima facie* apply only while the company is a going concern. Such surplus assets or any part thereof cannot be regarded as profits available for distribution among the preference shareholders in accordance with the articles of association. The surplus assets, remaining after repayment of capital paid on the shares to the ordinary and preference shareholders, ought to be distributed between the preference shareholders and ordinary shareholders *pari passu* in accordance with the nominal amount of their shares. *Re* FOSTER AND SONS, LTD. **(1942) 1 All. E.R. 314 (Ch.D.).**

COMPANIES (WINDING UP) RULES (1929), R. 150—*Proxies in favour of Official Receiver for creditors' meetings—Validity.*

Under the present R. 150 of the Companies (Winding up) Rules 1929, in the case of a company which is being wound up by order of the Court, the creditors have a right to appoint the Official Receiver to be their proxy at meetings of creditors convened by the Court. The decisions to the contrary under the old Rules. 1881 W. N. 120 and 18 T.L.R. 503 are no longer of any effect. *Re* GENERAL MORTGAGE SOCIETY. **(1942) Ch. 274 =(1942) 1 All. E.R. 414 (Ch.D.).**

COMPENSATION (DEFENCE) ACT (1939), S. 2 (1) (d)—*Dwelling house requisitioned by the military authorities—Compensation—Costs of solicitor engaged for negotiation—If recoverable as costs incurred in complying with the requisitions.*

Under Compensation (Defence) Act, 1939, compensation in respect of land requisitioned by the military may be settled by agreement or in default of agreement by the appropriate tribunal. A person who had engaged a solicitor for negotiating the amount of compensation claimed the costs incurred as "expenses incurred in complying with the directions given on behalf of His Majesty—the requisitioning of the land."

Held, though the expenses of a solicitor in connection with making arrangements to comply with directions of the authority would be recoverable as part of the compensation expenses incurred in measuring the compensation for having complied with the directions are not recoverable as part of the compensation under the terms of the Act. RHODES *v.* SECRETARY OF STATE FOR WAR. **(1941) 3 All E.R. 407 (C.A.).**

CONSTITUTIONAL LAW—*Governments of allied states in England—Conscription of their subjects found in England—Power to issue decree for.*

It is not contrary to British Constitutional law for the Government of an allied state (in this case the Netherlands Government) established in England with the consent of the British Government to issue a decree conscripting its subjects resident in England. *Re* ANAND. **(1942) 1 All. E.R. 236 (K.B.D.).**

COPYRIGHT—*Infringement—Building—Architect's copyright in—Extension to original building by other architects—Copyright, if affected—Whether builder or architect the author entitled to copyright—Damages—Proper measure of.*

In or about 1912 *H* & Sons employed the firm *S* & *B* as architects in connection with buildings which shortly afterwards were erected on part of the premises of *H* & Sons. In 1935 *H* & Sons employed *M* as their architect in connection with an extension of the original building. The claim in the action was made by the sequels in title of *S* & *B*, who alleged that the buildings put up in accordance with *M's* plans, and the plans themselves, infringed the copyright vested in the plaintiffs both in the artistic design of the buildings for which *S* & *B* were responsible and in the relative plans. The main defence was that it was implicit in the transaction between *H* & Sons and *S* & *B* that *H* & Sons and any architect employed by them should stand authorised to do what in fact had been done.

Held, that (*i*) no such term can be implied in the original transaction on the facts of this case. (*ii*) An architectural plan finds its meaning and purpose in the use to which it is put and the copyright vests in the architect in regard to the building as well as the plans. The builder is only part of the machinery employed in the production of the structure which embodies the design and ideas of the architect. For copyright purposes, the author of the architectural work of art is the author of the plans and not the builder. (*iii*) Though the

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damages are presumably at large to a certain extent, the Court should proceed in fixing the same on the basis of considering what sum might fairly have been charged for a licence to use the copyright for the purpose for which it was used and one is entitled to take into account all the surrounding circumstances in exactly the same way as one is entitled to do in the case of the invasion of a common law right of property. MEIKLE *v.* MAUFE. **(1941) 3 All E.R. 144 (Ch. D.).**

CRIMINAL PRACTICE—*Conscription by allied government in England—Deserter—Arrest—Dismissal of application for issue of writ of* habeas corpus—*Appeal incompetent as one relating to criminal matter—Supreme Court of Judicature Act*, 1925, *S.* 31.

The dismissal of an application for the issue of a writ of *habeas corpus* by a person arrested as a deserter after conscription by allied government established in England is an order on a criminal matter and an appeal is accordingly incompetent under the Supreme Court of Judicature (Consolidation) Act, 1925, S. 31. *Re* AMAND. **(1942) 1 All. E.R. 480 (C.A.).**

CRIMINAL TRIAL—*Acquittal by Court of summary jurisdiction "final"—Order for costs against prosecutor—If makes prosecutor a person aggrieved who could appeal—Order for costs—If one for payment of "penal or other sum."*

When a Court of summary jurisdiction dismisses a criminal charge, the order is final and the imposition of costs on the prosecution cannot create a right of appeal against such acquittal. The order for costs cannot be said to be an order "for payment of any penal or other sum" within the meaning of that phrase in the Summary Jurisdiction and Criminal Justice Act Northern Ireland, 1935, S. 24 (1) so as to make the order appealable. BENSON *v.* NORTHERN IRELAND ROAD TRANSPORT BOARD. **(1942) A.C. 520=(1942) 1 All. E.R. 465 (H.L.).**

——Autrefois acquit—*Applicability—Withdrawal of summons as information not laid by authorized person—Second information for same offence—Not barred.*

A withdrawal of a summons on a preliminary point (namely, that the information had not been laid by the authorized person) is not equivalent to a dismissal or an acquittal. The basic principle of the plea of *autrefois acquit* is that the person charged has already been put in peril and no man is to be put in peril twice in respect of the one charge. But where there was no withdrawal of the first summons on the merits, but in consequence of an informality in the proceedings and to correct that informality a second information was laid by a different person the justices are bound to hear the second information. *Pickavance* v. *Pickavance*, (1901) P. 60 at 63 held to be *obiter* and *Davis* v. *Morton*, (1913) 2 K. B. 479, Appl. OWENS *v.* MINOPRIO. **(1942) 1 K.B. 193=(1942) 1 All. E.R. 30.**

——*Charge of having carnal knowledge of a girl of 8 years—Only evidence that of victim—Prisoner's silence—If can be deemed to be corroboration.*

In a charge of having carnal knowledge of a girl of eight the only evidence was that of the victim and by virtue of the proviso to S. 38 of the Children and Young Persons Act, 1933, it was essential as a matter of law that the evidence should be corroborated by other material evidence. The conduct of the accused in not denying the charges in the following circumstances was relied on as affording the necessary corroboration. The circumstances were:—The police inspector saw the prisoner in the street and cautioned him in the usual way. He told him that he was not bound to make any statement and that he had a warrant for his arrest for having had carnal knowledge of *K* aged 8 years. To that the pri-

soner replied "I know what you mean, but not likely. She plays with the Sawbridge girl." The same evening the warrant was again read over to the accused who having been told that he need say nothing answered, "I have got you. Nothing to say." Again at the hearing before the Magistrate, after being cautioned that he was not obliged to say anything and that whatever he said would be taken down and given as evidence in the trial, he said "I am not guilty. I am going to say nothing." Lastly at the trial before the Judge having had the advantage of counsel's advice, he did not go into the witness box to give evidence.

Held, the conduct of the accused in the circumstances did not afford the necessary corroboration to support a conviction. R. KEELING. **(1942) 1 All. E.R. 507 (C.C.A.).**

——*Charge of murder—Plea of provocation in defence—Evidence not accepted—Direction to jury—Necessity to direct the jury to acquit in case of reasonable doubt in the other evidence.*

In a trial for murder the jury should be directed that if upon a review of all the evidence they are left in reasonable doubt whether, even if the prisoner's explanation or evidence be not accepted the act was unintentional or provoked the prisoner is entitled to be acquitted of the charge of murder and convicted only for manslaughter. R. *v.* PRINCE. **(1941) 3 All E.R. 37 (C.C.A.).**

——*Conviction of alternative offences—Invalidity.*

A person was charged with having committed assault or battery. On the facts proved he was guilty of battery. The justices convicted him in an alternative form, finding him guilty of assault or battery. On appeal,

Held, a conviction of alternative offences is bad and must be quashed as a person may be guilty of an assault without being guilty of a battery. JONES *v.* SHERWOOD. **(1942) 1 K.B. 127.**

——*Conviction by Court of summary jurisdiction—Proper remedy where there is denial of natural justice is by* certiorari *application to High Court.*

Where an accused is convicted before a Court of summary jurisdiction and there has been a denial of natural justice the proper remedy is not by case stated or appeal to quarter sessions but by application to the High Court for an order of *certiorari* to quash the conviction. *Ex parte* READ. **(1942) 1 K.B. 281 = (1942) 1 All. E.R. 56.**

——*Income-tax proceedings—Confession as a result of an inducement that no criminal proceedings will be instituted and production of documents—If can be used as evidence in subsequent prosecution in respect of the fraud perpetrated in making returns.*

B was a chartered accountant employed by *R* an assessee in making his income-tax returns. An interview took place at which were present two representatives of the Inland Revenue making investigations as to certain irregularities in the returns and *B* and *R* were present. In the presence of *B* and *R* the following extract from the Hansard's Parliamentary Debates of 19th July, 1923, was read: "The question of fraud and evasion in connection with direct taxation is of course a matter of great importance to the Exchequer, but it is not desired that fraudulent taxpayers should be deterred by the fear of criminal proceedings from making spontaneous disclosure of their misdeeds and appropriate pecuniary restitution. I will circulate with the official report a statement of the practice which is followed by the Board of Revenue in the matter. The following is the statement referred to: 'Where the taxpayer takes the initiative and voluntarily discloses the fact of his past frauds and their full extent and is also prepared to facilitate investigation and to furnish full evidence (including not only the business books and records, but also private bank books) as may be required on behalf of the board, as to the amount of the correct liability, the board will not institute criminal proceedings, but will accept a pecuniary settlement..... .....'" This having been read and a copy put into the hands of both *B* and *R*, they produced to the inspectors. two ledgers which had been fraudulently brought into existence to mislead the Revenue authorities. The authorities not being satisfied, another interview took place a couple of months later when two more ledgers were produced, and there was also produced by *B* the working papers used in the course of preparing *R's* returns. These revealed the fraud perpetrated in the two ledgers produced at the first interview. At a third interview the Hansard extract was again read to them and they were again given further opportunity to make further disclosure. Even then there was no full disclosure. In a subsequent prosecution of *B* and *R*,

Held, that the first two ledgers and the working papers of *B* though discovered as a result of the confession cannot in the circumstances be admitted in evidence having regard to the wording of the extract from the Hansard. The promise must be deemed to have been held out to *R* the assessee as well as *B* the accountant in the circumstances of the case. R. *v.* BARKER. **(1941) 3 All. E.R. 33 (C.C.A.).**

——*Murder—Prosecution for—Accused setting up self-defence but asking for reduction of crime to manslaughter—Facts disclosing a possible case of manslaughter—Summing up to the jury—Duty of Judge.*

Although the accused's case at the trial for murder was in substance that he had been compelled to use his weapon in necessary self-defence—a defence which, if it had been accepted by the jury, would have resulted in his complete acquittal—it is the duty of the Judge in summing up to the jury, to deal adequately with any other view of the facts which might reasonably arise out of the evidence given, and which would reduce the crime from murder to manslaughter. The fact that a defending counsel does not stress an alternative case before the jury (which he may well feel it difficult to do without prejudicing the main defence) does not relieve the Judge from the duty of directing the jury to consider the alternative, if there is material before the jury which would justify a direction that they should consider it. But if the evidence before the jury at the end of the case does not contain material upon which a reasonable man could find a verdict of manslaughter instead of murder, it is no defect in the summing up that manslaughter is not dealt with. Where there is no evidence to raise the issue of provocation it is not the duty of the Judge to invite the jury to speculate as to provocative incidents from the evidence. MANCINI *v.* DIRECTOR OF PUBLIC PROSECUTIONS. **(1941) 3 All E.R. 272 (H.L.).**

——*Procedure—Admissibility of evidence—Objection to—When to be taken.*

The counsel for prosecution in a murder trial had started his opening had stated a few facts to the jury and was proposing to open to the jury the circumstances in which a complete confession had been made by the accused, when counsel for defence informed him that there would be an objection to the admissibility of the confession. The jury was sent out and the question of admissibility was argued.

Held, the ordinary practice in such a case, if there is any objection on the part of counsel for the defence to the admissibility of a piece of evidence, is that he should inform the prosecution of that fact before hand, and that the piece of evidence should not be opened to the jury. But in cases like the present where it is con-

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venient and in which it cannot possibly result in any harm in its being done a Judge can hear advance arguments as to the admissibility of evidence. But in most cases the ordinary rule should be adhered to and it would have been very much better if it had been followed. Counsel for the prosecution could have opened the facts as to the murder and various other matters, medical evidence and so forth, and then simply have told the jury that there was some other vital evidence which he was not in a position to mention to them at the moment, but that it would be tendered in evidence at the proper time and the objection to admissibility could have been taken then and decided. R. *v.* HAMMOND. **(1941) 3 All.E.R. 318 (C.A.).**

DEBTOR AND CREDITOR—*Assignment of debtor's property for benefit of creditors—Covenant by creditors not to sue debtor—Rights against sureties reserved—Surety's right of indemnity against the debtor—Enforceability.*

Where there is an assignment of the debtor's property for the benefit of his creditors although the provisions of the law of bankruptcy are to be imported into the deed for the purpose of ascertaining the manner and proportions in which the proceeds of sale of the property comprised in the deed are divisible among the creditors the extent of the protection obtained by the debtor by virtue of the covenant not to sue is dependent entirely on the wording of such covenant where the provisions of the law of bankruptcy are not expressly or by implication imported into the terms of the covenant. Accordingly where under the covenant the assenting creditors are not to sue on account of their debts but the deed is not to affect the rights and remedies of the creditors against any surety the covenant did not affect a surety's consequential right of indemnity against the debtor though the surety was among the assenting creditors. The reservation as between creditor and debtor of the rights against the surety imports the continuance unimpaired of the surety's right of indemnity against the debtor. COLE *v.* LYNN. **(1942) 1 K.B. 143 (C.A.)= (1941) 3 All. E.R. 502.**

DEFENCE (GENERAL) REGULATIONS (1939), Reg. 18-B—*Imprisonment under—Onus of proof as to the validity of detention order—Claim for particulars of defence—Sustainability.*

Defence (General) Regulations, Reg. 18-B is in the following terms :—"If the Secretary of State *has reasonable cause to believe* any person to have been or to be a member of or to have been or to be active in the furtherance of the objects of any such organisation as is hereinafter mentioned, and that it is necessary to exercise control over him, he may make an order against that person directing that he be detained." The plaintiff having been detained by an order made by the Home Secretary under the Defence (General) Regulations 1939, Reg. 18-B, as a person of hostile associations in an action for damages for false imprisonment raised the validity of the order of detention. The plaintiff sought to have certain particulars from the defendant (the Secretary for Home affairs) of the grounds for belief of existence of "reasonable cause"—which the Courts below refused to order.

Held (Lord Atkin dissenting) that the words in the regulation "If the Secretary of State *has reasonable cause* for the belief" in the context point simply to the belief of the Secretary of State founded on his view of there being reasonable cause for the belief which he entertains and not that there must be an external fact as to reasonable cause capable of being challenged in a Court of law. The order of the Secretary of State is *prima facie* proof of the validity of the detention and

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as the onus shifts on the plaintiff to prove its invalidity the particulars of the grounds of the "reasonable cause" cannot be ordered to be given. LIVERSIDGE *v.* ANDERSON AND ANOTHER. **(1942) A.C. 206=(1941) 3 All.E.R. 338 (H.L.).**

See also GREENE *v.* SECRETARY OF STATE FOR HOME AFFAIRS. **(1941) 3 All.E.R. 388 (H.L.).**

DIVORCE—*Desertion—Resumption of co-habitation—When interrupts statutory period.*

The mere fact that marital relations between the spouses had taken place since the desertion does not constitute conclusive evidence of resumption of cohabitation so as to condone desertion and bring it to an end. MUMMERY *v.* MUMMERY. **(1942) P. 107=(1942) 1 All. E.R. 553 (P.D.A.).**

———*Desertion—Separation and maintenance order with non-co-habitation clause—Deletion of clause subsequently—If reconstitutes prior desertion.*

The deletion of a non-cohabitation clause from a separation and maintenance order after it had been in full force for many years cannot automatically reconstitute desertion. There must be other evidence of overtures on the wife's part towards a resumption of co-habitation or of the husband's conduct to explain her not making any. GATWARD *v.* GATWARD. **(1942) P. 97 =(1942) 1 All. E.R. 477 (P.D.A.).**

———*Desertion for three years—Preceding petition for divorce—If can be broken by mere offer which is not genuine to return by the other spouse.*

The principle laid down by the House of Lords in *Pratt v. Pratt*, (1939) A.C. 417 (that "if at any time during the three years preceding the presentation of the petition a deserting wife or husband makes a genuine offer to return to the other spouse and the other spouse refuses to accept that offer, the desertion is terminated") can be applied only if the Court is satisfied that there is a genuine offer to resume cohabitation and to behave properly as husband or wife as the case may be. Otherwise a great injustice might be done to a spouse who had been deserted for nearly three years if, at the eleventh hour when he was about to file a petition, he could be defeated by the stratagem of the offending spouse offering to return although not contrite or anxious to resume married life. WARE *v.* WARE. **(1942) P. 49=(1942) 1 All.E.R. 50.**

———*Petition—Rule of practice requiring petitioner to state "whether" there has been any resumption of cohabitation since the making of order in previous proceedings with reference to the marriage—Duty to state negative fact.*

The Matrimonial Clauses Rules, 1937, R. 4 (1) (*f*), provided : "The petition is a matrimonial case....shall state....(*f*) whether there have been in the High Court or a Court of summary jurisdiction any, and if so what, previous proceedings with reference to the marriage.... the effect of any decree or order made in such proceedings, and whether there has been any resumption of cohabitation since the making thereof...." On a construction of the rule,

Held, the word "whether" in the rule clearly means "aye" or "no" and the petition for divorce should plead or state "whether or not," there has been a resumption of cohabitation as it is desirable that the Court should know precisely the state of affairs between the parties. BISHOP *v.* BISHOP. **(1942) P. 41=(1941) 3 All.E.R. 268.**

EMERGENCY LEGISLATION — *Motor Vehicles (Control) Order* (1940), *Art.* 1 (*i*) *and* (3)—*A.R.P. Warden using his own motor car while on duty—If car used for 'civil defence.'*

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Motor Vehicles Order, Art. 1 required that a motor car shall not be unattended during the hours of daylight unless certain precautions were taken and it also provided that the article shall not apply to a vehicle whilst being used as a civil defence vehicle. The respondent, the head A. R. P. Warden for a district while actually on duty visiting the A. R. P. post left his own car which he used for his private and business purposes unattended without the prescribed precautions. He was allowed petrol and given allowances to use the car in the course of his duties as head warden.

Held, that the facts were sufficient to justify a finding that the vehicle was being used as a civil defence vehicle.

Per *Tucker, J.*—One has not to consider what was the normal or habitual or general user of the car in question, but the purpose for which it was at that moment being used. WYLES *v.* BANFIELD. (1941) **2 All. E.R. 791.**

———*Rats Ordinance—Person 'using' agricultural land for threshing corn required to erect fence impenetrable to rats—Person merely providing machinery and a mechanic—If 'using' the land so as to be liable for failure to erect fence.*

The Rats Ordinance (1940) required the person using agricultural land for threshing corn to erect around the land a fence impenetrable to rats. A person who has merely undertaken to superintend the operation of threshing the rick, to provide the machinery and to provide the services of a mechanic to work the machinery, can rightly be found not to be using the land. The person who was using the land was the occupier, *i.e.*, the farmer. The person supplying the machinery cannot in the circumstances be liable for failure to erect the fences required by the Rats Ordinance. CHAPPELL *v.* RUNDLE. **(1941) 2 All. E.R. 774 (K.B.D.).**

EVIDENCE—*Plaintiff's employee's 'proof' of evidence—Death of witness—Proof not admissible as witness was party interested.*

A proof of evidence taken from an employee of the plaintiff while proceedings were pending, cannot on his death be admissible in evidence, as he was a party "interested" in the proceedings within the meaning of the Evidence Act, S. 1 (3). PLOMIEN FUEL ECONOMISER CO., LTD. *v.* NATIONAL MARKETING CO. **(1941) 1 All. E R. 311 (Ch.D.).**

EXECUTOR — *Administration action—Arrears of alimony due to widow—If recoverable in administration action.*

Arrears of alimony due to the widow are not recoverable in the administration of the deceased's estate and the widow cannot therefore maintain an action for administration. *Re* WOOLGAR: WOOLGAR *v.* HOPKINS. **(1942) Ch. 318=(1942) 1 All. E.R. 583 (Ch.D.).**

FACTORIES ACT (1937), S. 23 (1) (a)—*Duty to provide lifting tackle free from patent defect—Slipping of an empty tray due to improper adjustment of the chains of the tackle—Injury to plaintiff—Liability.*

S. 23 (1) (*a*) of the Factories Act imposed a duty on the owners of a factory to provide lifting tackle free from patent defects. A make-shift sling used for raising and lowering goods was conceded to be a 'lifting tackle' within the meaning of that expression in the section. Where an empty tray slipped off and injured a workman on account of the difference in the adjustment of the length of the chains of the sling, *held*, that it amounted to a 'patent defect' and the defendants were liable for breach of a statutory duty. DAWSON *v.* MUREX LTD. **(1941) 2 All. E.R. 784 (K.B.D.).**

HIRE PURCHASE.

———**S. 24 (7)**—*Duty to take 'effective steps' to 'ensure' that crane does not approach within* 20 *feet of place where employee's work—If discharged by exhibition of warning notices.*

The duty imposed by Factories Act (1937), S. 24 (7) is absolute to take effective steps to ensure that a crane does not approach within 20 feet of any place where an employee is working and it cannot be construed that the employers should only take reasonable steps to secure the safety of the employees. The employers are liable if any accident occurs by reason of their failure to take such effective steps. The fact that the victim was well aware of the danger or that a notice had been put up is of no avail. LOTINGA *v.* NORTH-EASTERN MARINE ENGINEERING CO. **(1941) 3 All. E.R. 1 (K.B.D.).**

GARNISHEE ORDER—*Assignment of debt prior to order—Not completed by receipt of notice by debtor—Effect—Priorities—Equitable assignment.*

X and *Y* obtained judgment against *A* for £313-14*s.*-9*d.* on 19th June, 1939, for costs of an unsuccessful action brought against them by *A*. On 15th June, 1940, they obtained a garnishee order *nisi* on some money owing by *C* to *A*, which was served on *C* on 17th June. *A* had on 14th June, 1940, the very day he recovered judgment against *C* assigned the amount due from *C* to *H* who received the assignment the next day. On 17th June, *A* and *H* sent notices of assignment to *C* who did not receive them until 18th June. In the circumstances *X* and *Y* claimed that (1) the assignment to *H* was void and a fraud on them and other creditors; (2) alternatively that at the date on which their garnishee order became effective (*i.e.*) 17th June, 1940, *H's* title was incomplete, in that the assignment to him was only an equitable assignment until completed by notice to the debtor, and that, since it was given without consideration it was of no avail as against their rights under the garnishee order. On the evidence it was found that *H* was a *bona fide* creditor of *A*.

Held, that (1) the assignment to *H* was not in fraud of creditors; (2) the assignment was not complete as legal assignment till the receipt of notice of it by the debtor on 18th June, 1940: (3) though the assignment had not been completed by notice according to the provisions of the Law of Property Act, 1925 on 17th June, when *X* and *Y* served the garnishee order, it operated as a valid equitable assignment by which the rights of *X* and *Y* under the garnishee order were postponed to that of *H*. A judgment-creditor is in no better position than the assignor and cannot garnishee anything which the assignor could not honourably deal with by reason of the prior equitable assignment. HOLT *v.* HEATHERFIELD TRUST, LTD. **(1942) 2 K.B. 1=(1942) 1 All E.R. 404 (K.B.D.).**

HABEAS CORPUS—*Release of person arrested under invalid order—Re-arrest—If barred by principle of* autrefois acquit.

Where on the issue of a writ of *habeas corpus* a person detained under the *Defence Regulations* has been released on the ground that the pre-requisites of a lawful detention have not been complied with, the principle of *autrefois acquit* is not applicable and will not bar a subsequent detention. R. V. HOME SECRETARY: *Ex parte* BUDD. **(1942) 2 K.B. 14=(1942) 1 All E.R. 373 (C.A.).**

HIRE PURCHASE—*Provision for payment of a minimum amount if article returned or retaken within a certain period—Whether penalty or liquidated damages—Provision if in fraud of bankruptcy laws.*

By a common form of hire purchase agreement *X* company (the owner) agreed to let and *Y* company (the hirer) agreed to hire certain articles of second-hand

machinery. It was provided that a sum of £252 should be paid on or before delivery of the goods and that a total rent of £1,108 16*s.* should be paid by 12 monthly instalments of £92-8*s.* each, the first instalment to be paid one calendar month after the date of the agreement, and that the period of hire should be 12 months commencing from the same date. Then by another clause it was provided that if the hirer should return the goods or if the owners should retake the same before the expiration of 9 months from the date thereof, for any of the specified reasons, the hirer should pay a further sum which with the previous payments made by him, should equal the sum of £1020-12*s.* by way of compensation for the depreciation of the goods. After the delivery of the goods *Y* the hirer company went into liquidation within 9 months and *X* the owners claimed the consolidated sum of £1,020-12*s.* from the liquidators.

Held, that (1) the amount claimed was neither a penalty nor liquidated damages and even if it were it was a genuine pre-estimate of the damage sustained. It was a separate contract to pay a certain sum in a certain event and that event having happened the sum became payable; (2) the claim was not one in fraud of bankruptcy laws as it arose in a multitude of cases only one of which was the liquidation of the company. *Re* APEX SUPPLY CO., LTD. **(1942) 1 Ch. 108=(1941) 3 All. E.R. 473 (Ch.D.).**

HUSBAND AND WIFE—*Divorce—Death of husband—Secured maintenance of wife—Right against husband's estate—Law Reform Act*, 1934, *S.* 1.

Where a wife proceeded against the administrators of her divorced husband's estate in respect of her secured maintenance payable for the joint life of the husband and wife,

Held, that wife had no cause of action kept alive by the Law Reform Act, 1934 and the claim must fail. DIPPLE *v.* DIPPLE. **(1942) P. 65=(1942) 1 All.E.R. 234 (P.D.A.).**

INCOME-TAX—*Assessable income—Computation—Co-operative society returning out of its profits an amount in proportion to the purchases by assessee a member—If rebate or dividend—Liability to assessment—Finance Act* (1933), *S.* 31 (3).

A co-operative society of which the assessee was a member returned to him at the end of the year an amount from out of its profits, in proportion to the purchases made by the assessee.

Held, that though looked at from the point of view of the society the amount was a 'dividend' looked at from the point of view of the assessee it was a 'return' to him of part of the price which he had paid and therefore it is a rebate or discount on the price which must be included in the taxable income of the assessee under S. 31 (3) of the Finance Act, 1933. POPE *v.* BEAUMONT. **(1941) 3 All. E.R. 9 (K.B.D.).**

——*Replacement of obsolete machinery—Deductions for—Computation of amount.*

A company owned a fleet of steam ships. From time to time ships which were deemed to have become unsuitable for the company's business were sold and replaced by others. Three ships became obsolete in the year of assessment. In the case of one ship the allowances for wear and tear together with its sale price was less than the original cost of the ship while in the case of the other two ships the amount exceeded the original cost. On a construction of the relevant rules,

Held, that the company was entitled to an allowance in respect of the replacement of the one ship without taking into account the surplus arising in the case of the other two ships. CHARENTE STEAMSHIP CO., LTD. *v.* WILMOT. **(1942) 1 K.B. 210=(1942) 1 All.E.R. 85.**

INCOME-TAX ACT (1918), Sch. E.

INCOME-TAX ACT (1918), Sch. D, Cases I and II—*Firm taking in new partner—If cesser in the carrying on of business by old firm and succession by new "person"—Liberal as against literal construction.*

The Income-Tax Act (1918), Sch. D, Cases I and II, R. 9 reads as follows:—"If a person charged under this schedule ceases within the year of assessment to carry on the trade, profession, or vocation in respect of which the assessment is made, and is succeeded therein by another person, ... The Commissioners shall adjust the assessment by charging the successor with a fair proportion thereof from the time of his succeeding to the trade profession or vocation and relieving the person originally charged from a like amount. . . . . " In the case of a stock brokers business carried on for part of the year by *A*, *B*, *C* and *D* in partnership and for the next part of the year by *A*, *B*, *C*, *D* and *E*,

Held (*Lord Russell of Killowen*, dissenting), that in the instant case R. 9 must be construed in the popular rather than in a technical sense and the first partnership must be deemed to have ceased and second partnership succeed to the first. (1940) 3 All.E.R. 613 (C.A.), Reversed. INCOME-TAX COMMISSIONERS *v.* GIBBS. **(1942) A.C. 402=(1942) 1 All.E.R. 415 (H.L.).**

——**Sch. D, Case VI**—*Money realised by sale of right to have mares served by a horse belonging to assessee—Whether of income or revenue nature—Assessability.*

On the death of his owner when *X* a famous race horse was going to be sold, a number of race horse owners decided that they would like to join together in order to prevent *X* being taken out of the country. Accordingly, they empowered one *G* to bid for *X* on their behalf. After the purchase by *G*, those race horse owners made a written agreement under which 24 of them subscribed a sum of £53,000 (£47,000 for the price of the horse and the remainder for working capital). Each owner took a certain number of shares. In accordance with the agreement they were entitled to send mares to *X* free in proportion to their shares; but the management of the horse was left in the hands of a committee of three who were to regulate the number of mares which *X* might serve, the price at which he was to stand, and the suitability of the mares which might be sent to him. Subscribing owners who had no mares or no suitable mares were allowed to sell their free nominations to other owners of suitable mares. On the question of the assessability of the amounts realised by the subscribing owner by the sale of such nomination,

Held, that the owners were merely realising the fruit of the horse and the receipts were of a "revenue or income nature" and assessable as such. LEADER *v.* COUNCIL. **(1942) K.B. 364=(1942) 1 All.E.R. 435 (K.B.D.).**

——**Sch. D, Case VI**—*Payment for casual articles in newspaper—Assessability as revenue payment.*

Where an assessee a solicitor's clerk received a sum of money for the serial rights in his lifestory the true nature of the transaction is not a sale of copyright of the articles resulting in the realisation of capital but the performance of services, the sale of the copyright being subsidiary thereto. The receipt therefore is of a revenue nature assessable to Income-tax under Sch. D, Case VI of the Income-tax Act. HOBBS *v.* HUSSEY (INSPECTOR OF TAXES). **(1942) 1 K.B. 491=(1942) 1 All. E.R. 445 (K.B.D.).**

——**Sch. E**—*Commutation of salary and pensions—Assessability of amount received.*

INSURANCE.

A company agreed to pay its managing director £6,000 per annum and a pension of £4,000 per annum for ten years after he ceased to be managing director. Subsequently he agreed to release the company from the obligation and to serve as managing director for £2,000 per annum and in consideration the company agreed to pay him £40,000 in two equal instalments.

Held, the payment in commutation of the pension will be assessable as a profit from the assessee's office. WALES (INSPECTOR OF TAXES) *v.* TILLEY. (1942) 2 K.B. 169=(1942) 1 All.E.R. 455 (K.B.D.).

INSURANCE—*Insurance against liability to workmen—Question in proposed form "Are your machinery etc., properly fenced and guarded and otherwise in good order and condition?"—If refers to future condition—Condition in policy that assured shall take reasonable precautions to prevent accidents—If discharged by selecting competent foreman—Accident due to negligence of foreman—Effect.*

In a proposal for insurance against liability to employees one of the questions asked was "are your machinery, plant and ways properly fenced and guarded and otherwise in good order and condition"? and the answer was "Yes". In the policy of insurance was *inter alia* a condition that "the assured shall take reasonable precautions to prevent accidents and to comply with all statutory obligations." The insured employed a foreman who was obviously a competent and skilled man. In an action for indemnity under the policy for liability to a workman by an accident due to a defective scaffolding subsequently set up,

Held, (1) the question in the proposal form and the answer thereto merely relates to the moment of time at which the proposer is answering it and does not extend to the future condition of the machinery, plant and ways during the currency of the policy; (2) by entrusting to a competent foreman the task of providing suitable and safe material for scaffolding and by selecting suitable materials for the job the employers took the reasonable precautions imposed by the condition and the insured are not in breach of the condition if the foreman is in fact negligent in carrying out the task entrusted to him. WOOLFALL AND RIMMER, LTD. *v.* MOYLE. (1942) 1 K.B. 66=(1941) 3 All.E.R. 304 (C.A.).

——*Marine insurance policy—Clause exempting liability for frustration of voyage—Scuttling of German steamers carrying goods—Right to recover for constructive total loss of cargo insured under policy.*

A marine insurance policy covered war risks as well as marine risks and the policy contained a 'frustration clause'. The policy was warranted free of any claim based upon loss of, or frustration of the insured voyage or venture caused by arrests, restraints or detriment of kings, princes, peoples, usurpers, or persons attempting to usurp power. The goods were being carried on German ships which were directed by the German Government on the outbreak of the war to take refuge in a neutral port or if possible return to Germany with the cargo or as a last resort to scuttle. The masters of the vessels ultimately scuttled the ships. In actions by the owners of the cargo against the under-writers,

Held, affirming the decision of the C. A. in (1940) 4 All. E.R. 395, that the insured in each case was entitled to recover under their respective policies as each of them had suffered a constructive total loss of the goods through the action of the German Government. The frustration clause afforded no defence to the underwriters and the deviation was not such as would prevent the assured from recovering under the policies.

INTEREST.

RICKARDS *v.* FORESTAL LAND CO. (1942) A.C. 50 =(1941) 3 All.E.R. 62 (H.L.).

——*Marine policy—Construction—Ship requisitioned and sailing in convoy—Stranding not due to negligence of those on board—Loss whether due to war risk or marine risk.*

A motor ship which was requisitioned stranded while sailing in convoy and it was found that the stranding was not due to the negligence of the people on board and that subsequently the ship was taken some miles out of her course by a tidal set. In a claim by the owners for indemnity from the Minister of War Transport a case was stated by the arbitrator for the opinion of the King's Bench.

Held, that the loss was caused by the tidal set and as the warlike operations could have had no effect on this the loss was due to perils of the sea and not the consequence of warlike operations. (1941) 2 All.E.R. 776 (K.B.D.), reversed. THE COXWOLD. (1941) 3 All.E.R. 214 (C.A.).

——*Misrepresentation or concealment of a material fact—Effect—Road Traffic Act* (1934), *S.* 10.

Under the general law of insurance an insurer can avoid a policy if he proves that there has been misrepresentation or concealment of a material fact by the insured. What is material is that which would influence the mind of a prudent insurer in deciding whether to accept the risk or fix the premium. If this be proved, it is not necessary further to prove that the mind of the actual insurer was so affected. But under S. 10, Road Traffic Act (1934) the general law is modified and the insurer if he wishes to avoid the policy must establish (1) that the matter relied on was "material" in the sense that the mind of a prudent insurer would be affected by it, and (2) that in fact the underwriter's mind was so affected, and the policy was thereby obtained. ZURICH GENERAL ACCIDENT AND LIABILITY INSURANCE CO. LTD. *v.* MORRISON AND OTHERS. (1942) 2 K.B. 53=(1942) All. E.R. 529 (C.A.)

——*Society given power by rules to institute legal proceedings on behalf of members—Failure to institute proceeding—Society when liable.*

A society was established for the definite object of administering on behalf of its members the provisions of the National Health Insurance Act. A rule of the society provided that "the executive committee of the society shall have power to institute legal proceedings on behalf of members of the society in cases where it may deem it advisable so to do, and may direct the institution of any legal or other proceedings or inquiries which it may consider desirable in the interests of the society or its members." A member involved in a road accident suffered severe personal injuries. He claimed in an action against the society that the society had been guilty of negligence, in that it had assumed on his behalf responsibility for taking legal proceedings to recover damages against the other party to the accident —namely a County Council by one of its drivers—and in breach of its duty had omitted to commence those proceedings within the period of six months allowed by the Public Authorities Protection Act, 1893. He claimed that as a result of that delay the chance of obtaining damages was lost to him.

Held, that the rule did not impose on the committee any obligation whatever to institute legal proceedings on behalf of members. It gave the committee power to do so only in cases where it may deem it advisable so to do. BUTLER *v.* ALCOCK. (1941) 3 All.E.R. 411 (C.A.).

INTEREST—*Charging order silent as to interest—Interest payable.*

LIMITATION.

Though interest is not mentioned in a charging order, it is nevertheless payable because when the Court has once decided that there is a charge the sum charged must bear interest. STOKER *v.* ELWELL. **(1942) Ch. 243=(1942) 1 All.E.R. 261 (Ch. D.).**

LIMITATION— *Acknowledgement—Debt mentioned by debtor in Inland revenue affidavit and statement by debtor's solicitor to trustee in bankruptcy of creditor—If acknowledgment.*

In June, 1929, Mrs. B. H. repaid, out of the £10,000 lent to her, by her husband B. H. the sum of £ 1000. She died on March, 17, 1931 having by the will dated October 16, 1918 appointed her husband (B. H.) the defendant, her sole executor, and having after giving specific legacies and a pecuniary legacy, devised all the residue of her real and personal estate to the defendant absolutely. In his application for probate the defendant swore the usual Inland revenue affidavit in which he gave particulars of the estate of the deceased and in the list of debts due by the deceased was included the sum of £9000 due to B. H. (the defendant) Probate of the will was granted to the defendant on May 20. 1931, and on March 14, 1935 he was adjudicated a bankrupt. Thereupon this debt due to him from his wife vested in the trustee in bankruptcy. In June, 1936, the solicitors for B. H. acting in his capacity as executor wrote a letter to the trustee in bankruptcy mentioning along with a statement of account, that there was a possible claim for the £9,000 the balance of the loan he had made to the deceased. In an action by the trustee in bankruptcy,

Held, that the debt was time barred and neither the affidavit for probate nor the solicitor's letter constituted an acknowledgment of the debt as neither of them was made to the creditor or his agent nor did either of them constitute a promise to pay. TRUSTEE IN BANKRUPTCY *v.* BOWRING HANBURY. **(1942) 1 All E.R. 516 (Ch.D).**

MEDICAL COUNCIL— *Erasure of name fram register on the ground that member was found by Court guilty of adultery—Council if bound to hear other evidence in the inquiry.*

The Medical Act (1858), S. 29 required a "due inquiry" before the erasure of the name of a member from the register of the Medical Council. The Council on the finding of the Divorce Court that a member was guilty of adultery removed his name refusing to hear other evidence adduced by him.

Held, (*Singleton, J.* dissenting) that the refusal did not prevent there being "due inquiry as required by the Act. The Council was entitled to accept the finding arrived at after full investigation by a competent Court without any fresh hearing. THE GENERAL MEDICAL COUNCIL. **(1942) 2 K B. 261=(1942) 1 All.E.R. 568 (K.B.D.).**

MONEY-LENDERS ACT (1900), S. 1— *Principal and interest of earlier notes carrying high rates of interest consolidated into new loan at moderate interest and sued on—Power of Court to re-open the transactions.*

A registered money-lender having lent money at an interest of 150 per cent. per annum and after making further advances at high rates of interest ultimately took a fresh promissory note for the consolidated amount due for principal and interest with interest at 25 per cent. per annum.

Held, that the Court had power under the Money-Lenders Act, S. 1 (*i*) to re-open all the transactions back to the first note and relieve against the harsh and unconscionable rate of interest. LYLE, LTD. *v.* PEARSON. **(1941) 3 All.E.R. 128 (C.A.).**

PRACTICE.

PATENTS—*Condition against resale of article below a fixed price—Breach—Crucial time of knowledge of restrictive condition—Whether time of purchase or of resale—Practice—Certificate of validity of patent—When to be given.*

In an action to restrain the defendants from selling Gillette blades, manufactured by the plaintiffs under their patents, at less than certain regulated prices,

Held, that the burden lies upon the patentee to show *inter alia* that the defendant had the restrictive condition brought to his notice at the time when he acquired the patented goods and it is not sufficient to show that that condition came to his notice in the interval between his acquisition of the goods and his disposal of them. *Columbia Graphophone Co., Ltd.* v. *Thomas*, 41 R.P.C. 294, Expl.

Held, further, that the Court should not as a matter of practice or custom grant a certificate of validity of a patent in a case where there has been no effective contest, merely on *prima facie* evidence of validity being given. GILLETTE INDUSTRIES LTD. *v.* BERNSTEIN. **(1941) 3 All.E.R. 248 (C.A.)=(1942) 1 Ch. 45.**

PRACTICE—*Appeal—Collisions at sea—Apportionment of liability between joint tort-feasors by trial Judge—Power of appellate Court to vary.*

In deciding how much a ship is to blame for a collision, the Court has to decide a question which is just as much one of fact as is the question whether she is to blame at all. If an appellate Court is of opinion that the trial Judge has taken a wrong view of the respective degrees of blame to be attributed to the colliding vessels, it has not only the right but the duty to give effect to its opinion. CERAMIC (OWNERS) *v.* TESTBANK (OWNERS). **(1942) 1 All.E.R. 281 (C.A.).**

——*Appeal—Order by Court below in the exercise of its discretion—Interference in appeal—When proper.*

Appellate authorities ought not to reverse the order by a lower Court in its discretion merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations in the case then the reversal of the order on appeal may be justified. (1937) A.C. 473 and 29 Ch.D. 50, Ref to; (1940) 2 K.B. 123, Reversed. CHARLES OSENTON & CO. *v.* JOHNSTON. **(1942) A. C. 130 (H.L.).**

——*Collision case—Defendant and essential witness serving overseas in the war—If action to be stayed till their return.*

A lorry driven by the defendant, an army driver in charge of it, collided with a car belonging to one of the plaintiffs and carrying *C* and some friends or relatives who were with him. In an action by *C* and other persons injured in the accident, the Treasury Solicitor ultimately entered appearance for the defendant who was on active service abroad and asked for stay on the ground that the defendant and a material witness were out of jurisdiction on service.

Held, that the delay caused by such stay till return to England of the defendant and the witness will hold up the action indefinitely and was likely to cause grave injustice to the plaintiffs, and that accordingly such a stay should not be ordered. COPPIN AND OTHERS *v.* BUSH. **(1942) 1 All.E.R. 516 (Ch. D.).**

——*Defendant a prisoner detained in enemy territory—If "enemy"—Service of summons cannot be dispensed with—Rules of Supreme Court O. IX R. 14-B (1).*

PRACTICE.

A soldier in His Majesty's army who has been taken prisoner during the war and is detained in enemy territory, is not an "enemy" in any sense of the word and therefore service of summons of an action against him cannot be dispensed with under the Rules of Supreme Court O. IX, R. 14 B (1). VANDYKE *v.* ADAMS. (1942) **1 Ch. 155**=(1942) 1 **All.E.R. 130.**

———*Execution—Stay order — Subsequent variation of the order as to amount of security—No jurisdiction to make after orders passed and entered.*

Where on an application for a stay of execution pending an appeal, a Judge has exercised his jurisdiction as to the amount of security which should be given and as to the time within which the security should be given and the order as to stay has been passed and entered, the Judge is *functus officio* and has no jurisdiction to vary the order. The only remedy to get the order varied is to go to the Court of Appeal. *Re* V. G. M. HOLDINGS, LTD. **(1941) 3 All.E.R. 417 (Ch D.).**

———*Judgment—Debt not immediately payable—Property of value proportionate to debt to be charged.*

Even though a debt is not immediately payable the Court has jurisdiction to make a charging order in respect of it. But such jurisdiction must be exercised with the greatest care, as a charging order for a debt not immediately payable is a form of execution. It will not be a proper exercise of jurisdiction to lock up a disproportionate amount of property to satisfy a small debt by reason of the apprehended failure of defendant to satisfy the terms of a judgment. ROBINSON *v.* BAILEY. **(1942) Ch. 268**=**(1942) 1 All.E.R. 498 (Ch. D.).**

———*Jurisdiction—Objection not taken—Duty of Court.*

If a Court is itself satisfied that it has no jurisdiction to entertain a cause it is its duty to give effect to that view, taking if necessary the initiative upon itself. [(1906) 2 K.B. 119]. BENSON *v.* NORTHERN IRELAND TRANSPORT BOARD. **(1942) A C. 520**=**(1942) 1 All E.R. 465 (H.L.).**

———*Particulars—Claim for special damages for wrongful dismissal—Particulars from plaintiff of other employment after dismissal and period of reasonable notice—When to be ordered before delivery of written statement—Rules of practice—If can affect discretion of Judges in special circumstances.*

In an action for damages for wrongful dismissal the plaintiff claimed reasonable notice and averred special damage. Where a plaintiff alleges special damage he must give sufficient particulars of it. He must state either that he has not earned any remuneration in other employment during the relevant period or that he has done so and any form of pleading or any particulars given which do not bring to the clear knowledge of the defendant which of the two implicit statements he is going to rely on, is embarrassing. Also the defendant is entitled to have particulars of what the plaintiff claims to be reasonable notice. The ordering of such particulars before delivery of defence is desirable to enable defendants to decide whether they will pay money into Court and if so what amount and plead the same in defence. There is no rule of practice that particulars of special damages cannot be ordered. Rules of practice grow up and justify themselves as indicating that in the ordinary case judicial discretion will not be exercised in a particular way, but no such rule of practice can be binding where complete discretion is given, and if a Judge considers that an order should be made in the special circumstances of the case before him, he is certainly not bound to follow rules of practice of that kind. MONK *v.* REDWING AIRCRAFT CO. **(1942) 1 K.B. 182**=**(1942) 1 All.E.R. 133 (C.A.).**

TORTS

———*Reference to Official Referee—Investigation involving question of negligence of professional persons—Absence of appeal on findings of fact by referee—Exercise of original discretion by lower Court—If can be interfered with on appeal.*

Where the findings of an Official Referee on questions of fact will be final and no appeal was permissible, investigation involving question of negligence of professional persons ought not to be referred to an Official Referee thereby depriving the right of the party to be tried by a normal tribunal with a right of appeal. (1940) 2 K.B. 123, Reversed. CHARLES OSTENTON & CO. *v.* JOHNSTON. **(1942) A.C. 130 (H.L.).**

RAILWAYS ACT (1921), Sch. III—*Amalgamation of Railway Companies—Dismissal of some employees as a measure of retrenchment which would have been done even if there was no amalgamation—If entitles such employees to compensation as for "dismissal on account of the amalgamation".*

Sch. III of the Railways Act provided *inter alia* for compensation for existing officers and servants who suffer damage "by reason of an amalgamation of Railway companies." It was found that certain employees were dismissed after an amalgamation to reduce expenses and that they would have been dismissed even if there had been no amalgamation.

Held, on a construction of the relevant provisions of the schedule, that the employees were not entitled to compensation as they did not suffer damage by "reason of the amalgamation." BORMAN *v.* LONDON AND NORTH EASTERN RAILWAY CO. **(1942) 1 All.E.R. 442 (K.B.D.).**

SOLICITOR—Retainer—Client a company carrying on business in territory since occupied by enemy—When determines retainer. *See* ALIENS. **(1941) 3 All.E.R. 419 (C.A.).**

TORTS—*Damages—Pension from other funds—If can be deducted from damages payable under Fatal Accidents Act.*

A widow claiming for the estate, and for herself and two children under the Fatal Accidents Act, claimed damages in respect of the death of her husband, alleged to have been due to the negligence of the defendants. The defendants admitted negligence and liability. On the question of damages,

Held, in estimating the damages to which the family are entitled deductions have to be made in respect of pensions paid to the widow and the children from some pensions fund. The possibility of the widow's death and that of the children and the widow's re-marriage must also be taken into account, in fixing the amount of damages. LORY *v.* GREAT WESTERN RAILWAY CO. **(1942) 1 All.E.R. 230 (K.B.D.).**

———*Defamation—Slander of Women Act* (1891)—*Imputation of lesbianism to a woman—If amounts to imputation of unchastity which will be actionable without proof of special damage.*

The imputation of lesbianism to a woman is an imputation of "unchastity" within the meaning of the Slander of Women Act (1891) and she can succeed in an action for damages for slander nothwithstanding that no pecuniary damage had been pleaded or proved by her. KERR *v.* KANNEDY. **(1942) 1 K.B. 409**=**(1942) 1 All.E.R. 412 (K.B.D.).**

———*Factory—Accident due to patent defect in lifting tackle—Men engaged on the job at the time not called as witnesses—Evidence of expert witnesses—Value.*

In an accident case the plaintiff is not called upon to prove precisely how the accident happened. Where neither side called any of the men engaged on the job

when the accident, due to defect in the lifting tackle, took place in a factory and both sides relied on expert evidence, if the plaintiff's explanation is the more probable one, the Court can accept his case and find in his favour. [(1941) 2 All.E.R. 784, affirmed]. DAWSON *v.* MUREX, LTD. **(1942) 1 All.E.R. 483 (C.A.).**

———*Libel—Borough council meeting—Agenda in notice containing copy of committee's report containing defamatory statements—Transmission to public libraries—Publication—Whether privileged.*

After the discovery of a shortage of petrol at one of a Borough council's depots and the conviction of two employees for stealing the petrol, the council appointed a committee "to inquire into the circumstances relating to the loss of the petrol" and to report thereon. One of the convicted employees had during the trial made statements tending to implicate a number of his fellow employees and in their report the committee set out a list of the names of such employees including those of the plaintiffs. The committee stated that the accusations had been reiterated before them and that the employees concerned had emphatically denied the accusations. The report contained in terms no statement that the committee found the charges proved in whole or in part, but there was a recommendation that the employees named including the plaintiffs, should be removed from their existing positions and transferred to other positions. The town clerk sent a notice of a meeting of the council to consider *inter alia* the report of the committee. Copies of the notice containing a full copy of the committee's report were affixed near the door of the town hall where the council was to meet and were also sent to each of the public libraries in the Borough in accordance with long standing practice approved and authorised by the council. In an action against the town clerk mayor alderman and councillors by the plaintiffs for damages for libel alleging that the defendants meant that each of the plaintiffs had been a party to the stealing of the petrol, *held*, that the publication was not privileged as there was no duty or interest to make the communication to the rate payers at that stage. DE BUSE *v.* MCCARTHY. **(1942) 1 K.B. 156 = (1942) 1 All.E.R. 19 (C.A.).**

———*Negligence—Defective condition of lift—Liability of landlord for injury to visitor of tenant—Liability of repairer under limited contract of maintenance to users of lift.*

The plaintiff, a solicitor's clerk, in the course of his professional affairs went to a block of flats owned by *X* in order to call on a tenant living there. Owing to the defective condition of the hydraulic lift the plaintiff was injured. In an action for damages against the owners and the engineers responsible for 'inspecting the lift every month, to adjust, clear and lubricate the mechanism of the lifts', it was found that the day before the accident the engineers attended and adjusted the mechanism and that the cause of the accident was the faulty repacking of the cylinder gland by the mechanic employed by the engineer.

Held, that (*i*) *X* having employed competent contractors was not liable to the plaintiff whether he was an invitee or a licensee. (*ii*) Per *Scott and Goddard, L.JJ.* (*Clauson, L.J.*, dissenting).—The engineers were liable as the accident was due to their negligence in leaving the lift in a dangerous condition. HASELDINE *v.* DAW. **(1941) 3 All.E.R. 156 (C.A.).**

———*Negligence—Escort of child running into highway to save the child from danger—Injury from on coming motor cycle—Contributory negligence—If can be defence.*

A child escorted by the plaintiff ran forward to cross the road. The defendant at that moment was coming along on his motor cycle at a speed exceeding 23 miles per hour. Plaintiff ran out to save the child from being struck by the motor cycle. The defendant cleared the child but struck the plaintiff and injured her. In a claim for damages,

Held, in the circumstances, the initial wrong was on the defendant who was approaching the cross road at too great a speed and was in law solely responsible for the accident. What the plaintiff did was a natural and proper thing to do and there was no contributory negligence on her part. The plaintiff was therefore entitled to damages. MORGAN *v.* AYLEN. **(1942) 1 All.E.R. 489 (K.B.D.).**

———*Negligence—Local authority placing barriers across road on account of bomb damage—Liability for failure to keep the obstruction lighted.*

Where the local authority places barriers across the road on account of bomb damage it is their duty to keep the obstruction lighted. Where the plaintiff while riding a bicycle received injuries through colliding with the obstruction owing to their not being lighted he is entitled to recover damages from the local authority. FOSTER *v.* GILLINGHAM CORPORATION. **(1942) 1 All.E.R. 304 (C.A.).**

———*Negligence—Master and servant—Petrol tanker delivering petrol at garage—Driver lighting cigarette and throwing away match which started a fire—If act in course of employment.*

The respondents were insured by the appellant company against liability to third parties arising from damage to property caused by the use by them of a petrol tanker belonging to the respondents. On 2nd August, 1937, this tanker which was being driven by their employee, one *D*, had taken on board a consignment of 300 gallons of petrol at the Larne depot of Holmes, Ltd., for delivery into the storage tank of one Catherwood, a garage proprietor of Belfast. *D* drove the tanker to Belfast backed it into the Catherwood's garage, inserted the nozzle of the delivery hose-pipe into the manhole of Catherwood's tank and turned on the stopcock at the side of the tanker into the tank *D*, lighted a cigarette and threw away the lighted match. The match ignited some material on the floor of the garage and a fire was caused forthwith where the nozzle of the delivery hose was discharging into the tank. The tanker was destroyed by an explosion. An adjoining house and a car were also destroyed and respondents had to pay damages. In a claim on the insurance it was contended that *D* was the servant of Holmes & Co. and not of the respondents by virtue of an agreement between them which provided *inter alia*, that all the employees of the respondent engaged in or about the delivery of petrol should accept and obey the orders of Holmes & Co., regarding such delivery, the payments of accounts and all matters incidental thereto, and that the respondents should dismiss any employee disregarding or failing to obey such orders. In the clause there followed a proviso that nothing in the clause should be taken as implying that such employees were in any way the employees of Holmes & Co.

Held, (*i*) the terms of the contract between the respondents and Holmes & Co., did not involve the transfer of '*D*' to the service of Holmes & Co.; (*ii*) the negligent act of *D* which caused the fire was done in the course of his employment by the respondents; and (*iii*) the respondents were accordingly entitled to claim from the appellants under their policy. CENTURY INSURANCE CO. LTD. *v.* NORTHERN IRELAND ROAD

TORT.

TRANSPORT BOARD. **(1942) A.C. 509=(1942) 1 All E.R. 491 (H.L.).**

——Negligence—Public omnibus—Liability of windows coming in contact with overhanging branches of road side trees—Duty of owners to avoid the obstructions.

The duty of the owners of an omnibus is a duty to take at least reasonable care that the passengers shall not be injured while they are in that omnibus. It is the duty to avoid the omnibus running into obstructions, not only on the ground but also in the air (*i.e.*) on the sides higher up, like branches of road side trees. In the absence of any evidence on the part of the owners of an omnibus a person injured by the breaking of a window of the omnibus by crushing against a overhanging branch is entitled to recover damages on the presumed negligence of the owners. RADLEY *v.* LONDON PASSENGER TRANSPORT BOARD. **(1942) 1 All E.R. 433 (K.B.D.).**

——Negligence—Radiographer in hospital by error of judgment not applying sufficient screen while applying X-ray—Injury to patient's face—Hospital if liable.

The duty which the law implies in the relation of the hospital authority to a patient and the corresponding liability are limited. The Governors of a public hospital, by their admission of the patient to enjoy in the hospital the gratuitous benefits of its care, undertake that the patient whilst there shall be treated only by experts, whether surgeons, physicians or nurses, of whose professional competence the Governors have taken reasonable care to assure themselves; and, further that those experts shall have at their disposal, for the care and treatment of the patient, fit and proper apparatus and appliances. But the hospital authority does not make itself liable in damages, if members of its professional staff, of whose competence there is no question, act negligently towards the petient in some matter of professional care of skill, or neglect to use, or use negligently in his treatment the apparatus or appliances at their disposal. Accordingly where a patient's face was injured by reason of the inadequate screening due to an error of judgment while a radiologist was giving X-ray treatment for removal of warts the hospital authority is not liable for damages for the negligence. GOLD *v.* ESSEX COUNTY COUNCIL. **(1942) 2 K.B. 293=(1942) 1 All. E.R. 326 (K.B.D.)**

——Negligence — Vehicle skidding and striking a person on pavement—Negligence—Burden of proof.

No vehicle has a right so to manoeuvre itself that its tail on radiator, or whatever it may be, projects over the pavement to the injury of pedestrians lawfully there. The circumstance that the accident was due to a skid is not sufficient to displace the *prima facie* presumption of negligence. The skid by itself is neutral and may or may not be due to negligence. It rests on the defendant to displace the *prima facie* case of negligence by proving that the skid happened without any fault on the part of the driver. LAURIE *v.* RAGLAN BUILDING CO. **(1942) 1 K.B. 152=(1941) 3 All.E.R. 332 (C.A.).**

——Nuisance—Butchers' shop adjoining highway—Piece of fat escaping on to pavement—Plaintiff slipping on it and injuring himself—Right to damages.

The plaintiff fell and was injured by slipping on a piece of fat on the pavement. The piece of fat in question came from the defendants' (a butchers') shop. The piece of fat came there by jumping out on the pavement as the result of a chopping or slicing operation conducted inside the shop.

Held, that the defendants were guilty of negligence in the circumstances and liable for the nuisance.

WILL.

DOLMAM *v.* HILLMAN LTD. **(1941) 1 All.E.R. 355 (C.A.).**

——Nuisance—Snow storm—Accumulation of snow on roof of premises adjoining highway—Fall of mass of snow from roof injuring passer-by—Liability of occupiers for not abating nuisance or warning public.

The plaintiff was injured by a mass of snow which fell upon her while on the highway from the sloping roof of the defendants' leasehold premises and she commenced an action for damages alleging nuisance or in the alternative negligence. The accumulation of the snow was the result of a series of snow storms. No steps were taken by the defendant to remove the snow, no warning was given to the plaintiff and others using the highway and no step was taken to prevent the public from walking or standing under the roof in question.

Held, that the defendant was liable both in nuisance and negligence. (1941) 1 All.E.R. 245, affirmed. SLATER *v.* WORTHINGTON'S STORES. **(1941) 3 All. E.R. 28 (C.A.).**

——Railway—Statutory duty to provide lookout "where any danger is likely to arise" to workmen—Ganger killed while working on line—Liability.

A statutory rule required the railway company to provide a lookout "in all cases where any danger is likely to arise". Where gangers working on a line (where trains were likely to pass every few minutes) were killed by an oncoming train it cannot be said by a railway company which did not provide the lookout, that the danger was not an exceptional danger and the rule did not apply. If a lookout had been provided the accident would not have happened. The railway company is therefore liable for damages. HUTCHINSON *v.* LONDON AND NORTH EASTERN RAILWAY COMPANY. **(1942) 1 K.B. 481=(1942) 1 All.E.R. 330 (C.A.).**

TRADE MARKS—*Merchandise Marks Act* (1926), *S. 1—Imported goods bearing trade mark without indication of place of origin—No civil remedy available against the manufacturer—Criminal prosecution, only remedy.*

The only remedy of an importer against the manufacturers for a breach of the provisions of the Merchandise Marks Act 1926 in failing to indicate the place of origin of imported goods bearing trade marks is by way of prosecution in a Court of summary jurisdiction. No action for breach of statutory duty was maintainable. LONDON ARMOURY CO. LTD. *v.* EVER READY CO. (GREAT BRITAIN) LTD. **(1941) 1 All.E.R. 364 (K.B.D.).**

TRUSTS—*Constructive trustee—Solicitor acting for trustee—When liable for breach of trust.*

In a suit by the beneficiaries against the trustee's solicitor (through whom a mortgage transaction was put through and subsequently the proceeds recovered were invested in preference shares in a company and a loan to the trustee's son) alleging that as he knew the money to be trust money he became a constructive trustee of the money and had the duty of showing that the trust money was duly applied in accordance with the trust.

Held, that the agent (solicitor) so long as he acts honestly owes no duty to any one except his principal and that he only becomes liable as a constructive trustee if he intermeddles in the trust by dealing with or disposing of the trust-money without his principal's instructions. In the circumstances the solicitor cannot be made liable for breaches of trust committed by the express trustee. WILLIAMS ASHMAN *v.* PRICE K. WILLIAMS **(1942) 1 Ch. 219=(1942) 1 All E.R. 310 (Ch.D.).**

WILL—*Annuity "free from income-tax"—Directions—Form of.*

WILL.

(1) If a testator directs payment of an annuity out of the income of his estate, the annuity is not payable free of income-tax unless there is a direction in the will to that effect. If there is no such direction, income-tax is payable by the annuitant. (2) It makes no difference to the application of that rule if, in fact, the annuity is paid out of income from which income-tax has been deducted at the source before it reaches the trustees. (3) It is not a sufficient direction to use the words "a clear annuity" or free of all deductions. If a testator desires to free an annuitment from the payment of income-tax, he will use the words "free of income-tax," and if he wants to exclude sur-tax, will add the words "but not free of sur-tax." SKINNER, *In re*: MILBOURNE *v.* SKINNER. **(1942) 1 Ch. 82=(1942) 1 All.E.R. 32.**

——*Condition for forfeiture on 'marriage with person not of Jewish parentage and Jewish faith'—Validity.*

A clause in a will for forfeiture in the case of the marriage of the testator's daughter to a person not of the Jewish parentage and Jewish faith is valid and not too vague for consideration. 'Of Jewish parentage' in the context in the will refers to the religion of the parents of the husband at the time of his birth. (1940) 1 Ch. 385, overruled. (1941) 1 All.E.R. 539, reversed. *Re* SAMUEL: JACOBS *v.* RAMSDEN. **(1941) 3 All.E.R. 196 (C.A.).**

——*Executors—Liability for loss to estate by delay in realising and paying debts.*

Apart from any provisions contained in the will of a testator which expressly or impliedly deal with the payment of the debts, it is the duty of executors as a matter of due administration of the estate to pay the debts of their testator with due diligence having regard to the assets in their hands which are properly applicable for that purpose, and, in determining whether due diligence has been shown, regard must be had to all the circumstances of the case. The duty is owed not only to the creditors but also to the beneficiaries, for, the ultimate object of administration of an estate is to place the beneficiaries in possession of their interest, and that object cannot be fully achieved unless all debts are satisfied. There is no rule of law that it is the duty of executors to pay debts within one year. The duty is to pay with due diligence and if debts are not paid within one year the onus is thrown upon the executors to justify the delay. As beneficiaries take under the provisions of the will full effect has to be given to the terms giving the executors power to retain assets. Where the estate is saddled with speculative assets like shares the executor has a discretion to give the speculation a fair run. If by reason of the delay the shares fall in value and result in loss, the executors are not liable as their power of retention has been properly exercised. *Re* TANKARD, TANKARD *v.* MIDLAND BANK EXECUTOR AND TRUSTEE CO., LTD. **(1942) 1 Ch. 69=(1941) 3 All. E.R. 458 (Ch.D.).**

——*Soldier's will—Soldier stationed in a camp—Oral statement to another soldier 'I wish my wife to have all I have in case I get killed'—Death of the soldier in air raid two days later—Will, if entitled to admission for probate.*

A soldier, a territorial, was mobilised on 1st September, 1939. On the same day he gave his solicitor instructions for his will, but he never actually executed the will. In August, 1940, his battalion was in camp at a spot in Great Britain and on 5th August, 1940, while he was in camp, he said to a comrade of his: "I wish my wife to have all I have in case I get killed". On 7th August, 1940, enemy aircraft dropped bombs on the camp and he received a wound from which he died on the following day. In a motion by his widow to admit the oral will to probate,

Held, that the will is entitled to be admitted to probate as having been made on 5th August, 1940, by the deceased while a soldier in actual military service under the Wills Act (1837), S. 11. *Re* SPARK. **(1941) 2 All. E.R. 782 (P.D.A.).**

WORDS AND PHRASES—"Has reasonable cause to believe"—Meaning. *See* DEFENCE—GENERAL REQUISITION. **(1941) 3 All.E.R. 338 (H.L.).**

——*'Offender' in S. 186 of Customs Consolidation Act, 1876—If includes accused suspected of having committed offence—Arrest of person suspected to be harbouring uncustomed goods—Accused acquitted by Magistrate—Action for false imprisonment—Maintainability.*

Two Customs Preventive Officers arrested the respondent for alleged breaches of the Customs Consolidation Act, 1876, S. 186. He was brought before a Magistrate charged with knowingly harbouring uncustomed goods but was acquitted. He then brought an action for damages for false imprisonment. S. 186 of the Customs Act provided that "Every person who shall . . . . knowingly harbour . . . . any . . . . uncustomed goods . . . . . shall for each such offence forfeit either treble the value of the goods, including the duty payable thereon or £100 at the election of the Commissioners of Customs; and the offender may either be detained or proceeded against by summons." On a construction of the wording of the section,

Held, though the *prima facie* meaning of the word 'offender' is 'one who has committed an offence' the word is capable also of meaning an alleged offender and as the arrest was permitted by the statute the plaintiff's action must fail. [The dissenting view of *Mackinnon, L.J.*, in the C. A. (1940) 3 All. E.R. 453, affirmed.] BARNARD *v.* GORMAN. **(1941) 3 All. E.R. 45 (H.L.).**

WORKMEN'S COMPENSATION — *Fracture of ankle of workmen—Refusal of workmen to submit to operation—Reasonableness of refusal a question of fact unassailable in Court of appeal.*

The question whether a workman was unreasonable in refusing to undergo an operation is a question of fact and where the arbitrator arrived at a finding on proper evidence that the workman was not unreasonable in refusing to undergo an operation the decision is unassailable in a Court of appeal. STEELE *v.* GEORGE & CO. **(1942) A.C. 497=(1942) 1 All. E.R. 447 (H.L.).**

——*Refusal of workman to have injured leg amputated—Reasonableness—Effect on liability of employer.*

A workman's foot was crushed in an accident and after the removal of some bones which left him, though still suffering considerable pain, able to walk two miles slowly with a stick. The employers on their doctors advice wanted the workman to have his foot amputated which he refused to undergo under the advice of an other eminent surgeon.

Held, the refusal was not unreasonable in the circumstances. The employers can succeed only if they can establish that the man unreasonably refused to accept the offer to have an artificial foot supplied to him for the rest of his life in place of the injured natural foot which he was asked to get amputated. REDPATH BROWN & CO., LTD. *v.* HAYES. **(1942) 1 K.B. 445=(1942) 1 All. E.R. 298 (C.A.).**

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